UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

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In re: ) [AO]

) Docket No. 15-0071

) Milk in California

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BEFORE U.S. ADMINISTRATIVE LAW JUDGE

JILL S. CLIFTON

Thursday, November 12, 2015

9:01 a.m.

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Clovis, California 93727

TRANSCRIPT OF PROCEEDINGS

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---o00---
### Index - Volume 36

**Witnesses in Chronological Order**

**Sue Taylor:**
- Continued Direct Examination by Ms. Vulin: 7232
- Cross-Examination by Mr. Beshore: 7272
- Cross-Examination by Mr. Schad: 7286
- Cross-Examination by Mr. Schaefer: 7287
- Cross-Examination by Mr. Beshore: 7297

**Frank Otis and Dennis Lund:**
- Direct Examination by Ms. Hancock: 7301
- Cross-Examination by Mr. English: 7312
- Cross-Examination by Mr. Beshore: 7318
- Cross-Examination by Mr. Richmond: 7323
- Redirect Examination by Ms. Hancock: 7329

**J. Everett Williams:**
- Direct Examination by Mr. Smith: 7337
- Cross-Examination by Ms. Hancock: 7349
- Cross-Examination by Mr. Beshore: 7351

**Richard Sparrow:**
- Direct Examination by Mr. Smith: 7360
- Cross-Examination by Mr. Beshore: 7383
- Cross-Examination by Mr. Richmond: 7383
- Cross-Examination by Mr. Beshore: 7385

**Gino Tosi:**
- Direct Examination by Ms. Hancock: 7390
- Cross-Examination by Mr. English: 7412
- Cross-Examination by Mr. Beshore: 7419
- Cross-Examination by Mr. Richmond: 7428
- Cross-Examination by Mr. English: 7430

---00---
## INDEX - VOLUME 36

### INDEX OF EXHIBITS

<table>
<thead>
<tr>
<th>NO.</th>
<th>DESCRIPTION</th>
<th>I.D.</th>
<th>EVD.</th>
</tr>
</thead>
<tbody>
<tr>
<td>160</td>
<td>TESTIMONY OF SUE TAYLOR PART 3</td>
<td></td>
<td>7266</td>
</tr>
<tr>
<td>161</td>
<td>ATTACHMENT B</td>
<td>7267</td>
<td></td>
</tr>
<tr>
<td>162</td>
<td>THE NEW CALIFORNIA DISCOUNT CHART-WITH BLANKS</td>
<td>7273</td>
<td></td>
</tr>
<tr>
<td>163</td>
<td>ADVANCED PRICES AND PRICING FACTORS ANNOUNCEMENT</td>
<td>7283</td>
<td>7299</td>
</tr>
<tr>
<td>164</td>
<td>RECONCILIATION OF PROPOSAL 2</td>
<td>7290</td>
<td>7298</td>
</tr>
<tr>
<td>165</td>
<td>TESTIMONY OF FRANK OTIS</td>
<td>7300</td>
<td>7311</td>
</tr>
<tr>
<td>166</td>
<td>TESTIMONY OF EVERETT WILLIAMS</td>
<td>7337</td>
<td>7348</td>
</tr>
<tr>
<td>167</td>
<td>TESTIMONY OF RICHARD SPARROW</td>
<td>7359</td>
<td>7381</td>
</tr>
<tr>
<td>168</td>
<td>TESTIMONY OF GINO TOSI</td>
<td>7389</td>
<td>7412</td>
</tr>
<tr>
<td>169</td>
<td>GRIEVANCE BOARD DOCUMENT</td>
<td>7436</td>
<td></td>
</tr>
<tr>
<td>170</td>
<td>HEARING TRANSCRIPT AUGUST 16, 2004</td>
<td>7436</td>
<td></td>
</tr>
</tbody>
</table>

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THURSDAY, NOVEMBER 12, 2015 –– MORNING SESSION

JUDGE CLIFTON: We are back on record on November 12, 2015. It is a Thursday. It is approximately 9:01 in the morning. This is Day 36 of the milk hearing and we are in Fresno, California.

My name is Jill Clifton. I'm the United States Administrative Law Judge who is tasked with taking in the evidence at this rule making hearing. I work for the United States Department of Agriculture. I would like to take appearances of other participants, beginning first with my fellow employees from the United States Department of Agriculture, and then continuing on with teams of proponents and opponents, and then other participants, including some that we welcome back today, and some that we see for the first time today.

If you expect to testify today, I would like you to be part of the line up who come forward and make your appearance.

MR. CARMAN: Good morning, your Honor, Clifford Carman, C-A-R-M-A-N, Assistant to the Deputy Administrator Dairy Programs Agriculture Marketing Service USDA -- it is with an S.

MR. RICHMOND: Good morning, I'm William Richmond, R-I-C-H-M-O-N-D, with USDA Agricultural Marketing Service and Dairy Programs in the Order Formulation and Enforcement Division in Washington, DC, good morning.

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

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

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

MR. HILL: And I'm Brian Hill with the Office of the General Counsel, Marketing Regulatory and Food Safety Programs Division.

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

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

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


MR. ERBA: Good morning, Eric Erba, E-R-I-C, E-R-B-A, I work for California Dairies, Inc.
MR. ENGLISH: Good morning, your Honor, Proposal 2. Chip English, E-N-G-L-I-S-H, I'm with the law firm of Davis, Wright, Tremaine, with my principal office in Washington, DC. I am here on behalf of the Dairy Institute of California, and they are Proponents of Proposal 2. And I want to note in advance of one of our people today that I'm a proud resident of the State of Maine.

MS. VULIN: Good morning, Ashley Vulin, I'm also a representative of the Dairy Institute of California.


MS. TAYLOR: Good morning, Sue Taylor with Leprino Foods.

MR. OTIS: Good morning, Frank Otis with Foster Dairy Farms, Crystal Creamery, that's O-T-I-S.

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

MR. LUND: Dennis Lund, L-U-N-D, Director of Cost Accounting for Foster Dairy Farms, Crystal Creamery.

MS. de la RIVA: Good morning, Tiffanie de la Riva with the firm Stoel Rives, here for California Producer Handlers Association and Ponderosa Dairy.


MS. REED: Good morning, Kristine Reed with the Miltner law firm on behalf of Select Milk Producers.
MR. MILTNER: Good morning, Ryan Miltner, Miltner law firm on behalf of Select Milk.


MR. WILLIAMS: Everett Williams, Georgia Milk Producers and Dairymen. E-V-E-R-E-T, and then Williams.

MR. SPARROW: Richard Sparrow, I'm a dairy farmer from Kentucky.

MR. TOSI: Good morning, your Honor, my name is Gino Tosi. G -- like George -- I-N-O, last name Tosi, T -- like Tom -- O-S-I, I'll be testifying today on behalf of the California Producer Handlers Association and Ponderosa Dairy. Thank you.

JUDGE CLIFTON: Mr. Tosi, it is remarkable that yesterday when I asked the Veterans to stand, our witness and you were the only Veterans in the room. I'm amazed at that. There are lots of us here. Thank you for your service.

MR. TOSI: Thank you.

JUDGE CLIFTON: Is there anyone else who has not yet approached the podium who would like to do so at this time? I would like now to go to preliminary matters and announcements. I notice that Laurel May is double tasking
today. She is now taking exhibits and corrections to exhibits, and so on, coordinating with witnesses and all other duties.

MS. MAY: We have a saying at AMS, it is "all other duties as assigned" at the end of your position description, and that's what I'm doing today.

Welcome to the hearing. Glad to see all of you here this morning. Looking forward to hearing from some producers and other people today.

If you would like to testify in this hearing, you simply need to let us know that you would like to do so and we can get you into the line up. If you would like to ask questions of any of the witnesses, you may do so by raising your hand or approaching the podium and having the Judge acknowledge you.

As always, we are broadcasting this session of the hearing via live audio feed, which is available online at www.ams.usda.gov/live.

The court reporter is taking official transcripts of this hearing and they are available on our AMS Dairy website approximately two weeks after the end of each hearing week. And there are copies of some of the past exhibits back in the corner where Mr. Tosi is looking at the file boxes. You are welcome to help yourself to any of those, if you would like them. And we do have other copies of some of the earlier ones back in the hotel, so if there any that you don't see there let
me know and we might be able to come up with some others.

    My recollection, which is getting shorter and shorter, is that yesterday Sue Taylor was on the stand, and I believe today we are going to continue with her testimony and direct, or cross-examination, and then we have a couple of producers who introduced themselves this morning who would like to testify. So I will turn it over to Chip.

    JUDGE CLIFTON: Mr. English, I know Ms. Vulin is examining Ms. Taylor, but I'm calling on you with regard to the preliminary matters, such as scheduling.

    MR. ENGLISH: Thank you, your Honor, and I think we'll have a number of people coming up. But we have, and I think pretty much remarkably for this proceeding, had a lot of discussions among counsel to try to work things through, and so my part of this is to say that, yes, we would like to have Ms. Taylor get on the stand and finish her direct and her cross so that she can return, delayed, to her meetings. And then I think turn it over to others talk about what's going to happen next. I will say that after Ms. Taylor, we have a couple of housekeeping matters and they are basically two statements of party witnesses, the party parties, just to put in the record, under 801(d)(2), and that will finish our case-in-chief. And then we do understand that at some point in the near future, near to be defined, Dr. Schiek will return to respond to your questions from Tuesday.
But otherwise we are going to be done. And I will say that as of this moment, subject to not knowing everything that's going to happen, we do not have any rebuttal. So we do not presently anticipate rebuttal as we think about scheduling.

And then I'll say one more thing, hopefully I will have more information by this afternoon. Right now we have not heard anything from the Federal District Court located about five miles from here, and so at the moment, that hearing is still scheduled for 1:30 Monday afternoon. So we obviously are hoping to hear, and I, you know, if you hear a shout of joy some time today, you will know what that is about.

JUDGE CLIFTON: Didn't you say though, Mr. English, that typically you find out on the Friday before the hearing?

MR. ENGLISH: Well, I think it maybe 48 -- but you may be right, we could hear as late as tomorrow. What I'm saying is the second I know, you know, the only thing we'll know is if we get good news, which is the view of not having a hearing so it doesn't cause whatever issues. So anyway, that's where we are, and I assure you that, that we're -- I won't interrupt a witness, well, maybe not, but, you know, everybody will know as soon as I know.

JUDGE CLIFTON: Thank you. I do appreciate that. In any event, whether your hearing requires you to be elsewhere, we will start Monday morning, because you will be able to join us for that.
MR. ENGLISH: Yes.

JUDGE CLIFTON: And then I will not keep going without you so, if you have to be gone we'll not be in hearing here during that time, but it could be a short time that you are gone so --

MR. ENGLISH: And we're still looking at some options to try to help out because we want to keep going.

MR. ENGLISH: I assure everybody in this room that I think, like everybody in this room, I have every single motivation in the world to be done on or preferably before next Friday.

MS. HANCOCK: Nicole Hancock. I was going to offer our line up that will follow when Mr. English is done with his case-in-chief. We have Frank Otis and Dennis Lund from Foster Farms Dairy and Crystal Creamery to testify. They do have to leave by 3:20 so we're hoping that, hoping we can make that. If we get into a time crunch, we're willing to buy some pizzas and blaze on through lunch, if that's what it takes, but we need to get him out of here. I think his testimony is valuable, so I would really like to be able to put it on if I can.

When that's done, if there's more cleanup witnesses, that might happen then. Some other witnesses that I think we might hear from, we also have Gino Tosi, who is available and he'll put on testimony for Federal Order language for Producer Handlers Association, and then separately for Ponderosa Dairy, and then that is all of the witnesses that we have available
today. We have one more producer-handler that will testify
tomorrow for both Producer Handlers Association and then
separately for Ponderosa Dairy.

MR. SMITH: Your Honor, Dan Smith. The two dairy farmers
from the Southeast who introduced themselves, Mr. Williams and
Mr. Sparrow, are here for, throughout today, and they can serve
at whatever works best for your scheduling. So they are
available for the day.

JUDGE CLIFTON: Mr. Smith, there was a dairy farmer here
from Tennessee earlier this week, we didn't get him on. He was
a little ambivalent about whether he wanted to interrupt in
order to testify. He was very respectful. And I'm -- I didn't
catch his name, but I'm, I would imagine that he's part of your
group, and I'm sorry that that we didn't hear from him.

MR. SMITH: Well, you and I both imagine that. I heard if
he was here last night in the second connection I took, I think
that's what it was, and he was, but apparently he was gone
before I got here, so I will extend your expression of courtesy
to him through the network.

JUDGE CLIFTON: Thank you.

MR. BESHORE: Marvin Beshore. If I might, just some
information for everyone with respect to our rebuttal. We're
prepared to move forward tomorrow with rebuttal, assuming, you
know, that things will have evolved to the point where we can
start our rebuttal. We do have a dairy farmer, two dairy
farmers, Mr. Hollon is indicating to me, who we expect to be, who plan to be here tomorrow, you know, to testify. And looking just out towards next week, our rebuttal has nine or ten pieces to it. At this point, as we see it, some of them are very brief.

But one scheduling issue I'll just flag now, Mr. Hollon cannot be here from midday Monday through Tuesday, I think we'll be able to work other pieces around that, but he has a number of those parts, has responsibility for a number of those parts of our rebuttal case.

JUDGE CLIFTON: So he would be back Wednesday morning? MR. BESHAORE: Yeah, late Tuesday. Available Wednesday morning, yes.

JUDGE CLIFTON: Who else has preliminary matters, whether they are scheduling or any other concerns? I see none.

I would like to add what I'm thinking about now. I'm thinking about briefing. And typically, what we do is we wait until the transcript corrections have been proposed and ruled on, and then we have briefs. In this case, I will permit not only the opening briefs, but also reply briefs. This is too complicated and too important to have you see in a brief by someone else, an argument that you need to address, and that you need to alert the Department to other things they should consider. So we'll have to have two rounds of briefs.

Now, that does not require anyone who submits an
opening brief to also submit a reply, it is an opportunity, not a requirement. Anyone is welcome to submit a brief. You don't have to have been an attorney representing a proponent. But everyone who chooses to submit a brief should understand that if you will put yourself in the shoes of the US Department of Agriculture, and take into account what they need to consider, it will be very helpful.

The United States Secretary of Agriculture is a very hands-on, very knowledgeable leader, who will be very involved in this. There are legal constraints, even on a Secretary of Agriculture. Those may be the most difficult parts of dealing with all of the information. So we need your wisdom, we need your collective wisdom, even though you come from different points of view. I think if you respond to one another's, and I'm going to call them reply briefs, ideas, it will be very valuable to the people who have to work with these very difficult issues.

All right. That's all I have. Are there any other preliminary matters? None. Let us continue then with Sue Taylor's testimony.

Let's see, for those who weren't here yesterday and do not have a copy of Exhibit 161 and 160, are there any other copies available?

MS. VULIN: Yes, your Honor. We have maybe five of each.

JUDGE CLIFTON: Please raise your hand if you would like a
copy of the exhibits that Ms. Taylor is testifying about. She began this yesterday. There are two exhibits and I'll invite you to mark them with the numbers we have placed on them, if you would like. The document entitled Testimony of Sue Taylor, Part 3, is Exhibit 160, and Exhibit 161 is the Attachment B, as in boy, to that testimony, but it has its own exhibit number, 161.

Ms. Vulin, if you will identify yourself again, and then you may proceed. Ms. Taylor, you remain sworn. I would like you to state and spell your name one more time for us.


MS. VULIN: And I'm Ashley Vulin for the Dairy Institute of California.

CONTINUED DIRECT EXAMINATION

BY MS. VULIN:

Q. Ms. Taylor, yesterday you read your written statement Exhibit 160 into the record, correct?

A. Yes.

Q. And so today I would like us to turn to Attachment B, which are the set of tables that you created. I would ask that everybody please turn to Table 1 of Attachment B, which is Page 1 of the entire table packet.

Now, Ms. Taylor, can you give us, first off, just kind of an overview of the content of this table, Table 1?
A. Certainly. To orient everybody broadly to the tables, I selected a period starting January 2005 and going through December 2014, so a ten-year period. And for each table I attempted to analyze the price outcomes by applying the regulated price surface, regulated price formulas in Proposal 2 to the commodity prices that existed through that period. And there is a comparison with the existing Federal Order prices and also with the existing CDFA prices relative to the formulas in use, the permanent formulas in use at this point in time.

Table 1 specifically provides you with a commodity price inputs that were used in those calculations. So for Table 1, the left block is the set of commodity price inputs used for the Dairy Institute proposal, which those who have been here will recall, first of all, asked for USDA to use a western survey price to drive the commodity prices, but in the event that a survey cannot be conducted without violating confidentiality concerns, asks the Department to use certain default values that were calculated and submitted by Dr. Schiek based upon data of prices received and California, versus the NDPSR numbers predominantly. So in Table 1, well, I'll orient you as well. Immediately after the column headings, below the column headings, I have a row that I have titled column designation. And I put into that row, letters so that we can refer to the specific columns, and below that is column math. So for those columns where I have done math based on other
columns, I have attempted to -- to document what that relationship is.

Q. Thank you, Ms. Taylor. And I just wanted to point out, those headings are particularly helpful because this table spans multiple pages, both vertically and horizontally, so you will see that whereas page 3, the furthest column to the right is Column M, as in mother, you pick up on page 4 at Column N, as in Nancy, but you also continue down onto the next page within Column N, so that kind of helps orient those who are looking at the table to make sure they can visualize the table in its entirety.

A. Thank you. That was helpful. And if you look at, for example, page 3, you will see that at the bottom of each table, it's a pages 1 through 3, essentially would be the same set of columns but progressing through the months from 2005 through 2014, and at the bottom I have shown annual averages, and a ten-year average, and that should carry through with each table that we look at. Going back to specifics around Columns A through E, which are the price inputs for the analysis on the class price outcomes for the Proposal 2, those products which have comparable NDPSR surveys that already exist, are calculated using the default values relative to the NDPSR prices that were previously published by USDA. So in the case of western butter, western nonfat dry milk, and western dry whey, those were calculated directly from the NDPSR prices.
released by AMS at the time that class prices are announced.

Q. And those are Columns F through I?

A. Yes. Now, in the case of Column C, western cheddar 40
pound blocks, those prices were calculated with the exception
of the government shutdown, during which the specific block
data was not released, but otherwise those, Column C would be
calculated relative to the monthly average block price that fed
into the NDPSR cheese price. So again, the NDPSR cheese price
would be over in Column H, but because those are comprised of
both blocks and barrels, we had to tease out the block part of
that, and the Column C would be a calculation relative to the
block only piece of Column H.

In the case of Column E, the western whey protein
concentrate 34 price, that was calculated using the weekly data
from Dairy Market News and it was calculated based on the
average of the mostly's for a Central Western WPC 34, and that
was again, for the same periods that were associated, or I am
defined in the Dairy Institute proposal for each month.

Columns F through I, once again, are the published
prices from USDA for the commodities used in the calculation of
class prices. And Columns J through M similarly are the
published prices, but from the State of California, CDFA, that
were used to drive their milk price formulas. One thing I'll
point out is that there was a period when CDFA did not use the
western dry whey series, they had a flat 25 cent factor in 4b
price formula, but they did include their calculation in their exhibit in this hearing, so I used that data.

Q. Thank you, Ms. Taylor. So now if we could turn to Page 4, which picks up at Table N or excuse me, Column N as in Nancy, can you explain how these calculate in the data that you provided in Columns A through N?

A. Certainly. So pages 4 through 6 represent the difference in the commodity price used in our analysis of the Dairy Institute proposal versus those prices that were used in the Federal Order calculations and those prices that were used in the California State Order calculation. So you can clearly see in Columns N, O, and Q, that price discount that was used in, or was proposed in Dr. Schiek's testimony to get the NDPSR price series to a western equivalent. These are the default values that are in the formula. The 2.18 cent discount on butter, the 2.44 cent discount on nonfat dry milk, and the .63 cent discount on dry whey.

In the case of Column P, you will see that there's much more variability in the calculation, but that, again, as I described in pages 1 through 3, is driven by the fact that the Dairy Institute proposal is based on cheddar blocks, and the existing cheese price in Class III formulas is a combination of blocks and barrels.

The same analysis is done then again, for the California State Order commodity prices over time, and that's
columns R through U.

JUDGE CLIFTON: So, you know, Ms. Taylor, how B sounds like P sounds like -- I believe you were calling our attention when you pointed out the greater disparity, Column P like Paul?

MS. TAYLOR: That's correct.

JUDGE CLIFTON: Okay.

MS. VULIN: Thank you, your Honor.

BY MS. VULIN:

Q. So Ms. Taylor, let's take January 5th, which begins on page 1, and I'll just have you kind of read across the line throughout each of the pricing columns to explain what that number is and what it means, so we can just kind of use that as an example to understand the table as a whole.

A. Certainly. And just to clarify, that would be January of 2005, and Column N, as in Nancy, would be calculated by taking, from page 1, the first row Column A, and reducing it by Column F, so that would be the western butter series that's going to drive the analysis of the Proposal 2 outcomes, minus the, at that time, NASS butter price used in the Federal Order system.

Column O, nonfat dry milk, will refer back to the western nonfat dry milk price found in Column B on page 1, top row, reduced by the Column G on page 1, first row, the NASS nonfat dry milk price.

Column P would be the western cheddar price found in
Column C on the first page, reduced by Column H on the first page, first row, the AMS cheese price, the block barrel combination.

And in Column Q it would be the western dry whey price found in Column D in the first table, reduced by the NASS dry whey price in Column I on page 1, first row.

We go through that same process again on the California State Order commodity prices, so Column R is going back to the first page, Column A minus Column J. Column S is Column B minus Column K.

In the case of the California State Order commodity prices, nonfat dry milk is based on a survey, it's the California weighted average price, and if you will recall, we had some, we're essentially locking down some relationship in the Dairy Institute proposal, so you end up with some variability there as well as on the, again, the cheddar block. In the dry whey, Column T is C minus L from the first page.

Q. Column T as in Tom?
A. Yes. And Column U is D, as in dog, minus Column M from the first page.

Q. And neither the NASS pricing nor the California State Order commodity pricing provided a value for WPC, correct?
A. Correct. So I don't have those comparisons in this table. I just provide simply what our price assumption was in the first table.
Q. Thank you. And now turning to page 6, after the calculations between the two comparisons at the very end, which you had pointed out earlier, but I wanted to highlight again now that we have gone through the calculations, you have the yearly average for each of those calculations as well as the ten-year average.

A. Yes. And as you look through those individual years and the ten-year average, you will see that it's obvious that again we have hinged consistently to the NDPSR national survey for butter, nonfat dry milk, and dry whey. The cheddar cheese variability is related to the fact that we're using cheddar block instead of blocks and barrels. And when it comes to the State Order comparison, you will see a larger spread on average from the State Order price series on butter and cheddar, whereas nonfat dry milk are both within a penny of that ten-year history, and that larger variability in the pricing, I believe, is related to the different timeframes that we used to establish those discounts.

Q. Because of all the changes in the market that happened between 2005 and 2014?

A. Yes.

JUDGE CLIFTON: Ms. Taylor, how do I see that there's a greater difference? What do I look at to see that?

MS. TAYLOR: I was looking at the ten-year average, so it's the lowest line on that table. And over in the right hand
portion of the table, where we're comparing with the Dairy Institute proposal with the California State Order commodity prices -- well, I guess there are a few things that are happening in this. One, these are commodity prices before the discount factor that's embedded in the California class price formulas. And so there's that piece that is not represented here. These prices would be in the case of butter and cheddar, the CME price averages from the 26th of the prior month to the 25th of the current month. And then the California formulas apply a discount, it's referred to as the FOB factor, in the formula outside of this part of the calculation.

But what I was referring to is that 4.07 cent discount on butter and the 2.09 discount on cheddar. And as I think more about it, part of the reason why those are the greater discount in this part of the calculation, or the analysis, then the other two factors is, the other two factors are based on real time surveys, and the butter and cheddar are based on the CME price and then the discount is, the FOB discount is applied separately in the formula.

BY MS. VULIN:

Q. Thank you, Ms. Taylor. Is there anything else you want to tell us about Table 1?

A. No, I think that that covers largely Table 1. And it also largely covers Table 2, because Table 2, if I can have people turn to that, is in the same format, same logic, but
covers the advanced pricing factors. So those factors used for the calculation of anything that has an advanced price announcement, so it would be a portion of all of Class I and a portion of Class II prices.

Now, once again, we have some price series that are hinged off of published prices by AMS that have been published over the years, and some where a calculation had to be made to fit that particular timeframe. And specifically those that required a separate calculation are Columns C, D, and E, which would be the western cheddar 40 pound block, western dry whey, and western WPC. And those calculations would have been done using the same timeframe that is used to calculate the advanced price commodity prices. And in the case of the western cheddar 40 pound block, that would have been indexed to the NDPSR or NASS's, in the case that it applies, release of the cheddar block price. And the western dry whey would have been calculated relative to the Dairy Market News weekly dry whey quotes, as would be the case with western WPC 34.

Q. And in comparing page 6 with page 12, which are the ten-year average for the Class III and IV pricing factors of Table 1, and then the ten-year average for the advanced pricing factors in Table 2, you can see that there's a lot of consistency between them, and that the columns that you mentioned, C, D, and E, did have some effect but there are still a lot of similarity between these two tables?
A. Correct. As you look at the difference between the advanced pricing -- I haven't done it -- but if you look at the same relative to the announced commodity prices is used in the existing formulas on the Federal Order side, you would similarly see a lot of consistency, but they are not equal in terms of relationship.

Q. So just two different lenses through which to view the pricing?

A. Well, there's one set of data, Table 1, is used in the calculation of Class III and IV prices, and also the butterfat piece of Class II, and the calculations on Table 2 are related to Class I prices and the SNF portion of Class II.

Q. Thank you, Ms. Taylor. So turning now to Table 3, which is on page 13, and is entitled Class IV pricing impacts. Can you please just do the same thing and walk us through the set up of this table and the meaning of the various columns?

A. Certainly.

So on Table 3 we're looking specifically at the Class IV price which would apply to butter and dry milk regulated prices. The calculations are driven from the commodity prices that I explained in Table 1. The prices shown on pages 1 through 3 --

Q. Pages 1 through 3 of Table 3, which are also pages 13 through 15, correct?

A. Correct. And to clarify, the 13 through 15 would be
the handwritten page numbers, just so that it is a little
easier for people to make their way through the whole
attachment. So these would be the commodity, or the, excuse
me, they would be the component prices that are calculated
based on the commodity prices that we have seen in Table 1.

So for example, the left portion of that table, of
Table 3, page, I'll use the handwritten 13 is where I'm at, the
Column A would be the butterfat component price that would be
calculated based on the use of the formula that is proposed by
Dairy Institute, and for reference, we have had some
adjustments through the hearing, or some amendments to that
formula, so I had included that as Attachment A, page 5 on the
back of my, the body of my testimony. So it would be the
application of those price formulas using the commodity prices
that existed in January of 2005.

Q. And just to clarify, you are using the amended price
formulas?
A. Correct.

Q. Thank you.
A. Column B would be the same logic, using the solids not
fat calculation. And Column C would be grossing up those
components on a standard component assumption under the Federal
Order system of 3.5 percent fat and 8.685 percent solids not
fat.

The middle table that's entitled Class IV FMMO prices,
October 2008 formulas, would be the component and hundredweight values that were announced from October 2008 to current. And for the period from January 2005 through September of 2008 would be the recalculated component prices by applying that 2008 formula to the commodity prices that existed in that timeframe.

The table to the right, the California State Order prices, current permanent formulas from August 2008, would be the IV-A component prices the would be calculated based on the formula that existed at the time that, well, it is the last permanent set of formulas. One nuance that I'll point out, Columns G and H are straightforward, they are component price calculations. Column I and J, there is a difference in the standard component assumption that is used by California State Order as they quote hundredweight prices versus the California order. It's not a large difference, but the assumption in the California State Order when they quota hundredweight values is 3.5 percent fat, 8.7 percent SNF, and in the Federal Order it is 3.5, 8.685. And I based my comparisons when I look at hundredweights with the California system, on that Federal Order standard assumption, just so that I have apples and apples. But I did want to show the 3.5, 8.7 number because most people will look at it and try to compare it with what's been announced by CDFA and say it is wrong. So I wanted to show, in this case, both columns, so people can get a comfort
level on its accuracy.

Q. So Column I is just provided for context for Column J, but won't be entered into your calculation because it would essentially be an oranges to apples calculation?

A. Correct.

Q. Thank you.

JUDGE CLIFTON: So often it is just a penny difference on a hundredweight.

MS. TAYLOR: Right. I mean, it's not a big difference between 8.7 pounds of SNF and 8.685, but in the interest of accuracy I did want to differentiate.

BY MS. VULIN:

Q. So now if we could turn to page 16, that's where you start to run the comparisons starting with Column K. Would you walk us through those, please?

A. Certainly. The Column K through M is a comparison, the Class IV price from the Dairy Institute proposal, less the Federal Order as announced. Well, actually, it's not as announced, with that clarification, I have taken the 2008 formula and brought it forward into 2005, so you will see, once again, some consistency in those differences which are explained by the fact that we have, in the Dairy Institute proposal, adopted the same yield assumption and basic structure on Class III and IV. The differences are driven by different price levels, which again, we're primarily asking for a survey
price, but for the purpose of this analysis, have used a
default value, and also it's the difference in make allowance.

Q. The Columns M through N, as in Nancy, through P, as in
Paul, are the comparison with the California State Order
Class 4a prices.

Q. And then if we follow this column down to page 18, I
should say these columns, then we'll get down to our annual and
our ten-year average on page 18?

A. That's correct. Page 18, the ten-year average
difference on Class IV versus what the Federal Order formula
would drive, 60 cents per hundredweight. And the average
difference relative to the class price that would be calculated
based on permanent regulation at CDFA is a 21 cent reduction.

Q. Thank you, Ms. Taylor. So we'll turn now to Table 4,
starting on page 19. And we have got a lot of columns here, so
I will ask that you do the same and walk us through the meaning
of each of these.

A. The Table 4 is the Class III pricing impacts. This
table is complicated a bit because there are two different
approaches to other solids that are being considered under the
Dairy Institute Proposal. One being based on dry whey, one
being based on the whey protein concentrate 34 values, back
into a, essentially a liquid whey value equivalent.

Q. And Ms. Taylor, can you identify the columns that
address the first calculation you noted, the dry whey
valuation?

A. Sure. So columns Column C is the calculation of the other solids price, using the dry whey proposal. I also, for purposes of comparison with California, which does not split protein from other solids, needed to calculate a solids not fat equivalent for the purpose of this analysis. And so Column E would be the theoretical solids not fat price per pound to be used in that comparison.

In order to calculate the solids not fat equivalent, I used the ratios that exist in the Federal Order, which would be 5.9 pounds of other solids, plus 3.1 pounds of protein, divide that by 9 to get your price per pound of other, of solids not fat. So C would be the other solids price that's used to calculate the theoretical solids not fat price in Column E, and also used to calculate the Class III hundredweight value in Column G, which shows the, again, dry whey proposal.

Q. Thank you. So we have Column C, as in cat; E, as in elephant; and G, as in giraffe, just to stay consistent. C, E, and G, which apply to the dry whey valuation.

A. Correct.

Q. And now could you identify for us which columns you would look you when evaluating the liquid whey valuation, the alternative proposal?

A. In all cases, these are just one column to the right of the ones I just noted. So the other solids, based on the
liquid whey proposal, show up in Column D; the solids not fat price, again, using the same logic that I already described, but using the liquid whey proposal in Column F, and the Class III hundredweight value using the liquid whey proposal, would be Column H.

Q. Thank you, Ms. Taylor. So now I'll ask you to start back at the beginning now that we have differentiated what we will use those columns for, and have you begin at A and walk us across your calculations.

A. So A would simply be the butterfat price calculated under the Dairy Institute Proposal; B is the protein price calculated under the Dairy Institute Proposal; and Column C is the other solids based on the dry whey Dairy Institute Proposal; and D --

Q. You have done C through H for us, I'll let you get past having to do that again. If you want to pick up at I?

A. I through L would be the Federal Order prices, again, from October 2008 to current, should be based on the announced price, prior to that, they are restated. In Columns M through P would be the California State Order prices using the formulas that existed in August of 2012 to restate prior periods.

Q. So now we can turn to page 22 to see the comparisons you have run using those numbers, correct?

A. Yes.

Q. So I'll just have you walk us through those.
A. Okay. On page 22, this would simply, similar format to what we have already discussed, left hand side is a comparison with the Dairy Institute outcomes versus the Federal Order Class III, and on the right side versus the California State Order. The only thing, only nuance that I'll point out is the, again, we have the two different versions of the other solids valuation, and therefore, two different versions on the Class III hundredweight value. The dry whey version is in Column S and U, and the liquid WPC version is in Column T and V.

Q. V as in Vulin?

A. V as in Vulin. And similarly, on the State Order, there's the comparison where the dry whey based Dairy Institute Proposal shows up in Columns X and Z; the liquid WPC version shows up in Y and AA.

Q. And then if we turn to page 24 we'll be able to find the yearly averages and then the ten-year average that we have seen in the other tables, correct?

A. Correct. And in this case, you will see in the Federal Order block ten-year average, the dry whey approach reduces the ten-year average by 85 cents, and the liquid WPC other solids valuation reduces it by $1.42. In the comparison versus the California State Order prices, the dry whey version reduces the price by, or increases the price by 35 cents, and the liquid WPC version reduces it by 22 cents.
Q. Thank you, Ms. Taylor. So I'll ask that we skip Table 5 for now and move to Table 6, which you can find on the legal-sized paper at the very end of your packet. Because of the size of this document, we had to try and print it larger, and even then it is a good eye exam test for anyone who is interested in testing your eyesight.

So we're on Table 6, which is page 34 of the packet, but hopefully easily found, as it's larger than the other pages. And I'll ask, Ms. Taylor, that you tell us Table 6, Class 1 pricing impacts. Can you walk us through this table, please?

A. I hope. Okay. So Class I pricing is more complicated. The prices as similar to what I already walked through, because you have the driver being the higher of, effectively, the butter powder value or the cheese value. We have the extra columns showing what that skim value would be under both the other solids proposal based on dry whey, as well as the other solids based on the liquid WPC. So there is a little bit of extra complication here.

The Columns A through C, well, let's say A through D, focus on the component prices that are used to calculate the skim that will drive the selection of the higher of. So Column A would be the advanced protein price using the Class III protein formula calculation. The Column B would be the advanced other solids price, using the advance, or using.
the dry whey factor in the Class III formula from Dairy Institute. Column C would be the other solids factor using the liquid WPC, approach.

The SNF solids calculation in D would be the SNF price using the Class IV formula. Columns E through G would be the calculation of the skim value that then would allow you to select the higher of. So Column E is the Class III skim value using the dry whey factor; Column F is the Class III skim value using the WPC, liquid WPC factor; Column G would be the Class IV skim using the Class IV formula for SNF.

The Columns H through I show you the higher of under in Column H, if a dry whey factor as proposed by Dairy Institute is adopted. And in Column I, if the liquid WPC factor is used in the higher of calculation.

Based upon that -- okay. So Columns J through N are the allocation of the Class I mover between SNF fluid carrier, and I'm showing in Column N, the fat price. So the J through M are really the skim allocation between the SNF and the fluid carrier, and the SNF in Column J is driven by the dry whey factor, and the fluid carrier in Column L is driven by the dry whey factor. The SNF in K is driven by the liquid WPC factor, and the fluid carrier in M is driven by the liquid WPC factor.

Column N shows the advanced Class I fat pricing, and the Columns O and P show the Class I base milk price. Column O being, that would be, that would be driven using a dry whey
formula for other solids. And P being that that would be
driven by the liquid WPC factor being used to calculate other
solids.

The Columns Q through T are simply taking that
hundredweight base milk price and adding the respective
differentials, $1.80 for Northern California, and $2.10 for
Southern California.

JUDGE CLIFTON: Let me interrupt you for just a minute.
(Noise from other room interruption.)
You may proceed.

MS. TAYLOR: So in this case the dry whey factor would be
used --

JUDGE CLIFTON: Let me stop you.
(Noise from airplane interruption.)
Okay. Go ahead.

MS. TAYLOR: So in this case, the dry whey factor is used
in calculations for Columns Q and S, and the liquid WPC factor
would be used in the calculation of Columns R and T.

BY MS. VULIN:
Q. And we see those calculations running through page 34,
35, and 36, and then if we turn to page 37 we will pick up
again at Column U. Could you walk us through these columns,
please?

JUDGE CLIFTON: There's a noisy aircraft overhead. We are
at the Piccadilly Inn Airport.
BY MS. VULIN:

Q. So we're on page 37, looking at Column U.

A. I have to ground myself, because the difference between this Table 6 and the others is, in Table 6, or in the others I had essentially the calculations for both, for all three, the Dairy Institute, Federal Order, and California all on the front set of pages.

In the case of Table 6, because of the complexity of the Class I calculation, what we have gone through so far is strictly the Dairy Institute piece. And so page 37 starts the summarization of the existing Federal Order and the existing CDFA pieces of the calculations. So the Columns U through AA would be the Federal Order prices, again, restated to the October 2008 formulas. And the Columns AB through AK are the CDFA regulated milk prices restated to current permanent formulas.

Q. So then to get to the comparisons, I believe we turn to page 40, which is the third to the last page of the document. Could you walk us through the comparisons here, please, Ms. Taylor?

A. Certainly. So on page 40, this is, they have bottom line analysis of what's the difference between the Dairy Institute Proposal and the existing Federal Orders or the existing CDFA data. In the left five columns, which it seems I failed to letter, is the comparison with the Federal Order
based Class I price, fat, skim based on the dry whey proposal, skim based on the WPC 34 proposal, liquid WPC 34 proposal, and then the associated hundredweight comparisons.

This is a base Class I price to base Class I price comparison. The columns to the right, the table to the right is a little bit of an apples and oranges comparison as I noted in my testimony, because California doesn't apply a differential to a comparable number that you would find in the Federal Order for a base month price. Effectively what they do is calculate a commodity reference price, whose, in the formulas are not adjusted automatically every time 4a and Class 4b formulas are adjusted. And those formulas I'll characterize very loosely as being richly rooted in those manufactured class formulas at one time, without having any make allowances in them. And so inherently they have an elevation in price level. And so this comparison versus the, from the Federal Order base price to the California Class I price, is apples and oranges. And probably another way that we could compare it is, the Federal Order price inclusive of the differential, that would really be the apples and apples comparison, but there's some complications in doing that in itself, so I chose just to keep it cleaner. But we should recognize the price that would be paid for Class I under the Dairy Institute Proposal in a Federal Order system, would be increased by the differential amount from the prices
represented here.

Q. So are these prices then, are they going to be a little bit too low or a little bit too high?

A. These would represent the Dairy Institute prices as being lower than those that would apply by the differential that would apply at that plant.

Q. Thank you, Ms. Taylor. So I'll -- guide us now to Page 42, which is the end of that table, where we can find our annual averages over the ten-year period, and then our ten-year average for this data, correct?

A. Yes. So the base month comparison for the ten-year average, using the dry whey other solids valuation is 36 cents lower than the base month average that would have existed using the October 2008 formulas going backwards in the Federal Order, using the liquid WPC approach, a little over 55 cents lower.

Relative to the California State Order, and this is where I would like to remind everybody again, the actual price paid in the Federal Order would include an additional differential, but if you do a comparison between the Class I base month price and the California State Order price using the dry whey factor, it would be $2.59 difference.

Now, the one thing I should point out in this table, it's the only place where, instead of having the component calculated based on dry whey right next to the component calculated on the liquid WPC proposal, I have grouped. So in
the left side of that California comparison, fat, SNF, fluid
carrier, and hundredweight are all calculated on the dry whey
factor, and then at the right side of that table it's all
calculated on the WPC, liquid WPC factor. And so the
difference, again, for the ten-year average using the dry whey
factor is 2.5863, and the difference using the liquid WPC,
okay -- and I see I need to make a correction in that column
heading. Fourth line down, right most column, where it says
dollars per hundredweight at 3.5 fat, 8.685 SNF, 87.815 fluid
carrier, instead of saying dry whey, that should say liquid
WPC, as is also noted in the heading that is above those last
four columns.

Q. So, Ms. Taylor, we should probably begin on page 40 to
make that correction, since that's the beginning of that
column, correct?

A. That's correct.

Q. Okay. So, your Honor, we would ask that that
correction be made to the record copy.

JUDGE CLIFTON: All right. Let's do the easy thing first,
and let's give the columns letters, and then we will have an
easier time pinpointing exactly where we're making that change.
So how would you like us to label the columns beginning with
page 40 so that each one has a letter?

MS. TAYLOR: We ended the prior set of tables, it would
appear with AK, so now I'm going to have to test my memory of
the alphabet.

MS. VULIN: So we probably want to begin at AL.

MS. TAYLOR: AL, then AM, AN, as in Nancy.

MR. BESHORE: So what are we marking?

MS. VULIN: So we are on page 40, we are four lines down on the column designation row. And we accidentally omitted the labels for those columns, so now we're filling them in, beginning with the fat dollars per pound column, which will begin with an AL; the skim dry whey column, which will be AM, as in mother; the skim WPC 34 column, which would be AN, as in Nancy; the dry whey column, which will be AO; the liquid WPC column, which will be AP.

Now we're moving over to the right hand table. This is the Proposal 2 base month Proposal less the California State Order Class 1 prices. So now I'm in the fat column, which will be AQ; the SNF column, which will be AR; the fluid carrier column, which will be AS; the dry whey column, which will be AT; the fat column, which will be AU; the SNF column, which will be AV; the fluid carrier column, which will be AW; and the liquid PC column, which is currently at one we're going to change, so that will be AX; and then additionally, above the addition of AX there, we would ask that dry whey be stricken and replaced with liquid WPC.

And we ask that these corrections be carried on through page 41 and 42, your Honor. I'm happy to talk through those,
if you think necessary.

    JUDGE CLIFTON: No, I want you to be quiet. Oh, you mean
walk us through it. I thought you meant keep going while we're
making these changes. Okay. So, Ms. May, are there any
questions you would like to ask about the changes just made?

    MS. MAY: No, I think I have got it.

    JUDGE CLIFTON: Great. Thanks. All right. And what we
will do in our leisure, Ms. Vulin, is make exactly those same
changes to pages 41 and 42, and may proceed.

    BY MS. VULIN:

    Q. Thank you, your Honor.

    Is there anything else, Ms. Taylor, that you want to
add regarding Table 6?

    A. Yes, please. The thing that I would point out, again,
relative to price impacts on Table 6, if you look at the
ten-year average.

    Q. On page 42?

    A. Yes. I would like to point out again, that the Federal
Order piece, that's the Dairy Institute Proposal, the data
omits the Class I differential, which will be different
depending upon plant location, and it's $2.10 in
Southern California, so you could think about the difference
in, let's say -- now I figured out that I didn't relabel my
columns in that table. Okay. Column AX, the right most
column, you could think of the price impact being, rather than
the $2.78 in the $2.10 zone, it would be the 68 cent reduction. And similarly, you know, over on the, in column AT, instead of the $2.58 in that $2.10 zone, it would be 48 cent difference.

JUDGE CLIFTON: Okay. And when you refer to the $2.10 zone, you are referring to $2.10 zone?

MS. TAYLOR: Correct, where the differential that would be applied would be $2.10.

MS. VULIN: Thank you, Ms. Taylor. So your Honor, before we begin Table 5, I would request that we stake a small break. We have gone through a lot of data and there might be a small change that we would like to make to Table 5.

MR. ENGLISH: Chip English. So this might define how small the break is, so we'll see if we can help define it. This is a lot of material and a lot of information, and we have been working, even as Ms. Vulin and Ms. Taylor have been going through it.

And the first three pages of Table 5 are fine. Beginning on page 4 of Table 5, and the easiest thing to do is look at the first column on the left. Page 4 of the Table 5, I don't have those numbers. Page 28, thank you.

There's a nuance in California that a price is announced and holds for two months, and that nuance somewhere in these 42 pages of tables did not get picked up in what is presently Table 5 that you all have in front of you. And that will carry forward, just on the California side of things.
That will carry forward starting on page 4, does not affect the Federal Order values, but obviously would affect the comparison.

Dr. Schiek has been re-running those calculations, and we actually have already, in my hand, one copy of what would could arguably replace all of Table 5, and/or we could make it Exhibit A, something A, whatever the number is, because I'm confused. So that would be the reason to take a short break so that we can get copies of that and get that on. And I know it is 10:20, so it is maybe a little short of where we normally take our break, but I think it makes more sense to do that and have her complete Table 5 after we do that.

JUDGE CLIFTON: I agree. And I'm glad you alerted us before so that people weren't trying to solve it themselves.

MR. ENGLISH: That's why I thought we would take the break, tell you ahead of time of what we're doing and why we're taking the break.

JUDGE CLIFTON: Right. And we won't take a short break, we'll take 15 minutes.

MR. ENGLISH: And the good news is, in the world we live in, this is the smallest class I think, so, I mean, but it is important, all of these numbers are important, so we want to fix that.

JUDGE CLIFTON: Very good. Please be back and ready to go at 10:37. 10:37. That gives you 15 minutes.
(Whereupon, a break was taken.)

JUDGE CLIFTON: We are back on record at 10:37. Ms. Vulin?

MS. VULIN: Thank you, your Honor. We have printed what is
titled Table 5, Class 2 pricing impacts, but begins on
Page number 43. And this document we're going to ask be made
part of Exhibit 161, and that you simply append it at the end
of the document to begin after the Table 6 legal-sized page
documents. I have additional copies here. Is there anyone who
has not received a copy of the new Table 5, beginning on
Page 43?

JUDGE CLIFTON: It appears everyone has a copy. Very fine.

Then I would suggest that you just resume your examination of
Ms. Taylor.

MS. VULIN: Thank you, your Honor.

BY MS. VULIN:

Q. So Ms. Taylor, before we begin this Table 5, I would
ask that you please turn to page, Table 5, beginning on
Page 25.

And, your Honor, I will leave it up to you, but I would
like to make some indication on this page whether to X-out the
entire table or to make a notation that this table is no longer
the correct version that we -- and we would not support anyone
relying on this table.

JUDGE CLIFTON: Let me look at them.

MS. VULIN: Beginning on page 25.
JUDGE CLIFTON: They look so different. Okay.

MS. VULIN: May I recommend just an X through the table?

JUDGE CLIFTON: I -- you know, I have testimony from this witness about this document, do I not?

MS. VULIN: We haven't looked at this table specifically, she referenced it in her written testimony.

JUDGE CLIFTON: But not today?

MS. VULIN: But not today. We skipped Table 5 and moved to Table 6.

JUDGE CLIFTON: Oh, I remember you did that. Aren't you clever.

MS. VULIN: So we haven't looked at this specific data.

JUDGE CLIFTON: All right. Then, yes, I think what we should do is, we should put a line from the top left corner, just a line down through to the lowest right hand corner on each of these pages; 25, 26, 27, 28, 29, 30 and 31, and 32 and 33. I believe we should do that. And on page 25 we should say, "See pages 43 through 51". Would that suffice?

MS. VULIN: Yes, your Honor, thank you.

JUDGE CLIFTON: Ms. May, do you have any questions about that?


MS. VULIN: Thank you, your Honor.

BY MS. VULIN:

Q. So, Ms. Taylor, I ask that you now turn to page 43,
which is Table 5 that we provided. Can you, similar to the
other tables, walk us through what each of these tables means,
please?

A. Certainly. On page 43, the left block of columns is
the Class II price under Dairy Institute's Proposal, and the
right block is the Federal Order prices restated to the
October 2008 formulas in the right. And these are, again, the
component and hundredweight prices that are calculated using
the commodity prices that existed in those months.

So Column A is the butterfat price per pound on Class
II; Column B is the SNF price per pound for Class II under the
Dairy Institute Proposal; Column C is the skim per
hundredweight; and Column D is the Class II at Federal Order
standards, per hundredweight. That's all, again, A through D
is under the Dairy Institute proposal, and the same column
layout for E through H for the Federal Order existing formulas.

Q. Thank you, Ms. Taylor. I ask now that you turn to
Page 46, please. And beginning in Column I on page 46, can you
walk us through these California State Order prices?

A. Certainly. And to clarify once again, the California
Order has two-month pricing, advance pricing on the Class 2
piece, and so they lock in relative to the commodity values
prior to the first of those two months. And so what you would
see, if you look at this table versus what was in my original,
the original allowed that calculation to happen every month, so
the numbers are changed by essentially the second month getting
corrected to be locked the same as the first month in the
period.

The Column I is the Southern California butterfat Class
2 price; Column J, is the Southern California solids not fat
Class 2 price; and the Column K would be the hundredweight
price, again, restated similar to what I have done in other
tables from the normally quoted 3.587 reference that California
uses, down to the 3.58685 reference used in California.

The next block is the same, but for Northern
California, because there is a price difference in Northern
California versus Southern California, so that would be
Columns L through N. And then starting in Column O we have the
Class III price. Again, we have the Federal Order Class II is
equivalent to the combination of 2 and 3 in California. So
Column O is the Class III fat; Column P is Class III SNF; and
Column Q is the Class III hundredweight restated to the Federal
Order components.

In order to try to establish a consolidated value
across California's Class 2 and 3, we then took a simple
average of the Class 2 prices between Northern and Southern
California, and weighted that simple average with the Class III
price based on the pool utilization. So columns R and S, are,
would be the total solids utilization for Class II in the pool;
and Column S would be total solids utilization for Class III in
the pool.

Column T would be that weighted average result, where we took the simple average of Northern and Southern California Class 2, weighted it with the Class 3 price, to come up with that weighted average in Column T, it is fat price per pound; Column U it is SNF price per pound; and Column V it is a hundredweight equivalent.

Q. Columns T, U, and V take into account the data provided in Columns I through S, to develop these weighted averages, correct?

A. That's correct.

JUDGE CLIFTON: Let's go off record a minute.

(Whereupon, a break was taken.)

JUDGE CLIFTON: We are back on record.

BY MS. VULIN:

Q. So now I would ask that you turn to page 49, please. And here, similar to the other tables, we can see the comparisons between the Dairy Institute Proposal, the Federal Milk Marketing Order standard prices, and then the California State Order weighted prices, correct?

A. That's correct. In Columns U through X, we have the comparison between the Dairy Institute Proposal and the Federal Order Class II price as restated.

In Columns Y through AA we have the comparison between the Dairy Institute Proposal and the California State Order...
weighted average.

Q. Thank you. And if we turn to page 51, at the bottom of that page we're able to find our annual averages and then the ten-year average that we have seen in the other tables?

A. That's correct. Pointing you to the hundredweight impact of the Dairy Institute Proposal, the Class II price would be 58 cents below the Federal Order Class II price; and the Dairy Institute Class 2 price would be 15 cents higher than the existing California State Order Class 2 price.

Q. Thank you, Ms. Taylor. Is there anything else you would like to add in regards to Table 5?

A. No.

Q. How about any of the other tables, anything else you would like to add?

A. No.

Q. Your Honor, at this time I would like to move to admit Exhibit 160 and Exhibit 161.

JUDGE CLIFTON: Let's start with 160. Does anyone wish to question Ms. Taylor before determining whether you have any objection to it being admitted? No one. Are there any objections to the admission into evidence of Exhibit 160? There are none. Exhibit 160, that's 160, is admitted into evidence.

(Thereafter, Exhibit Number 160, was received into evidence.)
JUDGE CLIFTON: With regard to Exhibit 161, is there anyone who wishes to question Ms. Taylor before determining whether you have any objection to it being admitted into evidence?

MS. VULIN: Just for the record, I want to confirm that the newly printed 5 is a part of Exhibit 161, and we would like everyone, if they would, to just paper clip those together and consider them one exhibit.

JUDGE CLIFTON: Yes, I agree. It is an exhibit that goes from page 1 to page 51. No one. Are there any objections to the admission into evidence of Exhibit 161? There are none. Exhibit 161 is admitted into evidence.

(Thereafter, Exhibit Number 161, was received into evidence.)

MS. VULIN: Thank you, your Honor.

JUDGE CLIFTON: Mr. English.

MR. ENGLISH: Chip English. Your Honor, during the break we were efficient getting documents copied, and we had some conversations about scheduling. And I understand there's concerns, but I'm really going to fight hard for Ms. Taylor, because she's already missing meetings that are very important meetings. So, here in a nutshell, I hope we don't spend a lot of time discussing this and delaying it, is how I understand the lay of the land.

First, I want to thank Mr. Smith and his dairy farmers. My understanding is, and I may have, I don't know which one is
which, but one of the farmers is on a 7:00 p.m. flight tonight, so if we went a little late, we could conceivably get him done if we needed to. The other farmer is actually going to be here tomorrow morning, and so if worse comes to worse, could go tomorrow morning. But obviously we want to accommodate them and get them on sooner.

Second, Ms. Hancock has graciously shared with me the statement of Mr. Otis. And it is shorter, I can't say how long additional direct is, but it is certainly shorter than the testimony of we heard yesterday, and I can tell you that from my initial look without knowing what the additional direct is, my cross-exam is a significantly shorter. I understand they need to leave at 3:20, on the other hand, they are, I understand they are a producer-distributor, but they are a distributor, I think they are more like my clients.

Without spending a lot of time on it, I would like to push forward with the cross-exam of Ms. Taylor to see if she can get out of here to get to her meeting this afternoon, if at all possible.

I understand at some point in time we may need to break to do something, and I certainly will commit to work with Ms. Hancock about Mr. Otis, although I do think that we have been trying to push through and there's been various things that we have accommodated.

Again, I don't want to spend a lot of time on it. I
can even, without talking to my client, offer to share the
pizza cost if that's what we decide to do on lunch. So I would
like to see if we can just move forward and get this done.

JUDGE CLIFTON: Does anyone want to be heard on scheduling?
Mr. Beshore?

MR. BESHORE: I believe that we should adjourn the cross of
Ms. Taylor for the moment and allow Ms. Hancock's witness who
is only available today, and Mr. Smith's witness, and then
continue with Ms. Taylor.

In terms, and just make very quickly, there's a lot of
data here that's been changed this morning. If I have to
cross-examine now so that she can leave, I don't think that's
appropriate.

MR. ENGLISH: Your Honor, we were handed massive pieces of
data that people didn't have the privilege of having overnight.
I would indicate that Table 5, all data is important, but I
think everybody cares a whole lot more about Class III and IV
and I. But, you know I think that we can spend a lot of time
debating this or we can move forward.

I really, on behalf of the Dairy Institute, and on
behalf of Ms. Taylor, who has worked absolutely phenomenal
hours to get this done, I owe it to her to get her done and get
her out of here. Let's see how far we can get. If at some
point we may need to take a break for Mr. Otis, but again, I
indicate that Mr. Smith has graciously told me that his farmers
can go later or even tomorrow morning, so I don't know why we'd interrupt Ms. Taylor for that purpose, and I think we need to get done. And I think Ms. Taylor needs to be heard on this as well, because she really is missing very important leadership meetings, and she needs to get done.

JUDGE CLIFTON: Ms. Hancock, where are Mr. Otis and Mr. Lund from?

MS. HANCOCK: They are from Modesto, your Honor. If we don't get them on today, we have had them on hold since Friday, and if we don't get them on today, I lose them for the rest of the length of this hearing through next week, because they have pushed their meetings out already as well. And I appreciate that Ms. Taylor has as well. And it's just a predicament, and frankly, the longer we talk about it, the less ground we're gaining, but we can order pizzas now and maybe break for a half an hour, or whatever the court reporter is willing to do. We'll do as much as we can, that's why we gave them the testimony, you know, it's important for our case to get the testimony on, and if we don't get it on today before they have to leave, we lose the opportunity.

JUDGE CLIFTON: Now, you say they have to leave this room at 3:30?

MS. HANCOCK: They have to leave Fresno by 3:20.

JUDGE CLIFTON: They have to leave this room at 3:20.

MS. HANCOCK: That's right.
JUDGE CLIFTON: All right. What I want to do, I want to finish Ms. Taylor. I want her then to go, she's out-of-state, she has to go back to Colorado, I believe, so I want to finish her first. Then I'm happy to push through with Mr. Otis and Mr. Lund. I don't think we should break for pizza. I think we should just get it done. And then if we're hungry and it's not yet 5:00, we'll figure out what to do about food.

MS. HANCOCK: The court reporter is the only --

JUDGE CLIFTON: She looks forlorn. So that's what -- that's what I would like to do. So let's get after it. All right. Ms. Vulin. Let me hear from Mr. Smith.

MR. SMITH: Not to belabor, but just to to be clear, Mr. Sparrow's flight leaves at 7:00, so he needs to be at the airport in timely fashion before that.

JUDGE CLIFTON: What time does he need to leave this room? Figure that out and let me know.

MS. SMITH: If we say an hour, so he needs to leave no later than 5:30, quarter to 6:00.

JUDGE CLIFTON: Okay. You are saying he needs to leave no later than 5:30. Okay. Thank you. Fortunately, the airport is just around the corner from here. I wouldn't want to walk, though. Okay. Ms. Vulin, you may proceed.

MS. VULIN: I have concluded my direct examination and Ms. Taylor is now available for cross-examination.

JUDGE CLIFTON: Who will ask the first questions of
Ms. Taylor? You know, at times like this I wish Mr. Vetne were still here. Thank you, Mr. Beshore. I appreciate it. I know it is very difficult. 

CROSS-EXAMINATION

BY MR. BESHORE:

Q. Starting is not the difficulty, concluding without recourse is the issue. Marvin Beshore. Good morning --

A. Good morning.

Q. -- Ms. Taylor. The Dairy Institute's, the data, you know, what 50, 60 pages, whatever it is now, there are no blend prices calculated in that set of data, correct?

A. That's correct.

Q. But that's what dairy farmers of California will experience if the Dairy Institute's Proposal were to be adopted, correct?

A. I don't believe that that would be representative of the broad experience of dairy farmers.

Q. They wouldn't have minimum regulated blend prices?

A. There would be an announced blend price, but because the Dairy Institute Proposal adopts the traditional Federal Order rules regarding the application of the price and pooling, the blend price would be less relevant for many of the dairymen because there would be a competitive price that would be set up outside of the blend.

Q. Have you done any, do you have any tables to suggest to
the dairy farmers of California what those, what you project
those prices to be?

  A. I do not.

  Q. So what we can work with are your minimum prices, so
let's work with them. Your proposed prices which would, which
would, under, which would be minimum regulated prices. So I
would like to ask, your Honor, to mark as the next exhibit, a
one-page document.

JUDGE CLIFTON: All right. Some help, please, passing them
out. I'm going to mark this, Ms. May, Exhibit 162.

(Thereafter, Exhibit Number 162, was
marked for identification.)

JUDGE CLIFTON: Ms. May will need numbers of them. Are you
content with just one now, Ms. May? Everyone has a copy.
Mr. Beshore.

BY MR. BESHORE:

  Q. Thank you. On Exhibit 162, Ms. Taylor, we have, which
is titled, Difference Between Federal Order Prices and Dairy
Institute of California Proposal 2 Prices, 2014 Annual Total,
The New California Discount.

  So we have filled in, from the sources indicated on the
footnote, the pounds of utilization in California and the CDFA
pool in 2014. What I would like you to assist us with is
completing this table by filling in the price difference per
hundredweight for each of the classes on this on this table,
and we will need to, you will need to point us, direct us to
the page and location in Exhibit 161, I guess it is, where
these price differences can be found. Let's start with start
with Class I.

A. The premise of this calculation is inaccurate in terms
of reflecting what would happen. Even your own proponent
witnesses for Proposal 1 recognize, that, in fact, milk would
come outside of the pool, that there would be a competitive
pricing surface that would exist, and, in fact, as I noted in
Part 2 of my testimony, I would expect, and I also noted in
this testimony, I would expect that the underlying prices to be
quite different as a result. You would have more product price
conversions between the manufacturing classes and that
competition would likely drive a price surface with premiums to
farmers that would be quite different than what you have
calculated or are trying to have me calculate here.

The only way to get an effective price level at the
farm level is to push it through an econometric model of sorts.
In fact, Dairy Institute did contact Dr. Stephenson, probably
18 months ago, recognizing that there's so many dynamic changes
that would be --

MR. BESHORE: Your Honor, I hate to interrupt the
witness, but this, I just, we've experienced a dissertation
which was not an answer to my question, and you know, they
could make all the arguments on redirect whatever they want. I
asked for a number from Exhibit 161.

JUDGE CLIFTON: She's in the middle of explaining why that won't work and I'll hear her out.

MR. BESHORE: It's not a matter of working, I asked for a number.

JUDGE CLIFTON: I know you asked for a number.

MR. BESHORE: Is there a number and what is it?

JUDGE CLIFTON: Let me hear the rest of her explanation.

MR. BESHORE: Why would -- why is that appropriate on cross when I asked for a number, and there's, it hasn't been provided.

JUDGE CLIFTON: No, it hasn't. Would you let Ms. Taylor finish, please. Ms. Taylor, you were explaining that you had contacted Dr. Stephenson. Please resume.

MS. TAYLOR: Yes, thank you, your Honor. We contacted Dr. Stephenson about 18 months ago to see if he might be willing to do some modeling for us so that we could fully anticipate all the adjustments that would occur relative to any proposal we have put forward, but unfortunately he had already done some work for the cooperatives, your clients, and felt that he would be in conflict modeling the California State Order for Dairy Institute, in conflict with his arrangement with you folks as well. That is the only model that I know of that exists, that will last capture, not only the regulated price impacts, but also what goes on in the marketplace, which
ultimately you premised your question on dairy farmers needing to know what the impact is to them. It's not the regulated price impact, it's all-inclusive, including the competitive premiums.

MR. BESHORE: Okay.

JUDGE CLIFTON: Mr. Beshore, do you want the witness instead, to respond to a question of what would the minimum regulated price be under the Proposal 2 for each of these classes?

MR. BESHORE: I'm, I would. And, your Honor, I didn't ask the witness to do any calculations, I don't intend to ask the witness to do any calculations. I asked her, I attempted to start asking her, to locate on her 50 plus pages of tables and charts for us, the four numbers that would fill in the columns on Exhibit 162 for price difference per hundredweight under Proposal 2 versus Federal Order prices.

JUDGE CLIFTON: What price do you want her to look for?

MR. BESHORE: First, Class I first.

JUDGE CLIFTON: No, no, no, do you want her to look for what a farmer can expect in his mailbox or do you want her to look for a minimum regulated price?

MR. BESHORE: I want her to look for the difference between the Federal Order price and the Dairy Institute of California Proposal 2 price for Class I for to start with.

JUDGE CLIFTON: All right. And I think you are talking
about minimum regulated price.

    MR. BESHORE: I am. That is -- those are the prices which
are in Proposal 2. She's already testified she hasn't
calculated any blend prices, or any over order prices, or any
other prices except minimum prices, those are the only prices
that are in her table and that is the price that I would ask
her to point us to.

    JUDGE CLIFTON: All right. Ms. Taylor, can you do that?

    MS. TAYLOR: Yes. And, Mr. Beshore, I'm interpreting this
to be the difference from the Federal Order price, not the
difference from the CDFA --

    MR. BESHORE: Yes.

    MS. TAYLOR: -- existing prices.

    BY MR. BESHORE:

    Q. Yes, that's correct. As titled, Difference Between
Federal Order Price and Dairy Institute of California Proposal
2 Price and the Difference.

    A. Okay. For Class I, the difference per hundredweight
over a ten-year average, found on page 42 of the exhibit, is
55.5 cents.

    Q. Okay. And since we're using 2014, I wasn't clear
enough, we're using 2014 numbers here for utilization, so I
would prefer, I would request the 2014 average numbers in each
of these categories. So that's page 42 for Class I?

    A. That is. And I'll give you two sets of numbers because
it does get impacted by whether the dry whey proposal is 
adopted or the liquid WPC proposal is adopted. So for 2014, 
under the dry whey proposal, it would be 30.36 cents.

Q. Negative 30.36 cents?
A. Yes.

Q. And that's column --
A. Column AO.

Q. Okay. So the dry whey negative would be minus 30.36 
cents, 2014 average. And then for the liquid WPC it would be 
what?
A. A negative 77.81 cents.

Q. And that, of course, is liquid WPC is the preferred 
proposal of Dairy Institute, correct?
A. Yes.

Q. Okay.

JUDGE CLIFTON: And what column is that please, Ms. Taylor?

MS. TAYLOR: I believe that would be AP. Yes, AP, as in 
Paul.

BY MR. BESHORE:

Q. Okay. So let's -- same. I would ask for the same 
numbers then, for Class II, 2014, annual average.
A. The Class II would be found on page 51, and the 
difference would be a reduction of 52 cents in 2014, and that 
shows up in column X.

Q. Okay. Page -- what was the page again?
JUDGE CLIFTON: 51

MR. BESHORE: 51?

BY MR. BESHORE:

Q. Okay. So it is 43 cents for -- I'm sorry, is there only one?

A. 52 cents.

Q. Okay. And that's whether it's dry whey or liquid whey?

A. That's correct. The Class II price is calculated based on nonfat dry milk.

Q. Got it. Thank you. Class III? Same number annual average 2014 for Class III.

A. Class III would be found on page 24, and under the dry whey proposal it would be a reduction of $1.02, under the liquid whey proposal it would be a reduction of $2.03.

Q. Okay. $1.02 annual in 2014 for the dry whey, $2.03 annual 2014 for the liquid whey, correct?

A. Yes.

Q. And that's page 24 of Exhibit 161?

A. Correct.

JUDGE CLIFTON: And would you identify the columns for us please, Ms. Taylor?

MS. TAYLOR: The dry whey would be Column U, and the liquid WPC would be column V.

JUDGE CLIFTON: Column V?

MS. TAYLOR: V as in Victor, yes.
JUDGE CLIFTON: Thank you.

MR. BESHORE: Okay.

BY MR. BESHORE:

Q. Let's move to the Class IV prices and annual 2014.

A. That price impact would be found on page 18, and it
   would be a reduction of 60 cents a hundredweight.

Q. And that's not affected by alternative scenarios for
   liquid whey, correct?

A. That's correct.

JUDGE CLIFTON: What column, please?

MS. TAYLOR: That would be found in column M as in Mary.

BY MR. BESHORE:

Q. Okay. Now, I don't have a column on Exhibit 162 for a
   comparison with current CDFA prices.

JUDGE CLIFTON: I'm sorry, I have to go back. Tell me
   again the number that you have just told Mr. Beshore with
   regard to Class IV, Ms. Taylor?

MS. TAYLOR: Page 18, a reduction of 60 cents, .60.

JUDGE CLIFTON: All right. 6, thank you. I wrote it down
   wrong. Thank you.

BY MR. BESHORE:

Q. Okay. Now, I didn't put a set of boxes on 162 or
   didn't make a separate exhibit to compare Proposal 2 prices
   with current or 2014 CDFA prices, but I would like you to
   provide that information for us and tell us where we can, point
it out on Exhibit 161 and tell us what those values are.

Going, you know, sequentially Class I, II, III, and IV.

A. Class I, recall that the comparison with California
from the base month Federal Order price over to the California
Class 1 price is a bit of a mismatch since the California price
is all-inclusive and the California base month doesn't include
the differential, and I disagree with the methodology used by
Mr. Hollon on how to establish that weighted average
differential, so I will simplify it and use the $2.10 and the
$1.80, which, again, I'm not claiming to be the average. The
difference netting out the $2.10 would be for the dry.

JUDGE CLIFTON: Now, lead us to where you are looking.

MS. TAYLOR: Okay. Page 42.

JUDGE CLIFTON: Okay. And just so the transcript will
reflect, when you say 210 you are talking about $2.10 and when
you say 180 you are talking about $1.80.

MS. TAYLOR: That's correct.

JUDGE CLIFTON: Okay.

MS. TAYLOR: And in Column AT we have the price difference
with a dry whey factor, and in 2014 that is $2.29, so it, with
the $2.10 differential that would be an 18 cent reduction.

MR. BESHORE: 2.29 minus $2.10 would be 18 cents?

MS. TAYLOR: 19 cents.

BY MR. BESHORE:

Q. Thank you. And liquid whey?

7281
A. Column AX, the reduction in 2014 would be $2.76, adjusted by that $2.10 would be 66 cents.

Q. Negative 66 cents. Okay.

JUDGE CLIFTON: Let me make sure I got the response. Is it negative, Ms. Taylor?

MS. TAYLOR: Yes.

JUDGE CLIFTON: And is the 19 cents also negative?

MS. TAYLOR: Yes, it would be.

JUDGE CLIFTON: Thank you.

BY MR. BESHORE:

Q. Okay. Let's move to Class II, then. Comparing 2014 CDFA prices, with the 2014 Proposal 2 prices, would that be on page 51?

A. Yes, it would be. And in 2014, the Class II price would be 6 cents above the California price, and that would be found on page 51.

Q. And that's the far right column?

A. Correct. The one that, on page 49, where the table starts is labeled as AA.

Q. Okay. Let's go to Class III then. 2014 difference between Proposal 2 and the CDFA prices. Would we go to Page 24?

A. Yes, page 24, the difference in 2014, using the dry whey factor would be an increase of $1.49.

Q. Okay. And with the liquid WPC?
A. That would be 47 cents, and the dry whey would be found in Column Z, as in Zebra, and the liquid WPC in Column AA.

Q. Okay. And Class IV price, would that be on page 18?

A. Yes, it would. The 2014 difference is a reduction of 41 cents, so a negative .41, and that's found in Column P, as in Paul.

Q. Okay. Very good. Thank you, Ms. Taylor. Let me, let me have marked as the next numbered Exhibit 163.

JUDGE CLIFTON: I'm going to mark this new hand out as 163.

(Thereafter, Exhibit Number 163, was marked for identification.)

MR. BESHORE: I just want to check some numbers in your tables with, with Exhibit 163. And I think if these are all, if all our copies are marked, there's a highlight line through the Class I base price number in the left column of 163. Do you see that? Is that marked that way on yours, Ms. Taylor and your Honor?

JUDGE CLIFTON: Yes, and mine's in color, mine's a red mark, and people are shaking their heads theirs is, too.

MR. BESHORE: Okay. Very good.

BY MR. BESHORE:

Q. So where on, and this is just printed this last evening from the AMS website. Could you direct us to where the Class I base prices are on, for 2015, I'm sorry, 2014, where they are on your chart of tables, Exhibit 161?
A. They are on page 39.

Q. Okay.

A. And they are --

Q. What column?

A. Column Y.

Q. Okay. So Column Y of page 39. And I want to direct your attention to the December 2014 number in column, in Exhibit 161, Column Y. Could you tell us what that number is?

A. That is 22.66.

Q. And then looking at Exhibit 163, can you tell us what the number is for December, 2014 an Exhibit 163?

A. 22.53.

Q. Okay. Can you explain why they are not the same or what the difference is?

A. No.

Q. You mentioned Dr. Stephenson and the desire to have him do some econometric modeling for you; is that correct?

A. Yes, that was a discussion that we had probably 18 months ago as Dairy Institute was formulating their initial proposal.

Q. Did you -- and were you requesting him to do something to do the USDSS type modeling that he testified to in this hearing?

A. I believe that that was around his spatial equilibrium model --
Q. Yes.
A. -- the one that not only shows you what the final price is after the market's adjust, but shows you some of the dynamics in between. So it's not the, it's not looking at the regional price relationships so much as it is the longer term market dynamics.
Q. And did you hear him present any information of that nature in this hearing?
A. He did not present the information that we were interested in.
Q. I understand that.
A. Which is -- my recollection, I was working from my hotel at the time that he testified, but my recollection is he was talking about relative price relationships geographically in this hearing, as opposed to what a change in policy would result in within the State of California.
Q. Well, I heard him testify that his modeling is economic models and not econometric models, did you hear that?
A. That could have been a clarification, and I will not dispute his characterization.
MR. BESHORE: Okay. Your Honor, I don't have anymore questions at this time, but I may have, we may have some later when we have continue to have a few minutes to evaluate this and hear what other questions maybe asked of Ms. Taylor.
JUDGE CLIFTON: Who else has questions for Ms. Taylor?
Before I call on USDA employees to see if they have questions, is there someone else who has questions for Ms. Taylor?

Mr. Schad.

CROSS-EXAMINATION

BY MR. SCHAD:

Q. Good morning, Sue.

A. Good morning, Mr. Schad.

Q. I wasn't here when you testified last time, and I asked Marvin to ask you some questions, and quite frankly, he doesn't remember whether he did, so at the risk of being redundant, does Leprino have any independent dairy farmers in California?

A. We do.

Q. Okay. Is it true to say that the majority of Leprino's milk is bought in California from co-op sources?

A. That's correct.

Q. Okay. Does Leprino pay independent and co-op supplies monies above California minimum prices, premiums?

A. We do.

Q. Thank you.

JUDGE CLIFTON: I didn't quite hear your question, did you ask above minimum prices? Is that what your question was?

MR. SCHAD: Yes.

BY MR. SCHAD:

Q. During the period of 2007/2008 and 2015, we have heard testimony that milk was shipped out-of-state. Did Leprino ship
any milk from their independent supply, out-of-state?

A. No.

Q. There's been testimony that there was a capacity in California during those periods that was not utilized, I guess it is called willing capacity or unwilling capacity, that is, plant capacity that could have been utilized except for initial round price. Did Leprino have any such capacity during those period that I mentioned?

A. There were some periods while I was over milk procurement, where we made some decisions relative to the marginal milk above contract that redirected milk that we otherwise would have put into California to some of our other plants. We always satisfied our contractual commitments. This is on the marginal milk above those contracts.

Q. Would the answer be yes then?

A. Yes.

Q. Thank you.

JUDGE CLIFTON: I'll call on USDA, unless someone else has questions first. USDA? Mr. Schaefer?

CROSS-EXAMINATION

BY MR. SCHAEFER:

Q. Good morning, Ms. Taylor, or is it afternoon, I haven't looked at the clock here, so -- some of the questions Mr. Beshore asked helped me out on what I had looked at last evening. One of the issues or one of the things I noticed is I
tried to compute your component prices from the commodity
prices, and I got the commodity prices figured out all right,
because you had mentioned in your testimony that you had to add
in the adjustment factor, and so I got to the commodity prices.
But at least on Class III I'm not able to get the component
prices. And I think my question is, in Attachment A of
Exhibit 160 you list the component price, there's the formulas
for arriving at the component prices. And I the question I
guess I'm going to start with is, are those the formulas that
were used to calculate the component prices in your
Exhibit 163?

A. They should have been.

JUDGE CLIFTON: 161

MR. SCHAEFER: 161, I'm sorry. Yes, thank you, your Honor.

BY MR. SCHAEFER:

Q. And so, and those have the adjustments in them for the,
at marketing and I can't remember, administrative, and so
forth, and --

A. The marketing and administrative is embodied in the
make allowance, not in the underlying commodity price.

Q. Right. Correct. And but those are in there. And so
when we take this all back to Washington or to whoever is going
to do the analysis here, these are the formulas, then, that you
are, these are your final formulas at this point in time that
you are proposing that the Secretary adopt in Proposal 2?
A. I'm going to take one more look when you ask that
question, and ask Dr. Schiek to be reviewing at the same time.

JUDGE CLIFTON: We're looking at Attachment A to 160, and
Mr. Schaefer's question is, are these the final formulas
proposed under Proposal 2?

MR. SCHAEFER: Would it be beneficial to have a short break
here while they search for that, your Honor?

JUDGE CLIFTON: It would be. Before the break, though, is
there a disconnect between the two of you on how the make
allowance is considered? I don't know enough about it to even
know.

MS. TAYLOR: And Mr. Schaefer, if there's a concern that is
specific to a particular component, that would be helpful.

MR. SCHAEFER: Actually, it was the all the components with
regard to Class III. I did not really chase down some of the
other ones. I was getting a little glassy eyed, and when I get
glassy eyed, that's the end of it.

MS. TAYLOR: I don't know whether this might be helpful,
but I did prepare, just so that I could get comfortable with
the table, because as you know, there's a lot of data in that
spreadsheet. I prepared a reconciliation for Class III and IV
impacts that breaks it down by factor and does tie back to the
bottom line number. And we have made copies of that in case
you would like to see that.

MR. SCHAEFER: I think that would be quite helpful.
JUDGE CLIFTON: So let's take a break, and you can
determine whether you want to make that an exhibit, as you
discuss that with your team. Let's take, this is extremely
important. Let's take ten minutes. Please be back and ready
to go at 11:44. 11:44

(Whereupon, a break was taken.)

JUDGE CLIFTON: We're back on record at 11:45.

Mr. English?

MR. ENGLISH: Obviously, Mr. Schaefer was talking to
Ms. Taylor, but we talked about a document before going off the
record, which has now been distributed to everybody, I believe,
and it is headlined Reconciliation of Proposal 2 Dairy
Institute Class III and IV impacts.

JUDGE CLIFTON: I am going to mark that as Exhibit 164.

164. Will that work, Ms. May?

(Thereafter, Exhibit Number 164, was
marked for identification.)

JUDGE CLIFTON: Thank you. And, Mr. Schaefer, you have a
copy of this 164?

MR. SCHAEFER: Yes, I do.

JUDGE CLIFTON: All right. You may proceed.

BY MR. SCHAEFER:

Q. Okay. Could you kind of go through what Exhibit 164
contains here, Ms. Taylor, so we kind of get a handle on it?

A. Certainly. And again, the spreadsheet that generated
all these different tables was so massive that I wanted to confirm that, in fact, my bottom line number on Class III and IV impacts in the larger tables was attributable specifically to things that I could identify. And so I dissected the proposed changes in the formulas between the make allowance and the price level. It's easier to, easiest to start at the top relative to Class IV, because those component price formulas are more straightforward, so you will see that in the top table or top block within the table, I have Class IV, and I have broken it by component into SNF and fat. And then within each component I have broken it into make allowance and price levels.

So starting with the SNF make allowance row, the current Federal Order make allowance for nonfat dry milk is 16.78 cents, and our proposed factor is 20.12 cents, the difference being 3.34 cents, which results in a reduction in regulated price, so I'm showing it as a negative. And if you take that 3.34 cent increase in the make allowance and multiply it by the nonfat dry milk yield assumed within the solids nonfat formula for Class III of .99, then you have a change in the component price of .0031 cents. Multiply that by the solids not fat assumed in a hundredweight of milk at standard test of 8.685, that translates into an impact per hundredweight, a reduction in the Class IV hundredweight price of 28.72 cents.
On the price level, again, the Dairy Institute proposal is to use a survey of western prices. If that is not available, we have a default value of taking 2.44 cents off of the national average of the NDPSR price series. So similarly, multiplying that 2.44 cent reduction in price by the .99 yield factor, brings you to the .0242 cents per pound SNF impact, translating into 20.98 cents per hundredweight. So the SNF combined impact of the change in the make allowance, and the and price level, is a 50 cent reduction in the hundredweight value of Class IV.

I went through that same process on the fat side, and rather than going through all the individual numbers, I'll just point out the numbers that don't appear. So I would be extending the difference in make allowance or price level by the yield factor of 1.211 found in the fat formula for Class III. And then to translate from component to hundredweight, multiply it by the 3.5 pounds of fat, and my conclusion is there's a 10 cent reduction per hundredweight related to the changes in the fat factors, for a total reduction of 60 cents per hundredweight on the Class IV hundredweight or, price, I believe that ties to the table.

Class III, I went through a similar practice, but as you well know, Mr. Schaefer, we have some extra complications in the Class III formula because we value fat at the butter value, and then we make a correction for valuing it at butter
rather than cheese over in the protein price. And so I've broken the protein portion of the Class III formula into multiple pieces. The top section is the cheddar value of protein, and that is within the protein equation, the front part of it, where there's a yield factor of 1.383. So if you look at the, I'll start with the cheddar value of protein make, we have an increase in the make allowance of 3.03 cents multiply that by 1.383, gets into a change of component price of 4.19 cents. Translating then over into a change per hundredweight of 12.54 cents. Similar process in that first block on the cheddar value of protein for price level using the 1.383 yield.

The next several lines that start with cheddar value of fat is the portion of the protein formula that corrects for the difference in cheddar value of cheese versus the butter value of fat, which is what we're paying for the fat component under Federal Order pricing. So at the same logic applies, but the cheddar value of fat part of that formula has a yield of 1.572. And to translate between the fact that you are paying for 3.5 pounds of fat at the same time as you are paying for 2.99 and some change of protein, there's that 1.17 factor, so for these purposes I would have taken, under that make allowance line, the 3.03 cents multiplied it by the yield of 1.572 and the 1.17 to translate into the change per pound component. And that would have been the same methodology as you go all the way
through that shaded area through the credit for payment of fat, and butter value, that's also, well, actually that one wouldn't use the cheddar yield. It's the .9 times 1.17.

When you get to fat, same is the equation up above, the 1.211 yield. And when you get to the other solids, similar logic in the yield embodied in the formula is 1.03. And so I come down to the 86 cents, which ties closely to that table.

When I reviewed during the break, my price formulas in the table, I did not have any concerns on their accuracy. I will point out again, though, that we're using a block rather than a block barrel combination cheddar price, and the one other thing that we noted as we reviewed it, is that in the formulas on page 5 of Exhibit 160, my testimony for Part 3, we omitted the .15 cent marketing allowance and administrative allowance in the WPC 34 equation relative to the make allowance. It should be instead of the 3110, it should be 3125, and that was reflected in my spreadsheet formula.

Q. Okay. So basically the work that you have done on this would use these formulas, except for, and the change on the alternative other solids price, and so --

A. That's correct.

Q. Okay. A couple other questions while we are on this is, we have got a number of different factors in here, and I thought I might just take a minute to review them a little bit so we're clear on what they are as we move forward.
So for instance, in the cheese in the protein price formulation we have a .0224.

JUDGE CLIFTON: Mr. Schaefer, so that we can all look on with you, are you looking at Attachment A to Exhibit 160?

MR. SCHAEFER: Yes, I am.

JUDGE CLIFTON: Okay.

BY MR. SCHAEFER:

Q. And that is to adjust the NDPSR numbers to a western states value?

A. That's correct.

Q. And the .2306 is your make allowance, and I believe those were the California make allowances?

A. They are the California make allowances, plus the .15 cents, consistent with the methodology that was used in the October 2008 implementation from the '06, '07 hearing.

Q. And so for each one of the highlighted numbers on here, for so, that you go on in the cheese formula you have the .0224 and the 2306, the same is true for those, of course. And we go down to other solids, again, we have an adjustment for location, I guess I'll call it, western states versus NDPSR.

A. That's correct. And in the liquid WPC alternative, there's also the adjustment that was outlined in Dr. Schiek's testimony relative to the transportation and cooling.

Q. And that's included in the --

A. That's included in the make allowance.
Q. In the 31?
A. 3125.
Q. 3125.
A. 3125, correct.
Q. I believe that's all I have at this time, Ms. Taylor.
Thank you very much. I appreciate the work that you have done
to put these numbers in and it's nice to have something there
to start from to work with from our point of view. Thank you
very much.
A. Thank you.

JUDGE CLIFTON: Who else has questions for Ms. Taylor?
This is the last call before redirect.

Mr. Beshore, you look frustrated. Is it because you
haven't had enough time to digest it all?

MR. BESHORE: That's correct.

JUDGE CLIFTON: I don't know exactly how we would handle
it, but Mr. Beshore, if you think of additional questions after
we have dismissed Ms. Taylor, bring them up and we'll figure
out what to do about it. All right? All right. Then,
additional questions. Ms. May?

MS. MAY: Did you want me to change that formula on page 5
of exhibit, or well it's attachment A of Exhibit 160 to include
the .15 cents? Ms. Taylor just talked about it.

JUDGE CLIFTON: All right. So Ms. Taylor, with regard to
the administrative allowance, did you want to make any change
to Attachment A to Exhibit 160?

MS. TAYLOR: Yes, I would.

JUDGE CLIFTON: Walk us through what you would like Ms. May to write on the record copies.

MS. TAYLOR: I was a little too hasty piling up my materials.

MS. VULIN: Could it be on page 5 of your written testimony, Ms. Taylor?

MS. TAYLOR: Yes, it is. And under the Class III formula, it would be the fourth formula down, starting with alternative.

MS. VULIN: Fifth formula down perhaps?

MS. TAYLOR: Yes, thank you. The fifth formula down starting with alternative other solids price, at the end of the second line, prior to the end parens, replace the number that's .3110, with .3125.

JUDGE CLIFTON: Ms. May, good job.

MS. MAY: Thank you.

JUDGE CLIFTON: You're welcome. Ms. Vulin, you may proceed.

MS. VULIN: Are there no further questions from anyone else before I begin redirect?

JUDGE CLIFTON: Mr. Boshore?

CROSS-EXAMINATION

BY MR. BESHER:

Q. Okay. With respect to the -- Marvin Beshore -- with
respect to the correction on the Attachment A, did I understand you to say, Ms. Taylor, that that correction has already been factored into the calculations in Exhibit 161?

A. Yes.

Q. Okay. So it is then already included in the numbers that you gave us for Exhibit 162?

A. Yes.

Q. Okay. Thank you.

JUDGE CLIFTON: All right. At this time, are there any other questions for Ms. Taylor before redirect? You may begin redirect, Ms. Vulin.

MS. VULIN: It is very short and sweet, your Honor, I would just move to admit Exhibit 164, the reconciliation of Proposal 2, Dairy Institute Class III and IV Impacts, that Ms. Taylor has covered.

JUDGE CLIFTON: Does anyone wish to question Ms. Taylor before determining whether you have objection? No one. Is there any objection of the admission into evidence of Exhibit 164? There is none. Exhibit 164 is admitted into evidence.

(Thereafter, Exhibit Number 164, was received into evidence.)

MS. VULIN: Thank you, your Honor. I have nothing further.

JUDGE CLIFTON: Mr. Beshore?

MR. BESHORE: I would like to move the admission of
Exhibit 163. We will fill in the -- we will complete the calculations for the new California Discount on Exhibit 162 when we have a Ph.D. who can do the arithmetic.

JUDGE CLIFTON: All right. Thank you. And you represented, Mr. Beshore, that this is right off the USDA Agricultural Marketing Service website?

MR. BESHORE: I did.

JUDGE CLIFTON: All right. Is there any objection to the admission into evidence of Exhibit 163? There is none. Exhibit 163 is admitted into evidence.

(Thereafter, Exhibit Number 163, was received into evidence.)

JUDGE CLIFTON: All right. Is there any reason why Ms. Taylor should not be permitted, not only to step down, but to be excused? There is none.

Ms. Taylor, I know you are arriving at your meetings late, I am very grateful for all the work you did and that you stayed over. Thank you.

MS. TAYLOR: Thank you.

MR. ENGLISH: Your Honor, Chip English. I mentioned some housekeeping matters. I am prepared, they are simple, they can go anytime, I would rather we get Ms. Hancock's witness on the record. I would just yield the floor so we can get through today's testimony.

JUDGE CLIFTON: Very good. Thank you. All right, then. I
already have a copy of the testimony of Frank Otis. I would like to give it our next number which I believe is 165. Do you agree, Ms. May?

MS. MAY: Yes.

JUDGE CLIFTON: So please mark accordingly, testimony of Frank Otis, Exhibit 165.

(Thereafter, Exhibit Number 165, was marked for identification.)

JUDGE CLIFTON: Welcome, Mr. Otis.

MR. OTIS: Thank you, your Honor.

JUDGE CLIFTON: Do you want to testify as a panel?

MS. HANCOCK: Yes.

JUDGE CLIFTON: Is there anyone who needs a copy of 165 which is entitled Testimony of Frank Otis? It appears everyone has one.

I'm going to swear you both in, gentlemen, at the same time. I'll be swearing you in seated, and when I ask you to respond, I would like you to tell me what your name is before you give me the response, and to take turns. I suggest Mr. Otis go first.

Would each of you raise your right hand, please?

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

MR. OTIS: I do. Frank Otis.
JUDGE CLIFTON: Thank you.

MR. LUND: Dennis Lund, I do.

JUDGE CLIFTON: Thank you both. And Ms. Hancock, if you would identify yourself again and then you may proceed.

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

DIRECT EXAMINATION

BY MS. HANCOCK:

Q. Good morning, gentlemen.

Mr. Otis, did you prepare this statement?

A. I did.

Q. Okay. If you wouldn't mind, go ahead and read your prepared written statement for the record.

A. Okay. My name is Frank Otis and I am the President and CEO of Foster Dairy. I have brought with me Dennis Lund, Foster Dairy Director of Cost Accounting who has been with Foster Dairy for 28 years, and prior to that, with Knudsen for twelve years. I am here to testify about the Foster Dairy producer-handler operations, and how for nearly 50 years Foster Dairy has participated in the California quota system, which has, since its inception in 1967, included a class of quota called exempt quota, limited to producer-handlers. I offer this testimony in support of the Cooperatives' Proposal Number 1, as combined with the California Producer Handlers Association Proposal Number 3.
I joined Foster Dairy in 2012, moving from Philadelphia, Pennsylvania, where I ran a specialty cheese company (Alouette USA) for five years. Prior to that, I was a minority owner and operated a large butter powder company with Dairy Farmers of America. I have worked in all segments of the dairy business; cheese, ice cream, butter, culture, milk, powder, for over the last 27 years. Time flies when you are in the dairy business. I have a BA from Southern Oregon University and an MBA from the University of Redlands. I have been married to my best friend Ann for 28 years, and we have two wonderful children, Ashley 26 and Ryan 21.

JUDGE CLIFTON: Let me stop you for just a moment. The second sentence of the paragraph you just completed reading on page 2, reads as present, "prior to that I owned" and you read it differently. How would you like it to read in this exhibit?

MR. OTIS: I would like it to be read, "prior to that I was a minor owner and operated a large butter/powder company with DFA."

JUDGE CLIFTON: Ms. May, can you make that correction, please.

MS. MAY: Sorry, I missed it.

JUDGE CLIFTON: Okay. That's all right. You are on Page 2, the second paragraph, line 3. You are going to strike the word "owned" and insert "was a minority owner".

MS. MAY: That I "was a minority owner and operated"?
JUDGE CLIFTON: That I was, I guess we should say "I was a minority owner of and operated" yes.

MS. MAY: Okay.

JUDGE CLIFTON: All right. Thank you. You may proceed.

BY MS. HANCOCK:

Q. Mr. Otis, if you could slow down just a smidge, I think we're doing double-time on our court reporter today and so I don't want to wear her out too soon.

A. I would be happy to.

Foster Dairy operates under a DBA called Crystal Creamery for its plant side of the business dating back to 1920's. Our dairy farms are operated under a separate entity called Foster Farms Dairy, which was originally founded in 1941 by Max and Verda Foster. The same family still owns and provides oversight of the business today, which sells branded products under the name of Crystal Creamery and Humboldt Creamery. Today, Foster Farms dairy has five separate farming and milking sites in Hickman, California.

Our administrative offices and five processing facilities are located in Modesto, California, and two other processing facilities in Fernbridge (Humboldt County), California. Crystal Creamery distributes its manufactured dairy products from eight distribution centers covering the Central Valley and Northern California markets. We manufacture and sell fluid milk, cultured sour cream, cottage cheese, ice
cream, butter, nonfat dry milk powder, cream, as well as fruit
drinks and water. About 45 percent of our processed dairy
products is Class 1 fluid milk.

Our production plant purchases 15 percent of our total
raw milk supply from our own farms. We purchase approximately
75 percent of our raw milk needs from 19 independent producers
in California.

Q. Did you say 75 percent?
A. 75 percent, yep. The remaining 10 percent we purchase
from different milk brokers. Of the 15 percent that is
produced at our farms, approximately 56 percent is exempt
quota. That is, 18 percent of our total Class 1 -- that is 18
percent of our total Class 1 production is exempt. That exempt
quota does not offer our plant any pricing advantage. The
entirety of our exemption benefit is isolated with our dairy
farms.

Our entities each have their own profit and loss
statements and they are separate legal entities. Our exempt
quota is on our dairy farm P & L and is calculated as a benefit
to the farm to our farm. Our production plant and commercial
operations do not receive any benefit from our exempt quota.

Our creamery (plant) pays all of the independent
producers the announced blend price for the milk. All
processors ultimately pay the particular plant in plant blend
rate through the CDFA pool system to their producers. The
amount we pay is based on how we use the milk, calculated through the pool system that is blended and distributed to producers. When our plant (creamery) pays our farms, we pay the Class 1 rate for exempt quota volumes that our farms produces and deliver to our plant.

The reason that we pay the rate to our farm -- the reason that rate -- the reason we pay that rate to our farms is because the volume is exempt from the pool system at the Class 1 rate, so we receive a credit from the pool for the Class 1 value that is the exact same as what we pay our farms. Our farms will realize the benefit, and the creamery pays the same rate as if it acquired the milk from any other source. In sum, our creamery pays the same price regardless of whether we get the raw milk from our farm, from our independent producers, or from our milk brokers.

Foster Farms dairy has specifically structured its family-owned business in a way that preserves its exempt quota holding since the quota system was created in 1967. This family ownership structure includes the investment of hundreds of millions of dollars in capital spending in the dairy farms, processing facilities, and distribution centers over the last 50 years. In doing so, Foster Dairy established business relations with thousands of retailers with the goal of promoting and selling dairy offers to millions of Northern California consumers and beyond.
Foster Dairy, under the leadership of Max Foster, was a key participant in the negotiations with the state legislators in the establishment of the Pooling Act of 1967. His participation resulted in all California producers securing fair distribution of the monies that they received for the milk that they farmed. In these negotiations, which resulted in the 1967 Pooling Act, the Producer-Handlers, of which Foster Dairy was the largest, gave away significant advantages as a dairy farming and processing company. In exchange for this support of the 1967 Pooling Act, Foster Farms Dairy was given initial exempt quota in the 1967, in 1967, based on its Class 1 fluid sales at that time. The exempt quota, even back then, was an asset that was booked for our farm.

Over the decades to follow, Foster Farms Dairy exempt quotas increased with the California Legislators' 1978 amendment. This particular amendment provided all producer-handlers the opportunities to convert any regular quota between 1967 and 1977 to exempt quota, in which Foster Farms Dairy participated.

JUDGE CLIFTON: I would like you to read that sentence one more time, please.

MR. OTIS: Okay. This particular amendment provided all producer-handlers the opportunity to convert any regular quota purchased between 1967 and 1977 to exempt quota, in which Foster Farms Dairy participated. With the 1993 amendment, any
regular quota purchased from 1978 through 1993 was converted to exempt quota, and the Option 70 producer-handlers were able to purchase additional quota until March of 1995. Again, Foster Farms Dairy invested further into exempt quota and continued, and continued to maintain the benefit at the farm level. The exempt quota and the regular quota were given to producers to protect from the further dilution of their Class 1 markets.

Foster Farms Dairy has spent several million dollars to acquire exempt quota on just the 1993 amendment alone. Since March of 1995, there has been no further allowances of additional exempt quota and these exempt quotas remain frozen with the 1995 volume that each producer-handler had at that time. Although these exempt quotas cannot be sold, they do represent the measurable financial asset to Foster Farms Dairy, which today, has a value totalling millions of dollars on the Foster Farms Dairy balance sheet. In addition to the value listed in the Foster Farms balance sheet, the cost of maintaining exempt quota has been considerable for Foster Farms Dairy, including the additional cost related to foregoing strategic business opportunities, in favor of maintaining exempt quota eligibility. Note that the asset is held by our dairy farm side of the business, and all value of the exempt quota is within the dairy farm side as well. Foster Farms Dairy does not own regular quota, it holds all of its producer benefits as exempt quota.
MS. HANCOCK: I think there's a typo there on exempt.

JUDGE CLIFTON: Shall we just --

MR. OTIS: Oh, yeah, there's a P missing.

JUDGE CLIFTON: All right. So Ms. May, we are just going to re-spell exempt, it's the third line, fourth line up on Page 5. Thank you.

MR. OTIS: Like I mentioned, our farm is the entity that receives the exempt quota as an asset that is identified on our balance sheet as a "milk pooling right". The quota is booked as pounds of solid nonfat, which can be converted to hundredweight. The value of the exempt quota is worth more to my farms than just the booked value, as it is a legislative value that was created to compensate us for the markets that we, that were created when the exempt quota was issued and then through the two subsequent amendments to increase exempt quota.

Exempt quota is a producer benefit. In this hearing, exempt quota holders have been accused of using exempt quota to disrupt the commercial marketplace by targeting customer bids or somehow undercutting our competitors on price. This has NEVER occurred. We have to be competitive, and be very good at what we do, and do it as an efficiently as possible, but we compete on a level playing field. We pay the exact same price to our farm as we pay to other independent producers. Even when the market is really good for our farm milk prices, we do not use those benefits to cut costs at our plant or commercial
level. And when the farms are losing money, it does not impact
how we price, how I price my product. They are separate
entities.

Dean Foods has assumed that we have used a price
advantage from exempt quota, but they are wrong. Dean Foods
has suffered -- Dean Foods has not suffered at the hands of any
exempt quota. Yes, there was one national bid that we won
against Dean Foods, but it was not because of exempt quota. We
won that bid on a level playing field for our raw milk, for our
raw cost of milk. We competed on all the factors that Dean
Foods uses for its bid and won fairly. Dean Food has won more
bids against us, Foster Farms, than we have won -- than we have
one against them, and that is proof that we do not have any
pricing competitive advantage. In 2011 and 2013, Dean Foods
won two separate bids against Foster Dairy for a total of 15
million gallons per year. Adding that to the --

JUDGE CLIFTON: Let me stop you, 15 million gallons -- read
the rest of that.

MR. OTIS: I'm sorry.

JUDGE CLIFTON: 15 million gallons --

MR. OTIS: Of milk per year.

JUDGE CLIFTON: Thank you.

MR. OTIS: Yep. Adding that to the ten million gallons, it
should be milk, a year, that they took from Producer Dairy,
they have clearly exceeded what they claim we have taken from
them.

JUDGE CLIFTON: And before you continue, I'm going to ask Ms. May to make that addition. We're at the bottom of page 6, Ms. May, second line up. We're just going to add after gallons, we're going to say, well, it is gallons of, we're just going to add "milk per".

MS. MAY: Got it.

JUDGE CLIFTON: Thank you. And would you read that sentence again, please, beginning with adding.

MR. OTIS: Adding that to the ten million gallons of milk a year that they took from Producer Dairy, they have clearly exceeded what they claim we have taken from them. Simply stated, we have lost more bids to Dean Foods than we have won. There is no advantage for our plant or in bidding on prices to customers. All of the benefits of exempt quota stays with our farm.

Exempt quota has been engrained in the California quota system since its inception and indeed, it was necessary to achieve the consensus that led to the adoption of the California system. Exempt quota has been a win-win for all involved, and has played a part in the significant dairy growth that the State of California has enjoyed for decades. It is for these reasons that Foster Dairy and Crystal Creamery believe preservation of the quota system intact and recognition of the value of the California quota necessary, including the
maintenance of both regular quota and exempt quota.

To be clear, the California Producer Handler Association supports the Cooperative proposal. We are not attempting to change or alter the proposed Federal Order Producer-Handler definition, and we do not oppose creating a producer-handler exemption for those that fit within the criteria, even though we do not fit within the volume limitations. We are seeking to preserve the treatment of our exempt quota, along with the rest of the regular quota that makes up the quota system, and we have proposed to include an "exempt quota" definition to treat us as exempt quota holders and avoid conflict with the producer-handler definitions in Federal Orders. While we are proposing language through our Federal Order language expert, we are flexible in the approach and welcome help from the USDA to craft or modify the language to accomplish our goals as outlined in this testimony.

Thank you for allowing me to testify before you today.

MS. HANCOCK: Your Honor, at this point I would move for the admission of Exhibit 165.

JUDGE CLIFTON: Does anyone wish to question Mr. Otis before determining whether you object? No one. Are there any objections to the admission into evidence of Exhibit 165? There are none. Exhibit 165 is admitted into evidence.

(Thereafter, Exhibit Number 165, was received into evidence.)
MS. HANCOCK: Thank you, your Honor.

Mr. Lund or Mr. Otis, before I turn you over for cross-examination by other parties or participants, is there anything that you would like to add or comment on?

MR. OTIS: I think our statement said it all.

MS. HANCOCK: Okay. At this point, your Honor, I turn it over for cross-examination.

JUDGE CLIFTON: Who would like to begin with questions for Mr. Otis and/or Mr. Lund? If you have a question, you may indicate the party that you would like to answer it, or you may toss the question up and let them each respond if they would like, however you would like to proceed.

Who would like to begin? Mr. English?

CROSS-EXAMINATION

BY MR. ENGLISH:

Q. Good afternoon, gentlemen. My name is Chip English. I'm the Attorney for the Dairy Institute of California.

MR. OTIS: Good afternoon.

Q. So I'm just going to ask the questions, and whichever one wishes to answer, answers. For the benefit of the court reporter, certainly at least initially it would help if you identify which of you is answering, but that's for her, not for me, I'll realize who is answering, but the paper document has a little harder time.

And I really don't have a lot of questions for you, but
I would like to start on page 6 Mr. Otis' testimony in the top paragraph. And the discussion where "this was legislative value that was created to compensate us for the markets that were created when the exempt quota was issued." And I'm just trying to understand what that sentence means. What markets were created when the exempt quota was issued?

MR. OTIS: The Class 1 markets that we created back then, the fluid milk markets that we promoted and created.

Q. Would they be the Class 1 markets that you already had, is that what you meant?

MR. OTIS: Nope. It would be the Class 1 markets that, in our farming and processing facility, that we created, went out and got, and sold new customers with.

Q. Was that using the exempt quota to go get those customers, is that what you mean?

MR. OTIS: No, we didn't have exempt quota then. Prior to that, there was an advantage, obviously, to have your farm and your processing facility together, and you were able to manage your milk supply accordingly.

MR. LUND: Dennis Lund. I'll clarify. At the time the exemption was developed, we did have farming, and processing, and current Class 1 sales, and that's what the basis of the quota and exempt quota was based on. And then it grew after that, obviously.

Q. All right. That's what I thought. I was just -- fine.
I didn't want to get into semantics. So let me just ask, when you pay the Class 1 rate to your farm, I understand that, of course, CDFA audits the pounds, all your pounds are audited, including the pounds from your farm that are both subject to exempt quota and those that are not subject to exempt quota, correct?

MR. LUND: Yes.

Q. But CDFA does not audit the dollars paid with respect to the exempt quota, correct?

MR. LUND: In my experience, they have never asked about the rate we pay.

Q. Okay. And if they haven't asked about it, they haven't audited it, correct?

MR. LUND: They may have seen it but they didn't ask about it.

Q. So now, I just was doing some quick math, and that can be dangerous, especially on Day 36, it was dangerous on Day 35. But when I see your numbers on page 3, and let me just use, for simplicity, a hundred pounds. So as I read your testimony, and I thank you for the detail, you are telling us that assuming you had 100 pounds, 45 of those pounds are processed in the Class 1 fluid milk, correct?

MR. LUND: Of all the milk processed, yes.

Q. So 100 pounds, yeah, to be clear, my 100 pounds is all the milk processed by your fluid plant operation, correct?
MR. LUND: Yes.

Q. And in that case, 45 of the pounds are processed into Class 1. And then you tell us that, and yes, I checked the math, and yes, you are right, that 18 percent of your total Class 1 production is exempt.

MR. LUND: That's an approximate number. It changes from month to month, year to year, but on average that's about right.

Q. So if you have 45 pounds total, then I would take 18 percent of that, which is something just south of 9 pounds?

MR. LUND: That would be right.

Q. Okay. So if you have, and I'm, again, simplifying the math here, don't need to get too many decimals, I realize these are hypotheticals, if you have 100 pounds and 45 of those are Class 1, and you don't, and you are exempt on 9, so that leaves 36 pounds that you do have to account to and pay for the pool, correct? On the Class 1 side?

MR. LUND: That would be the portion that's, that is paid as normal, as a normal producer would get.

Q. And by that you mean that those 36 pounds plus the other 55 pounds, so we're up to 91 pounds obviously, on those 31 pounds, you both account to the pool and you pay farmers minimum prices, regulated minimum prices that are audited by CDFA and you contribute to the pool to the extent you have a payment of the pool, correct?
MR. LUND: The number you came up with was 91 pounds out of the 100?

Q. Yes.

MR. LUND: Yes, that's true.

Q. Okay. Now, I'm just curious, and I'm sure others may have told you this and you, I just want to make clear you don't have to give us confidential information, but given your utilization and your exempt quota, except for what I would call extraordinary events when you have price inversions and Class 1 is less than manufactured prices, do you, on those the 91 pounds, end up making some contribution to the pool each month?

MR. LUND: Ask the question again.

Q. Sure. So I'm trying to leave out months in which there's price inversions that cause the Class 1 price to be less than manufactured prices, so I leave those out of the equation. Other than that, on these 91 pounds that we have talked about that you do account to the pool, do you usually pay into the pool on those 91 pounds, pay contribution into the pool?

MR. LUND: I would say normally there have been times when the pool actually owed us money.

Q. Right?

MR. LUND: But overall we pay according to our end plant usage percentage by class, and comparing that to what we made a basically a down payment to the producers for that milk,
generally we have to pay into the pool, yes.

Q. Okay. On page 5 of your testimony, in the second paragraph near the end you have said that "the cost of maintaining exempt quota has been considerable for Foster Farms Dairy, including the additional cost related to foregoing strategic business opportunities in favor of maintaining exempt quota eligibility." And I'm really not asking you to tell me specific opportunities, but I guess I'm asking generally, what kinds of business activities or opportunities would an entity, any PD, need to forego in order to maintain the status?

MR. OTIS: It would be any strategic alliance that would involve releasing or the selling of ownership that would then disqualify us for exempt holding.

Q. I'm a little slower today than I was yesterday, and a little slower yesterday than I was the day before, so what you are referring to there is the 95 percent common ownership rule?

MR. OTIS: Yes.

Q. So I'm just curious, I mean, I understand the benefit to the farm, but if there's no benefit to the plant, why are the PD's fighting so hard to keep the provision?

MS. HANCOCK: I didn't hear the end of that.

JUDGE CLIFTON: Why are they fighting so hard to keep the provision?

MR. OTIS: Well, because it's going to my farms, and it's a credit that nets out most of the time to be financial advantage
through our farm operations. So common sense would tell you we
would like to keep that.

MR. ENGLISH: Thank you. That's all the questions I have.

JUDGE CLIFTON: Who next has questions for this panel
either Mr. Otis or Mr. Lund or both? Mr. Beshore.

CROSS-EXAMINATION

BY MR. BESHORE:

Q. Marvin Beshore.

Gentlemen, I represent the cooperatives which have
brought forth Proposal 1 for this hearing, and I have just a
couple of questions. So just maybe a clarification here for
Mr. Otis. In the third line of your testimony you reference
working for an entity for twelve years, which is identified as
K-N-U-T-S-O-N. Now, there's been a bunch of testimony of
several items of testimony prior to this about a dairy
operation in California that was Knudsen, K-N-U-D-S-E-N, I
think. That's the company?

MR. OTIS: Yeah, Knudsen, yes, not Knutson.

JUDGE CLIFTON: Oh, we have got a misspelling?

MR. OTIS: We have a misspelling.

JUDGE CLIFTON: See? Mr. Beshore is amazing, isn't he? He
knows so much. All right. So Ms. May, page 2, third line
down. We're going to change the spelling of Knutson to
Knudsen, being K-N-U-D-S-E-N instead of what's there.

MR. BESHORE: Credit Dr. Erba for that, not me.
MR. OTIS: Thank you.

BY MR. BESHORE:

Q. Now, a couple of questions about your Foster Farms Dairy. You say you have five separate farming and milking sites in Hickman, California. What county is that?

MR. OTIS: Stanislaus County.

Q. Stanislaus, okay. And they are all in one location or general location?

MR. OTIS: General location.

Q. How many cows do you milk?

MR. OTIS: Approximately 5700.

Q. In aggregate?

MR. OTIS: Yes.

Q. Total, okay.

MR. OTIS: Milking cows.

Q. Yes. What -- are they state average production per day or what's your average production per day, do you know?

MR. OTIS: I would say we're a little bit above the average, I would say we are, you know, depending on the year, anywhere between 85 and 90 pounds a day.

Q. That's very good production.

MR. OTIS: Yes, it is.

Q. Okay. With respect to your configuration that are purchases, your own farm is about 15 percent of your supply, you have 19 independent producers, for about 75 percent of the
supply. The other 10 percent you say is from different milk
brokers. Are you talking there about purchases of raw milk or
dairy commodities and milk?

MR. OTIS: No, this is raw milk and because of the school
influx, of school milk, you know, and summertime coming on. So
we balance about ten percent of our milk supply with a broker
that moves either our milk to somebody or helps us bring milk
in.

Q. Okay. And so you balance your supply through a broker,
and when you say ten percent, is that, that's then, on a yearly
total, that's about what, a --

MR. OTIS: That's about the average, yeah. It would be a
little heavier in certain times of the year, but of selling or
receiving.

Q. Okay. Do you buy any milk from cooperatives?

MR. OTIS: We have, sure.

Q. Okay. With respect to your 75 percent of your supply
to independent producers, do you pay then premiums over the
minimum, over minimum CDFA price?

MR. OTIS: We do.

Q. Do you pay premiums to the, your own farms as well?

MR. OTIS: We do. They all have the same quality bonuses
and incentives. All 19 independent and our five dairy farms.

Q. Okay. So are those -- are those quality and component
incentives based on, you know, like on component values --
MR. OTIS: It's estimated performance.

Q. If you can wait until I'm done. You anticipated the question completely, but in order to have a good transcript here, we need to only have one of us speaking at a time.

So are your bonus programs or premium programs based on both component levels in the producer milk and somatic cell count quality factors?

MR. LUND: Yes.

Q. How about rBST free, do you require rBST free milk from your suppliers?

MR. OTIS: We do.

Q. And that is that your total supply?

MR. OTIS: It is.

Q. Okay. The three plants, or three processing, five processing facilities, can you describe them just a little bit? Where are they and what products do they process?

MR. OTIS: I can. If you can appreciate, we have five processing facilities under one general roof in Modesto, so we process fluid milk, ice cream, cottage cheese, powder, butter, out of those facilities. We consider them separately, obviously, processing facilities. And then we have two other processing facilities under the, on the same land in Fernbridge that we process ice cream and powder and fluid milk from.

Q. Do you make -- are any of your products organic?

MR. OTIS: Yeah, we do an organic product under the
Humboldt Creamery and some private label customers.

Q. Is that at the Fernbridge locations?

MR. OTIS: We actually produce organically certified plant-wise in both facilities. A majority of our organic milk supply comes from the Fernbridge, Humboldt County area.

Q. Is any of your own farm production organic?

MR. OTIS: They are not.

Q. On page 5, I think there's some discussion of quota and how it was acquired and some of the limitations of it, and there maybe, first of all, there was some testimony yesterday from another one of your colleagues, and I asked him about how the purchases of exempt quota had been acquired during the time when you were allowed to purchase it. His testimony was that it was basically purchases of regular quota which could then become exempt quota in the hands of a producer-handler. Is that Foster Farms' experience also?

MR. LUND: Yes, it's true.

Q. So the purchases pre-1995 I guess, were -- were just off the regular quota market, if you will, by Foster Farms?

MR. LUND: Yes, it was no different -- well, it was regular quota, but in our hands became exempt.

Q. And you could, if you chose to for any reason, sell the quota back into the regular quota market also, correct?

MR. LUND: We could sell the quota, but then we would also lose that exemption.
Q. I understand. You wouldn't own it anymore so you wouldn't have the exemption. So is it the testimony, I guess this is for either of you gentlemen, Mr. Lund, maybe you directly handle some of the checkbooks and ledgers, is it your testimony that on the basis of the actual financial transactions on a monthly basis in your company, that funds are paid for the quota to the farm entity the separate entity at the Class 1 price?

MR. LUND: In the 28 years I have been there, yes, that's the way we have paid it.

Q. Okay. And that's paid out in the same way as the other 85 percent of your milk supply. I mean, in the same sequence and routine?

MR. LUND: Except that we no longer issue a physical check. It's more of a journal entry within our financial system.

Q. From one entity to the other?

MR. LUND: That's true.

Q. Okay. I think those are all the questions I have right now. Thank you very much, gentlemen.

JUDGE CLIFTON: Who next has questions for either Mr. Otis or Mr. Lund or both? Mr. Richmond?

CROSS-EXAMINATION

BY MR. RICHMOND:

Q. Bill Richmond, USDA. Good afternoon, gentlemen. We appreciate your testimony. Just a couple of quick questions.
You understand that the producer-handler provisions in the existing Federal Orders are pretty different than the producer-handler provisions that are in place here in California currently?

MR. OTIS: We do -- I do.

Q. And do you understand that under the Proposal 1 and 2 from the Cooperatives and from the Dairy Institute, that they would more or less align the producer-handler provisions under the proposed Federal Order with those that currently exist?

MR. OTIS: The 1 and 2 proposal? Yes.

Q. And you are in support of Proposal 1?

MR. OTIS: With the caveat of 3 being incorporated inside of it, yes.

Q. Okay. I guess what I'm asking is, there's potential if, under adoption of that proposal, that you would, you would no longer be a producer-handler, you would become a fully regulated handler. And I guess you would be okay with that as long as you were able to maintain your exempt quota?

MR. OTIS: I think the general statement would be, just sitting here, I would say as long as we maintain what we enjoy today, we would be okay with that.

Q. Okay.

MR. OTIS: But to make a general statement, I don't -- I would have to see the language and --

MR. LUND: Can I clarify the word enjoyment? I mean, we made a sizeable investment for this as well, it's not something that's just given to us.

Q. Absolutely. I understand. At the end of your exhibit you note that you would, you're flexible in the approach and welcome help from the USDA to craft or modify language to accomplish your goals as clarified in the exhibit. As part of that, would you be open to a, perhaps an audit, or some other means of verifying that you are, in fact, paying your farm at the Class 1 price?

MR. OTIS: Yeah. I will tell you that I would check with the family first, but today I would have no problem with that. We have nothing to hide. But I would -- would want to get the family's okay with that.

Q. Okay. I think that's all we have. I appreciate it.

JUDGE CLIFTON: I have a question for either or both of you. If I were trying to understand the value of quota, or the value of exempt quota, how would I begin?

MR. OTIS: How do we qualify it or how would you -- because it's listed, if you look at our P & L for our farms, you will see a line that says "milk pooling rights" which is our quota value. So there's a credit that's attached to that, usually. Sometimes it can go the other way, but mostly it's a positive. That shows that we earned X amount of credit in our farms for that milk that was exempt. So it's a separate line that's in...
our P & L. It is not blended into the revenue center.

JUDGE CLIFTON: So you are talking about your profit and loss that's prepared monthly?

MR. OTIS: Yes.

JUDGE CLIFTON: And it shows the advantage that you had for that month by not being involved in the payments into the pool?

MR. OTIS: Yes, it shows the, what we think it's an advantage but what we earned over a period of time. It is the exempt quota. It's, you say advantage, I say it's what we have earned over a period of time, either by getting it in the '67 legislative agreement, or buying it later on. So I wouldn't call it an advantage, it's an earned exempt credit, quota credit.

JUDGE CLIFTON: Now, your statement said that undervalues it, that it's actually worth more than what your profit and loss statement books it at. So, Mr. Lund?

MR. LUND: Just to clarify. Obviously buying quota is at a higher rate than the natural blend --

JUDGE CLIFTON: Rather than talk to me, which I appreciate, please talk to the microphone.

MR. LUND: Purchasing quota gives you 19 and a half cents per pound total solids nonfat higher than the blend rate that you would receive if you did not have quota. In our case, the quota that is exempt, that would be the differential between the quota rate and the current month Class 1 rate. That
differential changes from month to month, wildly I might add, but over a period of time it averages out to be pretty much the same number within 10 or 20 percent year over year. But we identify the difference between what we would pay at a quota rate, versus the Class 1 rate, and we identify that amount, which is noted on the financials of the dairy farms. So we do identify what that benefit is each month.

JUDGE CLIFTON: Now, we had some testimony that explained that there are two ways to look at the value of quota, I'm just talking about regular quota. And one is that income stream, month after month after month, but another is just its asset value, what it could be traded for, what it could be sold for. Do you look at exempt quota similarly? And I guess I would ask Mr. Lund.

MR. LUND: It is booked at what we paid for it. It doesn't have any additional value on the books. It's booked at what we pay for it.

JUDGE CLIFTON: We have no idea as all this evidence is evaluated, what the Secretary of Agriculture will choose at each juncture based on legal requirements and evidence and so on, but if it were determined that exempt quota should be treated like regular quota under a Federal Milk Marketing Order, how should exempt quota holders be compensated, if there's any mechanism to do that, for the loss that they would incur by having their exempt quota converted to regular quota?
MR. OTIS: Boy, that's an excellent question, your Honor, that I'm not prepared to answer today. I mean, honestly, that would really take some consideration beyond a casual comment here.

JUDGE CLIFTON: And I believe you probably value your exempt quota as higher than regular quota; is that true?

MR. OTIS: Well, we don't own any regular quota, so your question do we value our quota differently than quota owners, regular quota owners?

JUDGE CLIFTON: Well, let's say you had an opportunity to, let's say there was some regular quota for sale.

MR. OTIS: Uh-huh.

JUDGE CLIFTON: And you had the money to buy it, and because you had the entity you do, it could become exempt quota just by buying it.

MR. LUND: No, not anymore.

JUDGE CLIFTON: No? Not anymore. Okay. All right. So suppose since 1995 you can no longer have it become exempt.

MR. OTIS: Precisely.

JUDGE CLIFTON: All right. So if you bought some regular quota today, do you think you would regard it as equal in value to exempt quota that you have held since 1995 or earlier?

MR. LUND: My question would be, how do you define value? Financially on the books it would be whatever you pay for it. Now, personally how we value it, we know it has more value than
regular quota. If we had regular and exempt quota, we know the
exempt is worth more to us as an income stream, but on the
books it would be valued the same.

JUDGE CLIFTON: All right. Who else has questions for
Mr. Lund, Mr. Otis? I don't see any other questions.
Redirect?

REDIRECT EXAMINATION

BY MS. HANCOCK:

Q. Nicole Hancock.

Mr. Lund, Judge Clifton was asking you about the value
what you have booked on the books for the exempt quota, and you
mentioned that you have the amounts identified on there that
are equal to what you paid for it; is that right?

MR. LUND: That's true.

Q. That's not -- you are not saying that's what the value
is if you were to calculate a value to the business overall,
are you?

MR. LUND: No. That, and that's not even the market value,
it's the purchase value.

Q. Okay. Can you help us have a better appreciation of
what, why you have booked what you paid for rather than the
market value for that exempt quota on the books?

MR. LUND: That's generally accepted accounting principles.

Q. Which is what you are governed by in keeping the books?

MR. LUND: That's true.
Q. Okay. And then speaking of books, when Mr. Beshore was asking you about how you pay your farm for the milk that you buy from your farm and you mentioned that it was a journal entry, can you help us understand, do you operate two separate legal entities at the administrative -- let me say that differently. Do you provide administrative services for your separate legal entities?

MR. LUND: There are some administrative services in common, but there are administrative services separate at the dairy and at the creamery.

Q. Okay. So when you say you make a journal entry, is this just a paper transaction or is it actually money? Does it actually change who is entitled to have those funds?

MR. LUND: It's a paper transaction. There's no money transmitted between any entities.

Q. Do your -- is it an actual change of money though, where your farm actually is the one that's entitled to those funds instead of your creamery?

MR. OTIS: They would be if you had separate, if you had separate funding sources or what have you. But it is the same bank, it is the same accounts. So I mean, for example, this hearing and the cost of defending our position here would be a charge that we would charge to the farms. Okay? So it would be an expense that would be charged to the farms. Administrative handlings and activities that we provide to
farms, we charge them a charge. We don't send them a bill, it's a journal entry to say, hey, we had the PD hearing which cost us 30,000 this month, here is this charge to your farm. So, I mean, there's no checks that are exchanging hands. That would be, for us, Impractical.

Q. And how do you allocate your administrative costs between your separate entities?

MR. OTIS: We agree upon it with the farm general manager and say, listen, these are the services we're providing you, and we're going to charge you X percent, and we review that on an annual basis in case something changes dramatically as far as the services that our administrative staff provides to our farms. Because we don't want to duplicate our efforts in administrative.

Q. So would that allow the plant at all to allocate any of those benefits differently to take a price advantage that the farm receives for the payment of that milk to allow as a passthrough to its customers?

MR. OTIS: Listen, you could do what whatever you wanted to, if you wanted really to move paper around, that's why I think this gentleman asked about a possible audit and looking at the books. I mean, I can tell you specifically that we do not ever interfere with the price of our milk, and what our commercial operation pays, and what our farm gets credit for. We can't. Because honestly, I can't run my business based on a
credit from my PD handling that is not -- because it changes all the time. That changes all the time. When I'm making money in the farm, I can't start pouring into my commercial operation. You just can't run a business that way. And that is why we separate the two. But technically speaking, I think that's the question and why somebody asked about the audit, is could you? Absolutely. No, it is not against the law to do that, if that's the question. But we don't and we never have. And Dennis has been here 28, I have known Foster, the owner, one of the owners, about it, he said we have always separated, and that was Max's purpose. And I think we heard testimony yesterday that that was similar.

MR. LUND: And in our bill of materials and our calculations of cost of milk, we only use the class price plus premiums, plus bonuses, plus assessments we pay in calculating our milk cost. So there's no producer option, exempt option, that plays into that calculation.

Q. So your manufactured costs for your plant, that is what can be audited by the CDFA that you are accountable for insuring that you are selling at or above that amount.

MR. LUND: CDFA is going to audit what we pay to the producers, and even ourselves, basically, for the non-exempt to make, and how we use the milk. That's what they audit. How do you use the milk to make sure you are paying into the pool or to the producers the minimum rates.
Q. Okay. Thank you.

JUDGE CLIFTON: Who else has questions for Mr. Otis and/or Mr. Lund? I see none. Is there anything you would like to add before you leave us?

MR. OTIS: Thank you for letting us out early. We appreciate it.

JUDGE CLIFTON: I'm so grateful you were here and that you have given us your statements. Very helpful. Thank you both.

Is there anything objection -- did I -- it is already admitted. 165 is already admitted. All right. Now, it's 1:04. Why don't we take a stretch break and then I think we'll have the producers that are here with Mr. Smith; is that correct?

MS. HANCOCK: Do you want to do the 30-minute lunch break now?

JUDGE CLIFTON: Is this a good time to do it?

MS. HANCOCK: Yeah.

JUDGE CLIFTON: All right. Then let us take just a half hour. It's 1:05. Please be back and ready to go at 1:35.

(Whereupon, the lunch recess was taken.)

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THURSDAY, NOVEMBER 12, 2015 - AFTERNOON SESSION

JUDGE CLIFTON: We're back on record at 1:37. Before we continue with evidence, I would like now to take appearances of those who are here who did not come to the podium this morning, even if you are not testifying today. If you are testifying another day or are otherwise participating, I would like you to come forward now and enter your appearance.

MR. WHITCOMB: Thank you, Judge Clifton. I'm guessing that I might have been one of those that you were perhaps suggesting should appear. I will introduce myself. I'm Walter E. Whitcomb, I'm the Commissioner of Agriculture Conservation and Forestry for the State of Maine. And I'm here both, and will have testimony to present tomorrow. I had no intention to speak today so that's why I didn't come forward, again, earlier. But I will offer some comments as part of the, on the record tomorrow.

I have a personal interest and a professional interest. I actually attended a number of you at all the Vlsack proceedings in '09 and have an association with California, Rob, back to walking around the fields of New England with Dick Claus as he was buying cattle for Hilmar Cheese folks, so we, I don't want to say I'm responsible for what happened, but we have some association all across the country. Thank you for the opportunity.

JUDGE CLIFTON: Thank you for being here. I'm delighted
that you are here and I'm glad that you will lend some
information to the hearing record for the Secretary's
consideration.

All right. To whom may I thank, send my thanks, give my
thanks, for the pizza that we just enjoyed, which saved us
about 45 minutes? And did the payment for the pizza come out
of -- let me make sure I have her name right --
Ms. de la Riva's pocket?

MS. de la RIVA: No, it did not.

JUDGE CLIFTON: Okay. I would like to know to whom we owe
our thanks?

MS. de la RIVA: Stoel Rives.

JUDGE CLIFTON: Stoel Rives? The law firm?

MS. DE LA RIVA: Yes.

JUDGE CLIFTON: Bless you, bless you, bless you. Thank you
so much. All right, then. I think we're ready for
Mr. Sparrow's testimony, am I correct?

MR. SMITH: Dan Smith. We're actually going to hear from
Mr. Williams. And I understand you were going to take
Mr. Williams and Mr. Sparrow; is that correct?

JUDGE CLIFTON: It is up to Mr. Williams and Mr. Sparrow.
It's easy for us to set up two microphones, if they would like
it testify together. Is that what you mean?

MR. SMITH: No, I just meant, what you said before lunch
was we were going to take both of them this afternoon. And in

7335
that case, Mr. Williams is going first. That's all.

JUDGE CLIFTON: Oh, what you want to know from me is whether Mr. Sparrow will come right after Mr. Williams?

MR. SMITH: Yes.

JUDGE CLIFTON: Yes, that's my plan, thank you. So Mr. Williams is in the witness stand. I'm going to swear you in in a seated position. If you will raise your right hand, please.

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

MR. WILLIAMS: I do.

JUDGE CLIFTON: Thank you. Even though you have already given us your name and spelled it, would you do so again?


JUDGE CLIFTON: Thank you. And when you say J. Everett Williams, am I to write out the word Jay or the initial J.

MR. WILLIAMS: Initial J.

JUDGE CLIFTON: And you are known by Everett?

MR. WILLIAMS: Correct.

JUDGE CLIFTON: All right. Thank you. And I am seeing that we have testimony of Everett Williams being distributed, I believe, I will be marking this, Ms. May, as Exhibit 166; is that correct?

MS. MAY: That is correct.
(Thereafter, Exhibit Number 166, was marked for identification.)

JUDGE CLIFTON: So we'll pause until each person has a copy of the testimony of Everett Williams. We're good. Mr. Smith, would you identify yourself again, please?


JUDGE CLIFTON: Thank you. You may proceed.

MR. SMITH: Thank you, your Honor.

DIRECT EXAMINATION

BY MR. SMITH:

Q. Mr. Williams, did you prepare the statement that has been marked as Exhibit 146?

JUDGE CLIFTON: 166.

MR. SMITH: 166. My math is slow like Chip's, I guess, I apologize.

BY MR. SMITH:

Q. Please proceed with your statement, Mr. Williams.

A. I appreciate the opportunity to come here today. My name is J. Everett Williams. My family and I own and operate WDairy, LLC. The farm's address is 1141 Broughton Road, Madison, Georgia, 30650. I am also President of Georgia Milk Producers, Incorporated, and am testifying today in this capacity as well. Georgia Milk Producers address is
I am a graduate of University of Georgia with a Bachelor of Dairy Science Degree in Agriculture. After graduation, I managed a dairy operation in Southern Georgia from 1975 to 1978. I returned to the family farm in 1978. My father, John E. Williams, started the farm in 1958. At the time of my return, the dairy consisted of 90 milk cows, 400 acres, and one employee. WDairy has since grown to its current size of 1800 milk cows, 1827 head of young stock, and 3600 hundred acres of owned and rented land. The operation has 27 full-time and two part-time employees.

My two sons, Justin and Daniel, returned to the farm following their graduation from University of Georgia in 2005 and 2007. Justin oversees the cropping operation and Daniel oversees the livestock side of the operation.

It's a typo on this next one, it was in 2012.

JUDGE CLIFTON: All right. Ms. May, do you see the reference to 2002? We'll just make that 2012.

MS. MAY: Got it.

JUDGE CLIFTON: Thank you.

MR. WILLIAMS: In 2012, a new 72-stall rotary parlor and a third freestall barn were built to accommodate the increased herd size and to replace facilities that had been in use since 1958. No longer dependent on milk tanks, the dairy direct
loads milk into milk tankers and has reduced milking time from 24 hours a day to 18 hours a day. Fans and misters in the freestall barns contribute to cow comfort and reduce the effect of heat stress on the herd.

All forage crops are grown on the farm and fed in the form of silage. In 2014, we harvested 29,000 tons combined of corn, rye grass, and sorghum. Close attention is paid to ration analysis to aid in milk production and cow health. No-till and irrigation is used to improve crop production and manure is recycled by applying it to crop land to improve soil productivity.

The dairy also has an integrated recycling program. Sand is used and recycled for freestall bedding, lagoon water is recycled for flushing barns and irrigating crops, well water is used to cool the milk and then goes to the cow water troughs.

In sum, paying attention to detail, researching new ideas and the willingness to try new concepts has allowed the dairy to grow and improve.

As I indicated at the outset, I am the President of Georgia Milk Producers, Incorporated, and am here testifying in this capacity. I am a member of the Board of Directors for Cobblestone Milk, although I am not testifying on behalf of Cobblestone. I am also a Veterinary Advisory Board Member for the University of Georgia of Veterinary School.
Georgia Milk Producers is a producer-funded organization located in Watkinsville, Georgia. Georgia dairy producers vote by referendum every three years to maintain Georgia Milk's operation. Producers pay a one cent per hundredweight assessment to enable Georgia Milk to operate communication, promotion, and education programs.

Georgia Milk's main objective is to educate dairy producers, the public, and governing officials on all issues affecting Georgia’s dairy industry. These include legislation, environmental regulations, animal health and milk pricing. In the last category, milk pricing, Georgia Milk works to be directly involved in Federal Orders processes that affect Georgia producers.

Georgia Milk has a 16-member Board of Directors representing the ten Georgia Milk and American Dairy Association districts in Georgia. All directors are dairy producers who ship to either the Dairy Farmers of America, Maryland-Virginia Milk Producers, Lonestar Milk Producers, or Southeast Milk, Incorporated, Cooperatives. Each director is elected to serve on the Board of Directors by dairy producers during Georgia Milk's fall district meetings. The Board meetings are open to all Georgia producers.

Georgia Milk is a strong and vibrant organization because Georgia itself is one of the major milk producing states in the deep south. Georgia produces about 1.7 billion
pounds of milk annually, and ranks 24th in milk production nationally. Dairy is in the top 10 of Georgia's agricultural commodities, annually contributing 1.2 billion to the state's economy.

JUDGE CLIFTON: That's 1.2 billion what?

MR. WILLIAMS: To the state's economy.

JUDGE CLIFTON: Would that be $1.2 billion?

MR. WILLIAMS: Yes.

JUDGE CLIFTON: Thank you.

MR. WILLIAMS: Along with favorable temperatures and growing seasons, the state provides a supportive educational and regulatory environment for agriculture and dairy farming. Demand for milk has increased with the growing population of the state and region. Georgia is home to three major milk processing facilities which assure a stable in-state supply of packaged milk for consumers. In addition, Georgia is an important supplier of the large and substantially milk deficit Florida marketplace, with almost half of Georgia's raw milk production exported and utilized there.

Despite these advantageous marketing conditions, as with dairy farming across this country, maintaining a profitable dairy farm and working to promote the health and growth of my state industry, is a constant uphill battle, struggle. While we have relatively high classified minimum prices in the southeast, it yet remains a challenge to be
assured of adequate producer pay prices and cash flows because
a significant amount of the higher prices is used to bring in
deficit milk and to balance the market.

Earlier in the hearing, Calvin Covington presented
testimony identifying that milk production in the Southeast
decayed from 13.5 to 9.5 billion pounds between 1995 and 2014.
At the same time, according to Mr. Covington, fluid consumption
in the Southeast was 12.2 billion pounds in 2014. Milk
production for our region is thus, in deficit of 2.7 billion
pounds, which is almost 30 percent of fluid demand.

Our market, in other words, is in severe distress to
provide the required raw milk supply for the region's Class I fluid demand. According to Mr. Covington, "lower producer
prices and less milk make this challenge more difficult." I
certainly echo his opinion, as both a dairy farmer and as
President of our statewide producer organization committed to
maintaining and growing our local milk supply.

As is also common for dairy farmers across the country,
I strongly believe that farmers should support each other in
any effort to improve their market circumstance. From this
vantage point, I recognize that California dairy farmers have
petitioned for this hearing in order to improve the operation
of their regulated marketplace. From what I understand, the
California producers are seeking establishment of a Federal
Order because the California state regulation does not fairly
allocate market value between processors and producers.

Let me emphasize, therefore, that I support in principle, the California producer's effort to adopt a Federal Order to improve their market circumstances. At the same time, however, I also believe the Department has a responsibility to ensure that regulation devised to promote orderly marketing in one market area should not cause detriment to producers in another marketing area. Based on the information we have received from the Department, I am concerned about the possibility of such detriment being the outcome of this hearing for my market in the Southeast.

Mr. Covington's prior testimony further cites the Department's analysis indicating the potential negative impact that all of the hearing proposals would have on producer payments in the Southeast. While this information was already received as part of his testimony, I would like to present it again to emphasize its significance from my perspective as a dairy farmer and as President of Georgia Milk Producers.

Basically, the proposal on the chart shows that in Appalachians, the change in the blend prices go from anywhere negative 4 cents to a negative 13 cents on average. In the Florida Marketing Order, it goes anywhere from negative 1 cent to negative 22 cents. And in the Southeast Order, it goes from a negative 24 to a negative 26 cents.

In Georgia, the average farm has about 375 cows and
produces about 7.5 million pounds of milk annually, or about
75,000 hundredweight annually. According to the Department's
calculations, the average Georgia farm pooled on the Southeast
Order, would thus lose, on average, about $19,500 per year.
For the year 2024, (which is the "Minimum" in Mr. Covington's
calculation), the projected loss is $25,500.

On my farm, which is quite a bit larger, the average
annual loss would be 123,000, and the loss projected for 2024
would be 161,000.

Overall, for the state's aggregate milk production of
1.7 billion pounds or 17 million hundredweight, the average
loss would be just over 4.4 million, and the loss projected to
2015 would be 5.8 million.

JUDGE CLIFTON: Now, just so it's clear, all those figures
you gave us where you were talking about losses and so forth,
you were speaking in terms of dollars; is that correct?

MR. WILLIAMS: Yes.

JUDGE CLIFTON: All right.

MR. WILLIAMS: The other potential negative impact of the
different proposal is a decline in our region's milk
production. According to Mr. Covington's further review of the
Department's analysis, milk production would decline or at
best, remain flat under all of the different proposals. This
is understandable given the projected reduction in producer
prices.
As described above, Mr. Covington has indicated that "lower producer prices and less milk" make more difficult our challenge of providing an adequate supply of fluid milk for our region. From the calculations provided above, it is quite apparent to the producers in Georgia Milk Producers that all the proposals being considered in this hearing would likely cause even greater stress for our region if adopted in their current form.

On behalf of Georgia Milk, I respectfully request that the Department give careful consideration to this potential negative impact from the establishment of a California Order on the Southeast, as reflected in the Department's own analysis. If further analysis confirms the likelihood of such a negative impact from the proposals under consideration, adjustment must be made to ensure that establishment of a California Order will not harm our region, or other regions of the country.

Finally, I express my support for recommendation by Mr. Sparrow regarding the follow up regulatory process. As Mr. Sparrow proposed, at the least, if the Department is to establish an Order of questionable impact on other regions, it must ensure that a follow up regulatory process is in place that will allow for far more timely adjustment to be made than currently possible under existing order amendment procedures.

MR. SMITH: Does that conclude your written testimony, Mr. Williams?
MR. WILLIAMS: Written testimony. I wanted to add a couple of things. Basically, we're here today because the Kentucky Dairy Development Council, and the Tennessee Dairy Producer Association, and Georgia Milk Producers all started looking at the analysis the Department put out, and how this possible change would affect our prices. And we are definitely not against California's developing an Order system, but we are concerned about what effect it might have in the Southeast.

Also, when I look through the analysis, it's data in there that does not make good sense to me. And I'm looking at it on common sense and a real high, far distant level, not down in the pennies. But basically, and I went to our local Market Administrator office in Atlanta and presented a question and it went to Washington, and I still haven't gotten anywhere with it. And I talked to Mr. Clifford just awhile ago, and he says he's going to find the problem for me. And I guess the bottom line is, when you look at the two proposals, you have the co-op proposal that's basically going to add a dollar to the pay price in California, which should, and this is all in the analysis, and that's going increase 540 million pounds of extra milk. And of course that has repercussions all back over the United States.

And if you look at the charts, they saying it is going to lower the brim price in the Appalachian Order 13 cents, Florida price Order 22 cents, and the Southeast 26 cent. But
then you look at the Institute proposal, and it basically raises the California producer price about 10 cent, and that in turn, according to the analysis, increases 60 million pounds of production, which is not a lot of production. So therefore, it only affects the Appalachian Order 4 cents, so that's 13 to 4 cents on that one. The Florida Order goes from 22 cents to 1 cent on those two proposal. But the Southeast Order stays 26 to 24, which just my simple common sense looking at it, it's got to be wrong. And I can't find anybody to tell me I'm wrong, but nobody can find the answer. So I really think that's substantial, 'cause it really makes it look like all these proposal has the same effect in the Southeast, which they don't.

And I guess I'm really a strong supporter of co-ops, and I think it is great we're moving forward with this type hearing here. But it also concerns me that even with a strong market like in California, and we have three co-ops that have a vast majority of the milk, that we still need the Federal Order system to be able to price milk and be fair. I think that points out how much need it is in creating a level playing field in the Federal Order system all across the United States. And I guess that concludes what I have to say.

MR. SMITH: At this time, your Honor, I would move the admission of Mr. Williams' statement, and then make him available for cross-examination.
JUDGE CLIFTON: I need a little clarification. I don't know if, Mr. Smith, perhaps you are the one to help me here. Are the excerpts from prior evidence that are at the bottom of page 3 and the top of page 4, from Ms. Steeneck's --

MR. SMITH: No, it --

JUDGE CLIFTON: -- document.

MR. SMITH: Excuse me, the paragraph immediately preceding the tables indicates that they were presented as part of Mr. Calvin Covington's testimony.

MR. WILLIAMS: And the data came directly out of the 46-page Department analysis.

JUDGE CLIFTON: All right. Thank you. That's helpful. All right. Is there anyone who would like to question Mr. Williams with regard to Exhibit 166 before determining whether it should be admitted into evidence? No one. Is there any objection to Exhibit 166 being admitted into evidence? There are none. Exhibit 166 is admitted into evidence.

(Thereafter, Exhibit Number 166, was received into evidence.)

JUDGE CLIFTON: Do you have questions of the witness, further, Mr. Smith, or would you like to invite cross-examination?

MR. SMITH: No, I -- Mr. Williams is available for cross-examination.

JUDGE CLIFTON: Who would like to begin? Ms. Hancock?
CROSS-EXAMINATION

By MS. HANCOCK:

Q. Good afternoon, Mr. Williams. I'm Nicole Hancock. I represent the California Producer Handlers Association and Ponderosa Dairy.

I am just a little bit curious. The area where you produce milk you said is in a milk deficit area?

A. Yes.

Q. Tell me what you mean by that.

A. Milk deficit in relation to the fluid needs of the marketplace. We produce less milk than what the market needs on a year-round basis.

Q. Okay. So you have plants that are asking for more milk than what you can provide?

A. Yes.

Q. And have you been able to use that deficit situation in order to increase the raw prices or the prices of your raw milk?

A. Could you ask that again?

Q. Yeah. We have talked a lot in this case about supply and demand, and I think the Dairy Institute or some of the parties have suggested that if there's too much milk in the market, that it, that that's what drives the milk prices down. And so what I'm wondering is, is it your experience that since you are in a deficit area, if you have been able to ask for a
premium price or an extra price for your raw milk from your
from your plants?

A. In years past we have had over order premiums that
coop have been able to negotiate with processors. Those over
order premiums have been drastically decreased in the last few
years because of the general, just general marketing
conditions.

Q. So it's fair to say that even though you are in a
deficit area, it doesn't really drive up your milk prices that
much?

A. No. Okay. Say it again?

Q. Yeah, sorry, we distracted you there. That was a ploy.

A. I thought so.

Q. So is it fair to say, then, that even if you are, even
though you're producing in a milk deficit area, it doesn't
allow you to ask for more money from your milk just because you
are producing in a deficit area?

A. You may ask for more money, but the negotiation appears
that we receive less over order premiums. And what we miss in
supplying the Southeast, we do not have any manufacturing, so
milk is not pulled out of manufacturing plants to supply fluid
plants when they need it, it has to be brought in. So
therefore, it's brought in a lot of times at a deficit from
what the plants will pay, so that lowers the premium for
everybody.
Q. I see. Okay. Thank you very much. That's all I have.
A. Okay.

JUDGE CLIFTON: Who next has questions for Mr. Williams?
Mr. Beshore.

CROSS-EXAMINATION

BY MR. BESHORE:

Q. Marvin Beshore.

Good afternoon, Mr. Williams. I represent the Cooperatives here in California that have brought the Proposal 1, and so we really appreciate support in principle that you brought from the Southeast. I have just a couple of questions maybe.

How many producers are there in Georgia, dairy farmers?
A. Approximately 230.

Q. And they are all members of Georgia Milk Producers, is that the way that works? Or how does that work?
A. Yes.

Q. All right. Milk in the Southeast, you say Georgia's a deficit area, but nevertheless, it's in your testimony, it's a substantial percentage of the milk in Georgia is shipped down into Florida, correct?
A. Correct.

Q. Okay. So why would that be? I mean, maybe you can just explain a little bit how things work there in the Southeast in terms of where the milk, where the milk goes, how
it's drawn.

A. Basically, you have plants in Florida that are short of milk, there's not enough milk produced in Florida. So in most Federal Order system, it dominoes down. Georgia milk moves to Florida, and then, say, North Carolina milk moves into Georgia to fill in. And a lot of the Georgia dairy industry has been based on fulfilling the market in Florida.

Q. Okay. And is there under the -- scratch that. The Cobblestone Cooperative, did you -- is that -- did you say you are a member of Cobblestone?

A. I am a member.

Q. Okay. Yeah, but you were on the board, you are not on the board, you are not speaking for them, but where are they based? Where are their producers?

A. They have one producer in Georgia and the rest of them are in Virginia and North Carolina.

Q. Okay. Yeah, and I know Mr. Covington spoke on their behalf --

A. Right.

Q. -- when he was here earlier. So is their milk kind of dominoed south out of Virginia for the most part, towards the Carolinas and Georgia?

A. Cobblestone has a marketing agreement with Maryland-Virginia Milk Producers, and wherever the sales are needed, the Cobblestone milk moves, they use that milk to move
to fill in.

Q. Very good.

A. Cobblestone is a marketing co-op of larger producers, and so they ship tractor trailer loads, so they are pretty convenient, and they are strategically located to different plants in the Southeast, so Maryland-Virginia and other co-ops use them to fill in.

Q. So some of that milk, if it's trailer load, lots produced on the farms, it travels a little easier than some of the tankers that are assembled on the smaller farms?

A. Yes.

Q. Okay. And with respect to, you testified to the manure recycling program in your own farm. Is that something that's required by regulations in the State of Georgia, or is that something that you have developed on your own initiative, or can you just talk about that a little bit?

A. Okay. Basically, any large dairy these days have a manure management plan. It's based on some rules the DPPA has put out, and basically you account for all the nutrients your cows put out in the form of manure, and you put it back on crop land in a responsible manner that crops going to use that manure and recycle and not have a pollution of groundwater or runoff water.

Q. Okay. So that's, you know, those requirements are generated initially through the U.S. EPA?
A. Yes.

Q. To your understanding?

A. But it is also a sustainable because it's a good practice. You lower fertilizer cost by recycling.

Q. Okay. Very good. Now, you are on the Vet Board there. Are you also a Veterinarian?

A. I am not.

Q. Okay. So that's a public or a dairy constituent membership on the State Board?

A. Just another public service of trying to emphasize to our local Veterinary School that food and animal medicine is still important, not companion out.

Q. Very good. Okay. So just a couple of thoughts with respect to the blend price impacts. With respect to the price impacts that you have observed in, you know, in your testimony, and that were reflected in the USDA study. Of course, that was presented early in the hearing, there's been testimony about it, and you may not be aware of some of the information that has come to light. But is it correct that your understanding is that the negative price impacts in the Southeast are essentially a function of the Proposal 1 if adopted, generating additional milk production in California, 500 or so million pounds I think you indicated, and that's what would tend to cause in an overall supply fashion, the prices to go down in the Southeast?
A. That's my understanding. No more than my understanding
the Federal Orders of the other components. That's my
understanding.

Q. Okay. Well, so, so bad news for California producers,
but good news for you in the Southeast. The actual information
in record about production in California in 2014, which was the
first year of data, or which was, for which there was
projections in the USDA study, the actual production in
California was more than 2 billion pounds less than the
production assumed for the year 2014 in that USDA study. Were
you aware of that?

A. I was aware that California production has been
decreasing, especially this year.

Q. Right. Okay. And so this year, at the rate that it's
decreasing, it will decline another 1 to 2 billion pounds of
production this year in California, and that would tend to have
a more positive effect on prices going forward in the Southeast
if we got a lower base of production here in California,
wouldn't you think?

A. Yes.

Q. Okay. In fact, the decline in California this year
might be --

A. Yes.

Q. -- might be as much as the whole production in the
state of Georgia for the year.
A. Correct.

Q. Or something like that. Okay. Thank you very much for coming and testimony.

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

Mr. Richmond?

MR. RICHMOND: Bill Richmond, USDA. Mr. Williams, we appreciate you coming and wanted to let you know that we're working on getting you some answers to your questions. Our model has taken a lot of abuse, but we're working on it.

JUDGE CLIFTON: Are there any other cross-examination questions before I invite redirect from Mr. Smith?

Yes, Mr. Beshore?

CROSS-EXAMINATION

BY MR. BESHORE:

Q. I'm sorry, just have one other question of possible interest here. Are there producer-handlers or large producer-handlers down in your markets that you are aware of?

A. Processors or producers?

Q. Producers that, producer-handlers, like, a process, a farm that also packages and markets and so its own milk?

A. In Georgia there's not any except the very small ones, they are just a few thousand pounds a day.

Q. Thank you.

A. That I know of.

JUDGE CLIFTON: Let's see, I wanted to make sure I got
down, Mr. Williams, when you were answering Mr. Beshore about the environmental practices that you follow, and you mentioned the rules of the, and I didn't know whether you were saying EPA or whether you were talking about a Georgia entity that's like that. It sounded to me like you said DPPA, which --

MR. WILLIAMS: No, okay. The way I understand it, we have a little different situation in Georgia. EPA writes the big rules, they turn it off to EPD, which is our state government part. And then we really fortunate in the state of Georgia, our EPD contracts with the Department of Ag to enforce the rules and regulations. They inspect, they review our nutrient management plan, best practices, and if they find an issue they turn it back over to EPD for enforcement.

JUDGE CLIFTON: And who is it that does the inspection?

MR. WILLIAMS: The Department of Ag.

JUDGE CLIFTON: Oh, okay. That is good. And what is the Georgia -- now, are you talking about Georgia Department of Ag?

MR. WILLIAMS: Georgia Department of Ag does the inspection, they review your nutrient management plans, anything you do with manure recycling of that type thing. If they find a problem, if you do not correct it immediately, you are turned over to EPD, and basically EPD comes to tell you, you going to fix it.

JUDGE CLIFTON: Yes. And what would be the initials by which you would know the Georgia Department of Agriculture?
What initials is that called by?

MR. WILLIAMS: DAG, Department of Ag.

JUDGE CLIFTON: DAG, Department of Ag.

MR. WILLIAMS: Right.

JUDGE CLIFTON: Okay. And EPD stands for what?

Environmental --

MR. WILLIAMS: Protection Division.

JUDGE CLIFTON: Division. All right.

MR. WILLIAMS: Georgia unit.

JUDGE CLIFTON: And that's the Georgia unit. Okay. Good. That helps. All right. Mr. Smith, you may ask any additional questions you have of Mr. Williams.

MR. SMITH: Mr. Williams, my only question is if you have anything else to add. You've travelled a long way to get here, so do you have anything you would like to say in closing?

MR. WILLIAMS: Getting to be a small fraternity of dairy people. I mean, you see the whole group at the same place every place you go just about. It is good to be here.

JUDGE CLIFTON: That's great. Well, let me ask you this. You said that if issues arise because of what the USDA does with regard to California, you would like some prompt attention for those issues. Are there any current issues in your Federal Milk Marketing Order that need addressing or is everything going administratively properly?

MR. WILLIAMS: I don't know I need to answer that. I'm not
sure that I know anything particularly wrong, but I am always under the impression everything can be improved on.

JUDGE CLIFTON: Yeah, I agree with you there. But you didn't have any particular issues in mind, other than if some arise; is that --

MR. WILLIAMS: That's correct. The idea is, if we have, let's say the Department is wrong and it drops our price 50 cents, we think we ought to be an expedited hearing, we have had in the past, to address those issues, that type thing. And hopefully that's not the case.

JUDGE CLIFTON: Mr. Williams, anything further? Excuse me, Mr. Smith, anything further from for Mr. Williams?

MR. SMITH: No, your Honor.

JUDGE CLIFTON: All right. And did you want to add anything?

MR. WILLIAMS: No. Thank ya'll for your time.

JUDGE CLIFTON: All right. Thank you so much. Mr. Smith, you may call your next witness.

MR. SMITH: I would like to hear from Richard Sparrow.

JUDGE CLIFTON: And Mr. Sparrow has come to the witness stand, and we are distributing copies of Testimony of Richard Sparrow, which I will mark as Exhibit 167. 167.

(Thereafter, Exhibit Number 167, was marked for identification.)

JUDGE CLIFTON: All right. It appears that everyone has
one. Mr. Sparrow, I'll swear you in in a seated position and 
you will have to get used to how close you need to be to that 
microphone in order for it to sound good. And I suspect it 
will need to be closer than you are now. Would you raise your 
right hand, please?

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

MR. SPARROW: I do.

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

MR. SPARROW: My name is Richard Sparrow. It's 

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

DIRECT EXAMINATION

BY MR. SMITH:

Q. Good afternoon, Richard.

A. Good afternoon.

Q. Did you prepare the statement that you are about to 
present?

A. Yes, sir.

Q. Proceed with presenting your statement.

A. My name is Richard Sparrow. I am a dairy farmer in 
North Central Kentucky. The address of my farm is 1800 Old New 
Liberty Road, Owenton, Kentucky, 40359. And I'm President of 
the Kentucky Dairy Development Council ("KDDC") an advocacy
group for the Kentucky dairy industry. The address of KDDC is 176 Pasadena Drive, Lexington, Kentucky, 40503.

I'm testifying both as a Southeast dairy farmer and as President of KDDC. I am also speaking on behalf of the Tennessee Dairy Producers Association and have worked in collaboration with Everett Williams of Georgia Milk Producers, Incorporated, in developing these comments.

I preface my testimony by expressing my strong support for this Cooperative effort to join the Federal Order system in order to achieve more orderly marketing conditions and more equitable producer milk prices. In seeking these most vital objectives, dairy farmers have always been, and always should be, united to the extent possible.

Notwithstanding this heartfelt support, I'm compelled to travel here and testify because of the potential negative impact the Department's preliminary analysis indicated the Cooperative proposal, as well as other proposals, would have on the Southeast dairy industry. The Department's analysis shows that the proposals would all lower producer prices in the Southeast and have the related adverse impact on milk production in our region. This would have a particularly damaging impact for us, as the Southeast is already a milk deficit region. As I am sure California producers can understand, I must oppose establishment of a California Order if it would cause such significant harm in our region,
notwithstanding the benefit it might provide for them.

On behalf of KDDC, therefore, we first ask that the Department consider the impact that establishment of a California Order would have on other regions of the country as an essential factor in its decision whether to adopt the order. Further, we ask that the Department not establish the Order unless it concludes the Order will not reduce producer milk prices in other regions of the country and/or milk production, and so not cause adverse harm outside of the California marketing area and milk shed. In the support of this conclusion, the Department must be able to make express findings and document that the evidence presented at this hearing has overcome the Department's preliminary evidence indicating the original proposals would reduce milk pricing and production in the Southeast. If the Department chooses to devise an alternative proposal, it must then find and document that the evidence demonstrates this revised proposal will not so harm the Southeast.

We sincerely hope that the testimony received will allow for one of these outcomes so as to enable implementation of the California Order. In addition to explaining my and KDDC's concern prompted by the Department's preliminary analysis, my testimony also identifies some further actions KDDC believes the Department should take to enable that the Order, if established, will avoid new or ongoing harm to the
Southeast.

In the alternative, if the Department concludes to adopt a California Order with evidence still establishing that it will lower milk prices in the Southeast and other regions of the country, then the Department should include any such affected producers as part of the producer referendum required for final approval and implementation of the Order.

A little about my background. I graduated from University of Kentucky with a degree in Animal Science in 1978. After graduation, I worked for three milk marketing cooperatives throughout the Southeast territory for 33 years. At the start of my career and for a short time after graduation, I was employed as a Field Man for Cincinnati Cooperative Milk Sales Association, a small Southeast Ohio-based Cooperative. In this capacity I worked directly with dairy farmers help to coordinate delivery of their milk shipments for processing. After Cincinnati Cooperative Milk Sales merged with four other cooperatives, I became a Field Supervisor for the resulting, consolidated, regional cooperative, Milk Marketing, Inc. Promoted to Field Supervisor for MMI, I supervised 14 field representatives.

I worked for MMI in this capacity for 20 years until MMI merged with three other cooperatives to form the national Cooperative, Dairy Farmers of America. With formation of DFA, I became a Regional Manager. As a Regional Manager, I oversaw
two Field Supervisors and 18 Field Representatives. I also conducted regional producer meetings and provided market reports and milk pricing forecasts for our dairy farmer members. As a Regional Manager, I was also responsible for negotiating the contracts for milk sales from my region to our processor-handler customers. I negotiated prices, including over order prices, developed delivery schedules, and provided ongoing customer service, in general.

After working for DFA from 1998 to 2011, I retired back home to Owenton, Kentucky, to build and operate a new dairy with my three sons. We milk 40 to 50 registered Brown Swiss. We are members of DFA. Our milk is pooled in Federal Order 5 and shipped to the Kroger, Winchester, Kentucky plant.

I would add that I was raised in the dairy industry, so my professional work experience. I have been part of the industry all my life. My grandfather was the head cheese maker at the Kraft cheese plant at my home plant in Owenton. I began doing odd jobs at the plant when I was ten and worked at the plant during my summers in high school, receiving raw milk in cans, performing laboratory tests on milk and cheese.

During my lifetime, I have thus observed and experienced the profound transformation and consolidation of the processor and Cooperative sectors of the dairy industry, both regionally and nationally. Kraft, of course, during this time period, consolidated cheese processing plant capacity,
scattered across the country, moved all westward. Among other consequences in shift in processing capacity provided a significant basis for the truly remarkable expansion of the California dairy industry. Not long after DFA was formed, so as to provide a national Cooperative reach and marketing capability for dairy farmers. And Land O'Lakes also greatly expanded its operations out of the Midwest to both the East and West Coast for the same purpose. Combined, these changes to the industry's two core sectors have now led to this hearing for the establishment of a new California Federal Order.

Amidst these national changes, my --

JUDGE CLIFTON: I would like to you read the headings.

MR. SPARROW: The heading, I'm sorry. Yes, ma'am. Yes, ma'am.

Southeast Marketing Conditions and the Significance of Milk Pricing

Amidst these national changes, my professional experience working for the three dairy cooperatives revolved around the continuously challenging effort to provide a fluid milk supply for the Southeast region. In his testimony, Cal Covington summarized our challenges as a milk deficit region. He noted that the ten Southeast states now have an estimated 76.5 million people, or almost twice the population of California. He further identified that fluid milk consumption for this number of people requires 12.2 billion pounds of milk
supply, yet, milk production in the Southeast in 2014 was only 9.5 billion pounds, or a deficit of 2.7 billion pounds. When balancing and standardization are considered, according to Mr. Covington, the deficit of 2.7 billion pounds is more properly understood as 4.5 billion. This deficit is more than one-third of the total supply required.

Mr. Covington also described how to make up -- how to make up for the deficit, we must import milk from other regions, either in bulk or packaged form. In both cases, transportation adds expense that must be borne by producers, processors and consumers alike.

Mr. Covington's testimony provides the frame for my work experience. On the one hand, with this deficit always in mind, we in the Cooperative sector in the Southeast work constantly to maintain the sustainability of our member farms, member farmers, and also to grow their productive capacity so as to be able to provide as much local supply as possible to our processor customers. On the other hand, given the ever present deficit, we simultaneously confront the additional challenges presented by the need to import the required supplemental milk supply.

The crux of this dual challenge is producer prices. Higher milk prices make it far more possible to sustain and grow our existing local milk supplies. Lower milk prices force farmers out, and thereby increase the pressure and need to
import greater volumes of milk from away.

Additional Background -- The Kentucky Dairy Development Council

This brings me to my work with the Kentucky Dairy Development Council, KDDC. Operating in a deficit market actually represents a tremendous market opportunity. And the structure of Kentucky's dairy farming segment holds promise for expansion so as to take advantage of this opportunity. Kentucky, of course, provides great commodity crops that can support productive dairy farms. Kentucky has a relatively large number of dairy farms in our state. 718 dairy farms which ranks 12th nationally for licensed dairies. We produce 1.2 billion pounds of milk, ranking 27th nationally in milk production --

JUDGE CLIFTON: Would you read that sentence again, please? MR. SPARROW: Did I make a mistake?

We produce 1.12 billion pounds of milk, ranking 27th nationally in milk production, yet we rank 42nd in milk production per cow, and the average farm size is only 88 cows per farm. We, thus, have a pretty good base with a lot of capacity for growth.

KDDC was formed in 2005 to educate, represent, and promote the interest of Kentucky dairy farmers, and to foster an environment allowing for the growth of Kentucky's dairy industry. This mission is being fulfilled by the development and implementation of a number of programs to educate Kentucky
dairy farmers on business and production, agriculture practices and to provide services that will enhance sustainability and profitability, and increase productivity. KDDC also concentrates on working to empower young people in pursuit of dairy farming careers.

KDDC is a 501(c)(3) nonprofit, combined dairy farmer and allied industry organization. KDDC's board consists of 20 members. Twelve are dairy farmers representing the dairy farmers who reside in KDDC districts, the remaining eight members are allied industry dues-paying representatives of the other segments of the state's dairy industry.

KDDC has implemented a series of programs to promote top quality local produced milk in four Kentucky consumers. The umbrella program is Kentucky dairy improvement program, KDIP, I which utilizes regional dairy consultants to provide information and services to any dairy farmer in Kentucky. The Market Incentive Leadership for Kentucky (MILK) Program was developed with the specific objective of increasing local milk production and quality. We also have the Young Dairy Producer Initiative to provide leadership and management skills to active farmers 18 to 45 years of age, and those interested in breaking into the dairy business.

KDIP relies on four dairy consultants who work directly with dairy farmers across the state. In addition to administrating the three programs identified above, the
consultants bring awareness to producers of many other available loans, energy development, and nutrient management programs offered by local, state, and federal entities. The dairy consultants work in cooperation with UK Extension Specialists, Cooperative Extension Service County Agents, Kentucky Department of Agriculture staff, and the wide range of experts in the many fields touched by dairy farm operation.

I would like to specifically highlight the Market Incentive Leadership for Kentucky, or MILK, Program. This program provides direct incentives to Kentucky producers to encourage increased production, and is one of the most dynamic programs of its kind in the nation. While I am not yet able to say the program has succeeded in turning our production challenges completely around, the MILK Program has provided a true ray of hope that this objective is attainable. The benefits and success of this relatively new program, and the potential adverse impact on its success suggested by the Department’s analysis are the primary motivations for my appearance in this hearing.

The MILK Program’s incentive premiums are drawn from a grant received by KDDC from the State of Kentucky’s Agricultural Development Fund and matching funds provided collectively by Kentucky’s milk handlers. To receive the premium payments, participating dairy farmers must increase actual production of milk marketed by a required percentage
over an established yearly base, and their milk must meet or exceed a set level of quality standards. Producers must also participate in production testing, DHIA.

The program began in 2007. Since the program's inception, $5.6 million in the incentive premiums have been paid to Kentucky dairy producers from December 2014. The amount of milk produced by the milk program participants in 2014 was 562,061,145 pounds.

JUDGE CLIFTON: So the way that would look in the transcript, correct me if I'm wrong, would be 562,061,145 pounds; is that right?

MR. SPARROW: I should have read it that way probably.

JUDGE CLIFTON: Well, it is easier, but all right.

MR. SPARROW: Yes, ma'am.

JUDGE CLIFTON: So it is more than 562 million pounds.

MR. SPARROW: Yes, ma'am.

JUDGE CLIFTON: All right. So I interrupted you, but why don't you start with, I'm going to say more than 562 million pounds, and have you finish the sentence. Which is just over half of Kentucky's total annual milk production.

MR. SMITH: Could I just interrupt for a minute? Richard, in the second sentence, you said, "since the program's inception, 5.6 million in incentive premiums have been paid to Kentucky dairy producers from," the but you meant so say through.

JUDGE CLIFTON: All right.

MR. SPARROW: Thank you.

JUDGE CLIFTON: And just higher than that, if you would. If you'd just go to the last phrase in the paragraph above that, and you refer to DHIA. Tell me again what those initials stand for?

MR. SPARROW: Dairy Herd Improvement Association.

JUDGE CLIFTON: Yes.

MR. SPARROW: That's the official records. There's a national DHIA, this is Kentucky DHIA.

JUDGE CLIFTON: Excellent. All right. Thank you. So you have now completed the paragraph that ends with "Kentucky's total annual milk production", if you will pick it up from there.

MR. SPARROW: Yes, ma'am. Even more significant, during the cumulative time period of the program, 2007 to 2014, over 412 million additional pounds of milk has been generated over base years' production. Utilizing the average FMMO mailbox price per hundredweight of milk over this time, the additional 412 million pounds of milk has yielded -- I want to do it like you said it -- $82,409,768, was that okay -- of additional revenue for Kentucky dairy farmers. The program has thus leveraged the 5.6 million expenditure by a factor of nearly 15 times.
JUDGE CLIFTON: And that's 5.6 million dollars?

MR. SPARROW: Dollars, yes, ma'am. The milk program also results in substantial transportation savings. The additional 412 million pounds of milk produced in Kentucky since 2007 has displaced the need for the transport of over 8,240 tanker loads of supplemental milk into the Commonwealth for processing. Federal Order transportation credits subsidize handlers at or near .005 per hundredweight per mile. For a 50,000 pound tanker load of milk, this equals $2.50 per mile. According to the information received from the Appalachian Market Administrator's Office, the average load travels approximately 400 miles to delivery in Kentucky. This equals a cost of about $1,000 per load. The milk program has thus saved 8,240,000 in transportation costs alone.

JUDGE CLIFTON: So that's more than --

MR. SPARROW: Dollars.

JUDGE CLIFTON: $8 million; that is right?

MR. SPARROW: Yes, ma'am.

JUDGE CLIFTON: And you have saved that during what period of time?


JUDGE CLIFTON: Wow, that's impressive. All right. So let's go back up to the middle of that paragraph, the sentence that says, "Federal Order transportation credits".

MR. SPARROW: Subsidize handlers at or near --
JUDGE CLIFTON: And let's talk --

MR. SPARROW: Is that 5 mil per hundredweight? If somebody could help me with that. I think that's right.

JUDGE CLIFTON: I think that would be just right. Yes?

Okay.

MR. SPARROW: Okay. I should have said it that way. I thought that but I didn't want to be corrected so I left it alone.

JUDGE CLIFTON: No, I think that's good. 5 mil. In other words, about half a cent?

MR. SPARROW: Okay.

JUDGE CLIFTON: Is that right? If a mil is a tenth of a cent, would 5 mils --

MR. SPARROW: Half a cent per hundredweight. I think, yes, ma'am. I think that's correct.

JUDGE CLIFTON: All right. Thank you. These programs have had such impressive results in such a short period of time.

MR. SPARROW: We're proud of them.

JUDGE CLIFTON: I would think so. All right. I think we have brought you to the next heading.

MR. SPARROW: Milk Pricing Concerns

JUDGE CLIFTON: Yes, please.

MR. SPARROW: With the same motivation, other states in the Southeast have also implemented programs with the same objective as the milk program. These programs, along with the
amendments to Class I differentials and pooling requirements established by the 2007 FMMO hearing for the three Southeast orders have resulted in a slight upward trend since 2010 in milk production in the Southeast. It is critical to all segments of the dairy industry in the Southeast, producer, processors, and consumers, that this upward trend in production continue to increase in order to provide for the fluid milk needs of our market.

JUDGE CLIFTON: And we can just strike the "the" right after "our"?

MR. SPARROW: Okay. Fluid milk needs of our market. Yes, ma'am.

JUDGE CLIFTON: All right. Thank you, Ms. May. All right. Now we're starting at the top of page 6.

MR. SPARROW: Again, milk prices are the key to all of this. We are thus deeply concerned by the Department's preliminary analysis which indicates that all the proposals for a California Order will reduce Southeast producer prices. KDDC's concern is that such a price reduction will offset the gains we have made, particularly with the milk program, and set us again, on a downward, rather than upward, trend in milk production.

Here's a summary table of the Department's analysis of the different proposals impact on the Southeast prices prepared and presented by Mr. Covington. And you can see the average
minimum and maximums.

JUDGE CLIFTON: All right. And so what this is, it is a little excerpt from an exhibit that we already have in evidence, and it is showing projected changes beginning with the year 2017 going through the year 2024.

MR. SPARROW: Yes, ma'am.

JUDGE CLIFTON: All right.

MR. SPARROW: Overall, the state's total annual milk production of 1 billion pounds, or 1 million hundredweight, the average loss caused by the Cooperative proposal would be just over $2.6 million annually. This would wipe out half the value of production incentive payments that have been paid under the milk program. This loss is projected to increase to $3.4 million in 2024 (the projected "minimum" in Mr. Covington's table).

Milk Marketing and Production Concerns

The Department's additional analysis confirms our concerns about the likely impact that will result from this reduction in producer prices. The Department's analysis indicates that milk will be flat in the near future and decline over time. The Department's Table 5 confirms his assessment with regard to the Cooperatives' proposal. Here are the Department's calculations of the impacts the Cooperatives' proposal would have on milk production in the three Southeast Orders.
Milk production changes under the Cooperative proposal.

And again, the numbers are there, and that's also an excerpt.

JUDGE CLIFTON: All right. And just so we're clear, when you refer to the three Southeast orders, you have got them shown here, don't you?

MR. SPARROW: Yep.

JUDGE CLIFTON: Well, the table shows them.

MR. SPARROW: Right.

JUDGE CLIFTON: Tell us what the AP is?

MR. SPARROW: Appalachian Order, Federal Order 5; Florida Order; Southeast Federal Order 7.

JUDGE CLIFTON: Which one is the Florida one?

MR. SPARROW: Florida, what is Florida's Order number? 6, thank you.

JUDGE CLIFTON: Okay. Good. Thank you. All right. And you may pick up then with your words below that Table B5.

MR. SPARROW: As may be seen, milk production is at best flat throughout the region. For the Southeast, there would be an accelerating decline, over time.

Proposed Department Actions

In my introduction, I stated that the Department must account for the potential impacts that imposition of a California Order will have on other regions of the country.

Again, on behalf of KDDC, I here ask that Department consider the impact that establishment of a California Order would have
on other regions of the country as an essential factor in the Department's decision whether to adopt the Order.

Further, we ask that the Department would not establish the California Order unless it concludes that the Order will not reduce producer milk prices in other regions of the country and/or milk production and so not cause adverse harm to other regions of the country. If the Department is to adopt the Cooperatives' proposal or one of the other proposals, the Department should be able to make express findings and document that the evidence presented at the hearing has overcome the Department's preliminary evidence, indicating the selected proposal would reduce milk pricing and production in the Southeast. If the Department is to devise an alternative proposal, it should similarly make express findings and conclusions ensuring that its revised proposed California Order would cause no such harm to the Southeast.

JUDGE CLIFTON: All right. And that word you have got there is actually ensuring; is that right? You would like the Department to make express findings and conclusions ensuring?

MR. SPARROW: Ensuring. Yes, ma'am.

JUDGE CLIFTON: All right. You may continue.

MR. SPARROW: If the California Order may be so adopted, we further propose that the Department include provisions that anticipate the impacts that will be experienced in other orders over time. I defer to the expertise of the Department and
others as to what these provisions might be, but here to emphasize the Department must account for the Order's impact over time rather than just its immediate impact.

In the alternative, it is also requested in my introduction if the Department concludes to adopt a California Order with evidence still establishing that it will lower milk prices in the Southeast or any other region of the country, then the Department should include those producers in these other regions as part of the producer referendum required for final approval and implementation of the Order.

BY MR. SMITH:

Q. Thank you, Mr. Sparrow. A couple of follow up questions. First on page 4 of the statement, there's a footnote describing, briefly describing Tennessee's milk production. That footnote is attached to the end of the paragraph that carries over from page 3 to page 4, after the word "growth"; is that correct?

A. Yes, sir.

Q. And could you read the language in the footnote?

A. Yes, sir. Tennessee is similarly situated in the marketplace with room for expansion. Tennessee produces 750 million pounds of milk, ranking 30th in milk production and 19th in a number of licensed dairies. At the same time, Tennessee ranks 41st in production per cow.

Q. Next question, I'll refer you to the second paragraph
of your statement on the first page. You indicate that you're speaking on behalf of the Tennessee Dairy Producers Association. Is it correct to say that the recommendations that are made on behalf of KDC would also apply as being recommendations made by the Tennessee Dairy Producers Association as well?

A. Yes, sir.

Q. My final question for you is, page number I may not be able to find so quickly, but you mentioned the matching payments that are made out of the Kentucky Agriculture Development Fund?

A. Yes, sir.

Q. Could you just provide a little bit more explanation of the Kentucky Agriculture Development Fund that's the source of the payments?

A. I'll be glad to, because it's very unique. And you mentioned that it impressed you. The Kentucky Agriculture Development Fund was created by the tobacco master settlement that Congress did 1999. At that point in time, there were payments made to all Kentucky tobacco-based holders, and there was a similar amount of money that was given to the states. In the state of Kentucky, it was decided that the lion's share of those dollars would come back to Kentucky agriculture to diversify, to move away from the substantial impact of tobacco had on our economy in the State of Kentucky as a farmer and
move into other things.

So it's unique in my perspective, of somebody that raised tobacco, that now they are actually tobacco dollars that are coming in, if you want to look at it this way, in producer's milk checks, matched by the processors. And I, that's what makes that program unique. And I appreciate you making me say that.

Q. Is the match dollar for dollar?

A. It is, it is 50/50. Ag Development Funds, 50 percent of producer, processor, handler, procurement agency, whether it's DFA or Dean, they all participate, everybody that markets milk in the state of Kentucky.

Q. So it is half --

A. If their producer qualifies, that is premium dollars from that marketing organization, 50 percent, and then 50 percent is tobacco settlement money.

Q. So there are qualification requirements that you described?

A. Qualification requirements are, producer must increase the over base year of moves every year, so right now, in 2015, we're competing against the average for 2013 and 2014, so it is a rolling base, if you will. And ten percent gets you a dollar a hundredweight on your growth production, and five percent gets you 50 cents a hundredweight.

Q. And if you qualify --
A. And you have got to have the criteria as well. You have to meet the quality criteria of each different procurement agency.

Q. And then half the money --

A. It's what we call the premium program.

Q. Then half the money comes out of the state and half the money comes out the industry?

A. Exactly right, yes.

Q. Thank you. Mr. Sparrow is available for cross-examination.

JUDGE CLIFTON: All right. Let's see. Do you want to admit his exhibit first?

MR. SMITH: Oh, thank you, Chip, yes, I would like to do that. Move -- I wrote down the number this time, and so I move the admission of Mr. Sparrow's statement, Exhibit Number 167.

JUDGE CLIFTON: Does anyone want to ask Mr. Sparrow questions about Exhibit 167 before determining whether you object? No one. Are there any objections to the admission into evidence of Exhibit 167? There are none. Exhibit 167 is admitted into evidence.

(Thereafter, Exhibit Number 167, was received into evidence.)

MR. SMITH: And Mr. Sparrow is now available for cross-examination.

JUDGE CLIFTON: Who will begin? Mr. English?
CROSS-EXAMINATION

BY MR. ENGLISH:

Q. Good afternoon, your Honor. Chip English. And I rise actually for two reasons. One, to thank Mr. Sparrow and Mr. Everett both for their testimony and for their gracious accommodation so Ms. Taylor could get off the stand and catch her plane today.

And second, with the unqualifiedly good news that 20 minutes ago, Judge Ishi took the case off the docket for Monday. So we do not have a hearing on Monday.

JUDGE CLIFTON: We have a hearing here.

MR. ENGLISH: I'm sorry, we do not have a Federal Court Hearing down the street, separate from this, and that's what I meant to say. We do have a hearing here. Well, okay, somewhere else, too.

JUDGE CLIFTON: Good. I'm so glad. That's really good news. I hope whatever happened, that you and your clients won.

MR. ENGLISH: Well, we don't know.

JUDGE CLIFTON: You will know six months from now. Okay. All right. That's great news. All right. Now, before -- I know that Mr. Sparrow needs to go. I think we need at least a five minute stretch break before further cross-examination. We have been sitting quite awhile, let's not take very long, just five minutes. Let's be ready to go with cross-examination questions at 3:00. 3:00.
JUDGE CLIFTON: We're back on record at 3:02. I'm happy to report, no one can escape. Who will ask the first cross-examination questions of Mr. Sparrow?

Mr. Beshore, thank you.

CROSS-EXAMINATION

BY MR. BESHORE:

Q. Marvin Beshore. Good afternoon, Mr. Sparrow.

A. Yes, sir.

Q. I represent the California cooperatives and we sincerely appreciate your support for our proposal. I've just got a question or two about dairying dawn there in Kentucky and Tennessee. In Kentucky, do you still have some Grade B dairy farms in Kentucky?

A. No, sir.

Q. No. How about in Tennessee?

A. I'm not sure about Tennessee. But there are none in Kentucky.

Q. No more in Kentucky?

A. No.

Q. Very good, thank you.

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

Mr. Richmond?

CROSS-EXAMINATION

BY MR. RICHMOND:

Q. Bill Richmond, USDA. Thanks a lot for coming,
Mr. Sparrow.

A. Yes, sir.

Q. My name is Bill Richmond. I work with the Department of Agriculture. Is just wanted to talk to you a little bit about some of your requests for the Department on page 7.

A. 7?

Q. Yes, sir. So correct me if I'm wrong, but I think basically what you are asking us to do, is if we do recommend a California Federal Milk Marketing Order that's approved by producers, if we are in some way able to predict the impact of a California Federal Order on the rest of the country to negatively impact producer pay prices or milk production volumes, then we should -- should attempt to alleviate those impacts?

A. Yes, sir, that's a hundred percent --

Q. Okay.

A. -- my belief and my statement.

Q. Okay. And I think you based a lot of the arguments on the results of our preliminary economic impact analysis?

A. That's really all I have got to base it on. Yes, sir.

Q. So just to clarify for the record a little bit. What this document is, it's a, it's the best tool that we have to try to estimate and forecast the impacts of a change going out to some point in the future. And so I wish we had a better way of arriving at conclusions of what those impacts ultimately
would be, but we don't. And so, just, I would just suggest we all try to keep that in mind when drawing conclusions about an estimate.

A. You know, when -- when a weather forecaster is wrong and I cut hay down and my hay gets wet, I go on and wait until it dries up and I bale it. But your forecast would have much more deleterious effect than that for a longer period of time, not one crop of hay, but a whole year's milk production if it's correct.

Q. We appreciate that.

JUDGE CLIFTON: Mr. Beshore?

CROSS-EXAMINATION

BY MR. BESHORE:

Q. So as time goes on, and days go on here, my memory gets impacted. I have -- there was a question I meant to ask, I forgot the first time.

Mr. Sparrow, at the very end of your statement you request the Department provide a vote for producers in your region with respect to this. Okay?

A. Yes, sir.

Q. So just assume with me, I know you are not a lawyer, but that's not authorized under the law. Okay?

A. Well, my -- I'm not an attorney, and I'm proud to say that.

Q. I guess I walked into that one, right?
A. However, I would question for you would be, why is geography the only basis that you can vote on a Federal Order within a certain geography? Why shouldn't any producer that's impacted by this change, be able to vote on it? When the Federal Order introduced a new price surface and changed Class I differentials, that impacted every dairy farmer in the United States and every dairy farmer was allowed to vote at that point in time, Federal Order-wise. They could vote the order out. You could vote the order out. So at that point you could make a change.

Q. Are you -- okay. The reason why --

A. All I'm saying --

Q. The reason why vote's geographically limited is because that's what the Congress said in the law?

A. I understand. But at that point in time, 1933, is that when we're talking about? The Federal Order design and amendments since then. We don't deal on a geographic and local market anymore. What happens in California, don't stay in California, that's all I'm saying.

Q. Okay. I understand that. But with respect to the increased differentials several years ago in the Southeast, are you under the impression that the rest of the country had a vote on the changes in those Orders?

A. Well, in a round about way you do, by you having a group of producers in the Federal Order can always vote the
order out and that would disallow that if that impact was so
adverse, correct or incorrect?

Q. Same thing would apply on this one, too.

A. Correct.

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

JUDGE CLIFTON: Who else has questions for Mr. Sparrow? Is
there anyone else before I invite redirect by Mr. Smith?

Mr. Smith?

MR. SMITH: Thank you, your Honor. Richard, do you have
anything else that you would wish to add to your testimony at
this point?

MR. SPARROW: Not really.

MR. SMITH: You are all set?

MR. SPARROW: Yes, sir.

MR. SMITH: That concludes his testimony, your Honor.

JUDGE CLIFTON: Thank you, Mr. Smith. Mr. Sparrow, I thank
you not only for your testimony, but for this document. I
continue to just delight in the new things each witness brings,
and you have brought us a whole new perspective we didn't have
before. You and Mr. Williams, did you travel together to be
here?

MR. SPARROW: No, ma'am.

JUDGE CLIFTON: Travelled separately. I appreciate the
effort you went to and your at your own expense to be here and
give us this information. I particularly appreciate how you
were willing to wait, even though normally we like to take
dairy farmers as soon as possible. So on many front, I thank
both of you.

MR. SPARROW: Yes, ma'am. Thank you. I appreciate the
opportunity to be here. You know, a lot of dairy farmers
aren't exposed to the Federal Order hearing process. Most
dairy farmers aren't. There's a lot of things that I wouldn't
say they don't like about it, but they've got other things they
think are more pressing. However, you have got to understand
that what you do here has an impact, not just a Federal Order
impact, but impact on dairy farmers.

Recently my son and I were milking and a fella that I
didn't even know stuck his head in the door and said, "I'm a
dairy farmer and I sold out October 1st, three counties away.
And I miss it so much that I wanted to come back. And I have
never seen your," I have got a relatively new set up and it has
some nice features in it, "and I wanted to see it, and I miss
looking and watching cows being milked."

You people, and I respect you, but you have got to
understand your impact is tremendous. The Federal Order impact
is tremendous. What you do here is impact, is tremendous.
That's all.

JUDGE CLIFTON: Understood. By the way, I don't know if
you and Mr. Williams know, but there is an agricultural
publication that is capturing that live audio feed and placing
it on a website where you can listen to it. You can listen to any of the days of the testimony. And that's just at www.my-dairyman.com. So if you miss the live audio feed, you can go to that site and find what you would like to listen to.

MR. SPARROW: I admire you for being here for 36 days.

JUDGE CLIFTON: Well, thank you very much. We're coming in the home stretch. You can feel it in the air. Thank you. You may step down. All right. It seems to me Mr. Tosi would be our next witness, would that be true?

MS. HANCOCK: It is, unless you want to take the full break now. I don't care. Either way.

JUDGE CLIFTON: No, why don't we get started and then we'll take one when it gets really intense. Ms. May, I'm going to mark the testimony of Gino Tosi as Exhibit 168. Is that what you have?

MS. MAY: Yep.

JUDGE CLIFTON: Thank you.

(Thereafter, Exhibit Number 168, was marked for identification.)

JUDGE CLIFTON: All right. 168. Mr. Tosi, I'll swear you in in a seated position. Would you raise your right hand, please.

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

MR. TOSI: I do.
JUDGE CLIFTON: Thank you. Please state and spell your name for us.

MR. TOSI: Sure. My name is Gino Tosi, it's spelled G -- like George -- I-N-O, last name Tosi, T -- like Tom -- O-S-I.

JUDGE CLIFTON: Thank you. Ms. Hancock, you may proceed.

MS. HANCOCK: Thank you, your Honor.

DIRECT EXAMINATION

BY MS. HANCOCK:

Q. Mr. Tosi, welcome.

A. Thank you.

Q. Did you prepare Exhibit 168?

A. Yes.

Q. At this time, would you go ahead and read your statement into the record?

A. Certainly.

My name is Gino Tosi. I'm appearing today on behalf of the California Producer Handlers Association (CPHA) in support of their proposal published in the Hearing Notice as Proposal 3. In this regard, I am only testifying in the limited scope that the proposed Federal Order language that is presented in the Exhibit A of my testimony would accomplish the intent of the CPHA to preserve their exempt quota treatment, along with preservation of the rest of the quota system.

It is my opinion that in the event the Department issues a Federal Milk Marketing Order (FMMO) for the state of
California, the proposed Order language amendments to the
Cooperative's proposal would accomplish the intent of
Proposal 3. As already testified by Mssrs. Richard Shehadey
and Mr. Frank Otis, the intent of Proposal 3 is to retain
intact fully, that aspect of the current feature of the
California State Marketing Order quota system as it affects
current exempt quota holders. Others have testified on the
need to retain the current California quota system in all of
its scope and features.

The proposed order language is modeled after the Order
language by the Cooperatives' proposal for a California FMMO.
It deviates from the Dairy Institute's or DI's proposed order
language in ways that I will discuss during my testimony. In
this regard, in the event the Department issues an FMMO that
resembles the features of the DI proposal, the inclusion of
similar language to allow for the definition of "exempt quota"
holders and the deduction from the pool calculations would
accomplish the same result. Neither the Cooperatives' or DI's
proposals provide for the continuation of the exempt quota in a
Federal Order for California in their own respective Order
language. I had the word "on" there, your Honor, after the
word "California" and I would like to change that to the word
"in".

JUDGE CLIFTON: "In". And you also, when you read it, you
included the word "Order" here. Do you want us to insert
"order" between "proposed" and "language", or no, maybe you don't need it.

MR. TOSI: "Respective proposed", we could say "Order language" that would be fine, your Honor.

JUDGE CLIFTON: All right. Let's insert that word there, just to be clear. All right. And as you read your statement, Mr. Tosi, I would like you to read also the headings, and you're about to have one now.

MR. TOSI: Thank you.

Background

I retired from Dairy Programs with 31 years of Federal service in November, 2010. I currently live in Berea, Ohio, a suburb of Cleveland, where I was raised and the town in which Baldwin-Wallace University is located. I hold a Bachelor of Science and a Master of Science degree in Agricultural Economics from The Ohio State University. I'm a Veteran and I'm a member of the VFW. I began my service with the U.S. Department of Agriculture, first as temporary loan officer with the Farmer's Home Administration immediately after graduate school. And while I was in graduate school, I was recruited by the Foreign Agricultural Service (FAS) as an Economist to work in Washington, D.C. During my service in FAS, I worked on credit and food assistance programs for countries in Latin America; then I also worked on what was then called the U.S.-Canadian Free Trade Agreement; and also foreign market
development programs for U.S. Dairy, livestock, and animal genetics.

Over 20 years of my Federal service was in the Order Formulation and Enforcement Branch of Dairy Programs. During my years in Dairy Programs, I participated in a broad range of events and actions reflecting literally all aspects of Federal Milk Marketing Orders (FMMO's). I consider the most noteworthy to include a 43-day National Hearing held in six cities in 1990 (which was the first major event that considered a number of changes to how the FMMO system operates) -- and just for the record, there are, I counted five of us who are veterans of that who were there for every moment of that 43-day National hearing -- also, separate, I participated in several rule making proceedings of several different marketing orders before Federal Order Reform; when specific FMMO decisions became the subject of lawsuits, I assisted attorneys of the Justice Department by writing portions of briefs explaining FMMO policy and how requirements of the Agricultural Marketing Agreement Act are incorporated into FMMO provisions. And I would like to add, (in helping prepare Justice Department attorneys, I consider my most notable experience was in the successful defense of the Federal Milk Order system in the mid-1990's brought about my interests in the Upper Midwest).

JUDGE CLIFTON: Now, I don't quite understand the grammar of that. So the successful defense of the Federal Milk Order
MR. TOSI: Yes, I see your point, your Honor. I was trying to identify the timeframe in which that happened, and that was in the mid-1990's.

JUDGE CLIFTON: Yes, that's fine so far. And then from there, "brought about my interest".

MR. TOSI: Oh, I'm sorry, thank you, your Honor, "brought about by interests".

JUDGE CLIFTON: Oh, "by" instead of "my".

MR. TOSI: Correct.

JUDGE CLIFTON: So do you see where we are, Ms. May? We're going to strike the word "my" and replace it with "by", and that's in the middle of page 2.

MS. MAY: Got it.

JUDGE CLIFTON: Thank you.

MR. TOSI: I'd also like to include, the four-year Reform effort resulting in the current Federal Milk Marketing Order in system of among other things, the larger consolidated Milk Marketing Orders. I have explained, explaining program features and rule making decisions on Capitol Hill to Congressional staffs; the invitation by, and participation with, the Justice Department as a program expert in what's now commonly referred to as the Hillside Dairy case, that went before the Supreme Court of the United States, and from which the court found certain features of the California Milk Order
system to be in violation of the Commerce Clause. The Commerce
Clause of the Constitution.

JUDGE CLIFTON: And let us stop you right there so that we
can insert the "of" that you just read. So, Ms. May, fifth
line up from the bottom of that last full paragraph, we're
going to insert the word "of" so it will read "in violation of
the Commerce Clause".

MS. MAY: Got it.

MR. TOSI: Thank you.

JUDGE CLIFTON: All right. So just read that last portion, if you will, I want you to begin with the semi-colon, the
invitation, I know it's a long section, but just read from "the
invitation by".

MR. TOSI: Yes, I re-read this just to read, the invitation
by, and participation with, the Justice Department, as a
program expert in what's now commonly referred to as the
Hillside Dairy case that went before the Supreme Court of the
United States, and from which the court found certain features
of the California Milk Order system to be in violation of the
Commerce Clause of the Constitution.

I was the primary author of nearly every Federal Order
decision during a ten-year period since implementation of the
then 11 consolidated Orders which are now 10, in 2000, until my
retirement in November of 2010. Some of the decisions that I
authored weren't published or brought to final implementation
until after my retirement.

   I'm now employed by the Cuyahoga Community College as an instructor where I teach basic mathematics and economics. I also volunteer as a teaching assistant for GED classes for people seeking to earn their high school diploma in Cleveland's inner city and English as a Second Language for new immigrants.

I have assisted my daughter in opening two retail restaurants or stores in New York City and her bakery located in Brooklyn, New York.

BY MS. HANCOCK:

Q. What are the name of those stores?

A. The name of the stores are Milk Bar, and I'll let you all in on a secret, when she was first starting off, and she knew this was a kind of work that I was doing, I referred to ya'll one time as the "Milk Bar" and she liked it. So it's her way of tipping her hat to ya'll, too, so.

Q. Little tangent, sorry about that.

A. Okay. I am currently assisting in evaluating possible bankruptcy actions. I have done other volunteer work helping to feed needy families in the greater Cleveland area.

Program Specifics

Q. All right. Say that one more time?

A. I'm sorry, Proposal 3 Specifics.

As shown in Exhibit A, Proposal 3 Order language would first amend Section 1051.17 CDFA, quota premium, quota nonfat
solids and nonfat quota milk and end the bold.

JUDGE CLIFTON: Now, is that nonfat quota milk or is it --

MR. TOSI: I'm sorry, your Honor, non-quota milk.

JUDGE CLIFTON: Okay. So that's non-quota milk. All right.

MR. TOSI: Correct. And that ends the bold, the words that are bolded. Of the cooperatives proposal for establishing a FMMO for the State of California. In this regard, Proposal 3 adds two subsection, or paragraphs E and F. These two paragraphs reference current California State Order provisions and language that affect exempt quota holders and make these features a part of the proposed FMMO.

Okay. The Dairy Institute or DI's proposal is structured differently in minor ways in this feature of an FMMO for California. Rather than having a separate Section 1051.17, which in the Dairy Institute Proposal is "reserved" they do nevertheless, bring their proposed FMMO for California basically --

JUDGE CLIFTON: Wait, wait, wait --

MR. TOSI: Start bring into their proposed --

JUDGE CLIFTON: They do nevertheless, slow down.

MR. TOSI: They do, nevertheless, bring into their proposed FMMO for California, basically the same references to the quota system provided for in the State Order. In this regard, DI brings these features into their Section 1051.11 California
quota and producer quota.

JUDGE CLIFTON: Go ahead and read the title in there section?

MR. TOSI: Yes, the words that I intend to have bolded are the words Section 1051.11 California quota program and producer quota. In the event that the Department adopts the DI proposed order, then it's my opinion that this section of the DI proposal be amended by adding two new paragraphs identical to that already specified in subparagraphs E and F of the Section 1051.17, which just as a refresher there, is the section identified by the Cooperatives in the Cooperatives proposal.

Because the California State Order provides that exempt quota holders essentially receive the difference between the Class 1 price and the plant blend price, it's necessary to subtract that which is exempt quota from the Class 1 value of milk, and then I would like to strike the word of, and in its place write in the cooperatives, then I would like to continue with the words that are now bolded, Section 1051.60 Handlers' value of milk.

JUDGE CLIFTON: All right. Let me make sure Ms. May and I are together with you. So Ms. May, we're on page 3, the last full paragraph, the third line down. At the end of that line we strike "of" and we insert "in the" let's see, we want a capital C for Cooperatives, and we want it to be plural,
MR. TOSI: Correct.

JUDGE CLIFTON: Okay.

MR. TOSI: And then the words again, bolded, I'll repeat that Section, 1051.60, handler values of milk.

JUDGE CLIFTON: Handlers' value of milk.

MR. TOSI: Of milk, and then bolding would end. In this regard this is accomplished by adding, excuse me, this is accomplished by amending paragraph (a)(1) of this section by inserting the words, and I quote, "less that portion of milk that is exempt quota as defined in Section 1051.17 (e) and (f)" as highlighted in Exhibit A. Additionally, Paragraph (a)(2) of Section 1051.60 would need to be amended by inserting the words, and I quote, "less that portion of milk that is exempt quota as defined in Section 1051.17 (e) and (f)." And I should technically I should end that with a close quotation there.

JUDGE CLIFTON: All right. So we'll close the quote at the end of the last full paragraph on page 3.

MR. TOSI: The DI proposed order language differs from that of the Cooperatives and how the Class 1 value for milk is determined in their respective Section 1051.60.

JUDGE CLIFTON: Do you want us to have the word respective in there or no?

MR. TOSI: It's not necessary, your Honor.

JUDGE CLIFTON: Okay.
MR. TOSI: This is detailed in Section 1051.60, subparagraph (a). When the two compete -- while the two competing proposals differ in this regard, they both nevertheless describe how the Order will arrive at the Class 1 milk value in determining a handlers' value of milk. I make no judgment have no opinion on which of the two competing proposals is superior. I do note that in order to accomplish the intent of Proposal 3, then Section 1051.60 of the DI proposal would similarly need to be amended to provide for deducting that portion of milk that is exempt quota as defined in the California State Order.

BY MS. HANCOCK:

Q. And in that section, if we strike Section 1051.60 of the --

A. Of the --

Q. Or so that it just reads of the DI proposal, we strike Section 1051.60 of.

JUDGE CLIFTON: And do you see where that is, Ms. May?

MS. MAY: Yes.

JUDGE CLIFTON: All right. So we will strike Section 1051.60 of, is that correct, Mr. Tosi?

MR. TOSI: Yes.

JUDGE CLIFTON: All right. Would you read that again, I do note.

MR. TOSI: I do note that in order to accomplish the intent
of Proposal 3, then Section 1051.60 --

MS. HANCOCK: Don't read the part that we struck, just take out "Section 1051.60 of" and read that sentence without that part.

MR. TOSI: I'm sorry, I'm not -- I'm not understanding what I'm being instructed.

MS. HANCOCK: I think that that was a mistake in reference after Cooperatives' proposal, and so I think it just was supposed to read "then the DI proposal would similarly need to be amended."

MR. TOSI: Yes.

MS. HANCOCK: So we struck where it says "Section 1051.60 of", and then if you re-read that sentence without those three --

MR. TOSI: Understood. Then the DI proposed --

JUDGE CLIFTON: So start "I do note".

MR. TOSI: Okay. I do note that in order to accomplish the intent of Proposal 3, then the DI proposal would similarly need to be amended to provide for deducting that portion of milk that is exempt quota as defined in the California State Order.

Now that the exempt quota is defined as part of the proposed order, it becomes necessary to require this identification in handler reports as specified in and begin the words that are bolded, Section 1051.31 Producer delivery and payroll reports. And then at the end of that word "reports"
there, that would end the words of that words that I intend to be bolded. Please note that Exhibit A re-describes the exact order language for this section as in the Cooperatives' proposal. Because this section directs payments to producers and Cooperative associations to that described in Section 1051.73(f) and that this Proposal 3 proposes to amend Section 1051.73, as noted in Exhibit A, reiteration of the Cooperatives' proposed order language is provided only for clarity in following all the links that are needed to accomplish the intent of continuing to ensure that exempt quota is retained in a new California Federal Milk Marketing Order.

Finally, Section 1051.73 of the Cooperatives' proposed order language, and then strike the word "this" and replace it with the word "of", so I'll start over with that.

Finally, Section 1051.73 of the Cooperatives' proposed order language of Proposal 3, and then please strike the words of CPHA.

JUDGE CLIFTON: No, I'm confused. So we know that we have, we start with the Cooperatives' proposed language.

MR. TOSI: Correct.

JUDGE CLIFTON: And now we're going to begin to talk about what you are adding to it.

MR. TOSI: Correct.

JUDGE CLIFTON: But I'm not quite sure if we just strike the this and put of that we're there.
MR. TOSI: Yes.

JUDGE CLIFTON: Take a look at it.

MR. TOSI: Show you, your Honor?

JUDGE CLIFTON: Yeah.

MS. HANCOCK: What if it said for Proposal 3.

JUDGE CLIFTON: This is a good point for our real break.

MS. HANCOCK: Okay. We'll fix this part of it while we're breaking so.

JUDGE CLIFTON: Very good. Let's take -- let's just take ten minutes. Please be back and ready to go at 3:45. Just gives you 10 minutes.

(Whereupon, a break was taken.)

JUDGE CLIFTON: We're back on record at 3:46. Ms. Hancock?

BY MS. HANCOCK:

Q. Mr. Tosi, I think we left off on page 4 and we have corrected that sentence now beginning with the paragraph or the paragraph that begins finally.

A. Yes, thank you.

Q. Can you read that as corrected now, we'll make sure we're all on the same page?

A. Finally Section 1051.73 of the Cooperative's proposed Order language would similarly need to be amended by adding a new subparagraph 4(a), (or in the event that this format may no longer be acceptable in the latest drafting guidelines the Federal Register -- then a new subparagraph (9)), with the
words: "The pounds of exempt quota, excuse me, the pounds of
exempt quota nonfat solids as defined in Section 1051.17(f)."

JUDGE CLIFTON: So as we look at it as written, we're going
to strike about five words.

MR. TOSI: That's correct.

JUDGE CLIFTON: All right. And the words that you want
Ms. May and me to strike in the paragraph on page 4 that begins
"finally" are what words?

MR. TOSI: At the end of the sentence the first word you
would strike would be the word "this" and then in the second
line of that paragraph would be the words "proposal", the
number "3", the word "of", and the abbreviation "CPHA".

JUDGE CLIFTON: All right. Ms. May? Done.

MR. TOSI: As with differences in Section 1051.60 of the
Cooperative and DI proposals, their respective Sections
1051.73, differ in how payments are specified in payments to
producers and Cooperative associations. Nevertheless, the DI
proposal would need to be amended in a similar manner.
Specifically, the pounds of exempt quota nonfat solids as
defined in Section 1051.17(f) would likewise need be made part
of the DI proposed Section 1051.11.

JUDGE CLIFTON: All right. Now, have you made any changes
in the way this is written in this paragraph at the end?

MR. TOSI: I may have read it incorrectly, your Honor.

JUDGE CLIFTON: Okay. Why don't you read that last
sentence again of the last full paragraph, well, it's not exactly the last full paragraph. Starting with the word "specifically".

MR. TOSI: Specifically the pounds of exempt quota nonfat solids as defined in Section 1051.17(f) could likewise be made part of a, could be made a part of DI proposed Section 1051.11. This concludes my testimony in support of Proposal 3 of the California Producer Handler Association.

BY MS. HANCOCK:

Q. And, Mr. Tosi, did you have any other modifications to your statement that you would like to make?

A. Yes. If you could please, everyone, if you could just refer to page 2 of my testimony, in the middle paragraph there, that's, that begins over 20 years of my Federal service, if you come down to the -- to the sentence in the paragraph where it refers to "the Hillside Dairy case that went before the Supreme Court of the United States," I'm concerned that I mischaracterized the -- I have legally mischaracterized the outcome of that case. It is a little more complex than the simplified way in which I stated it, so I think it is probably best that we strike the words "and from which the court found certain features of the California Milk Order system to be in violation of the Commerce Clause of the Constitution."

JUDGE CLIFTON: All right. So what we will do is after the phrase "Supreme Court of the United States" we'll put a
semi-colon.

MR. TOSI: Correct.

JUDGE CLIFTON: All right. And then we will strike all of the words to the next semi-colon.

MR. TOSI: That's correct, your Honor.

JUDGE CLIFTON: All right. So after "the Supreme Court of the United States semi-colon" the next word would be "I was".

MR. TOSI: Correct.

JUDGE CLIFTON: Okay. Ms. May, are you good?

MS. MAY: I'm good.

JUDGE CLIFTON: Thank you.

BY MS. HANCOCK:

Q. Mr. Tosi, I guess first I want to kind of go off script a little bit. And yesterday was Veteran's Day, and the Judge asked everyone to stand in the room and she recognized you, but I would, for the record, just like to formally recognize you and thank you for your military service and what you have given to our country.

And, your Honor, also in recognition of Mr. Tosi's considerable Federal Milk Marketing experience, and the amount of time that he spent drafting his own Order language, I would like to formally have him recognized as an expert in Federal Order language.

JUDGE CLIFTON: You know, Federal Order language covers a multitude. Do you want to focus in on dairy or what?
MS. HANCOCK: That's a great limitation to have, especially for purposes of this hearing. I mean, his experience may go on beyond what I'm aware of even, but, and I suspect it does, but for purposes of this hearing I would like to have him recognized as a Federal Order specialist for Dairy Marketing purposes.

JUDGE CLIFTON: Does anyone wish to question Mr. Tosi in order to determine whether you have any objection? No one. Is there any objection to Mr. Tosi being accepted as an expert in Federal, as an expert in Federal Order Dairy Marketing.

MS. HANCOCK: And say it again?

MR. RICHMOND: Federal Milk Marketing Orders.

JUDGE CLIFTON: Sorry, what?

MS. HANCOCK: Expert in Federal Milk Marketing Orders, FMMO's.

JUDGE CLIFTON: That's easy. Very good. I have changed it. Does anyone object to Mr. Tosi being accepted as an expert in Federal Milk Marketing Orders? No one. I accept Mr. Tosi as an expert in Federal Milk Marketing Orders.

MS. HANCOCK: Your Honor, with that, I would move admission of Exhibit 168.

JUDGE CLIFTON: Now, the most important part of it we didn't even look at yet.

BY MS. HANCOCK:

Q. Well, Mr. Tosi, you have, you have an exhibit attached
to your statement?

A. Yes, I do. It's extremely technical, it's rather tedious, and you know, I think it would be, if anybody has a copy of this, including the court reporter, between what's highlighted and all, I think if we could just request this exhibit be entered into the record as if it were read, I think it would be helpful for everyone.

Q. So rather than that, what we're moving for is the admission of the document, so the document will be in the record. And your Honor, I believe in page 3 and 4 of his testimony he walked through each one of the changes specifically that he added, and then he has included the specific language as Exhibit A.

JUDGE CLIFTON: All right. Mr. Tosi, look with me at Exhibit A, please. How many pages is it?

MR. TOSI: Exhibit A is it is a total of five pages, your Honor.

JUDGE CLIFTON: And tell me the difference between those portions of it that are highlighted in yellow and the portions that are not?

MR. TOSI: Okay. On the first page of Exhibit A you will notice that there are two paragraphs in Section 1051.17 that are highlighted in yellow. And what these two paragraphs include are the exact references to the current California Department of Food and Agriculture, the CDFA regs, that would,
if we cite them this way, directly bring into as completely as
we think is needed, the exempt quota.

BY MS. HANCOCK:

Q. To the code Sections, right? Not the regulations?

A. Excuse me, yes, the code Sections there. That would
bring in the language that I think is needed to make the exempt
quota part of a California Federal Milk Marketing Order.

JUDGE CLIFTON: All right. And so the parts that are not
highlighted in yellow, are they something that you took out of
the Federal Register Exhibit 1 language that was already
suggested by the cooperatives?

MR. TOSI: With respect to – with respect to Section 60,
1051.60 Handlers' value of milk, that's taken --

JUDGE CLIFTON: I'm sorry, I'm just on the first page.

MR. TOSI: Okay. On the first page.

JUDGE CLIFTON: And I don't see that there.

MR. TOSI: The Section 1051.31 producer delivery and
payroll reports, I was showing that in there that if you would
go into all other Federal Orders, that all other Federal
Orders, all Federal Orders require reports.

BY MS. HANCOCK:

Q. So I think she was asking something even more
foundation, at the foundation level just in the Exhibit A. The
portions that are not highlighted came out of the cooperatives
proposed language, right?
A. Yes, that's correct.

Q. And in the portions that are highlighted yellow is the proposed additional language that you have crafted in order to preserve the exempt quota treatment?

A. Yes, that is correct.

Q. Okay. I think she, just for the record, was trying to make sure that we have a good explanation of how we've broken up the exhibit.

A. I know that, you know, I recognize that going through all of this is extremely tedious and technical, and there were some minor differences between the Cooperatives' Proposal and DI's Proposal, either in how they numbered things or little issues like that, but, you know, the bottom line is this, that regardless of in the event the Department decides to adopt one proposal or the other, I was trying my best here to show here are the things would you need to bring into either one of those proposed Order languages to accomplish the intent of Proposal 3.

Q. And do you believe that the language that you have highlighted here accomplishes the goal of preserving exempt quota as it's currently treated under the California State Order system?

A. Yes, I do.

Q. Okay. And other than -- other than preserving exempt, or preserving the treatment for exempt quota, are there other
consequences to adding this language that you are aware of that would occur?

A. No, I don't believe that any of the things that I was proposing in here would have any other impact on any other feature of, or intents of either the DI Proposal or the Cooperative Proposal. It is very, very limited in what its intent is and I think it accomplishes that.

Q. And would it allow for any additional exempt quota holders to be created in the future?

A. It would not.

Q. And would it allow for the current exempt quota holders to increase their exempt quota volume?

A. No, it would not.

Q. With that, your Honor I would move for the admission of Exhibit 168.

JUDGE CLIFTON: Now, let's go back to the suggestion that the court reporter type it as if read. What we have learned is that it's a bad idea to request the court reporter to type into a transcript things that are formatted as are regulations. So I would propose one of two things, either we just realize in the transcript that one looks to Exhibit 168 and finds Exhibit A for the actual proposed additional language, or Mr. Tosi, we have you read what's highlighted in yellow in Exhibit A, if you want it actually to appear in the transcript.

MS. HANCOCK: Your Honor, in the interest of time, and I
think it's perfectly fine for purposes of preserving the record and making sure that the parties all have adequate information, that we admit the document as with the exhibit attached.

JUDGE CLIFTON: I agree totally. Is there any objection to the -- well, first, does anyone wish to question Mr. Tosi about Exhibit 168 before determining whether you object? No one. Are there any objections to the admission into evidence of Exhibit 168? There are none. Exhibit 168 is admitted into evidence.

(Thereafter, Exhibit Number 168, was received into evidence.)

MS. HANCOCK: Thank you, your Honor, that's all I have at this time.

JUDGE CLIFTON: Who would like to begin, Mr. English?

CROSS-EXAMINATION

BY MR. ENGLISH:

Q. Good afternoon, Chip English for the Dairy Institute. Welcome, Mr. Tosi, to the other side of the Milk Bar.

A. It's very different sitting on this side of the microphone.

Q. And from my part, as long as you want to do it, I hope it is a long and enjoyable time on this side of the Milk Bar.

A. Well, thank you. I appreciate that.

Q. Let me just start with a couple of questions that Ms. Hancock just asked you. And as I understood it she asked
can there be new exempt producer distributors. Did you understand that to be the question that you said no?

A. No. What I understood the question to be was that if we brought these proposed changes into a California Federal Milk Marketing Order, would that, in any way, increase the amount of exempt quota for people who currently have exempt quota. And my answer -- answer was no, it would not.

Q. But if wouldn't prevent, if the statutes get amended and there's no exempt quota, then the Federal Order would, in essence, be sort of bringing those in if those amendments were to happen?

A. I'm not sure how to answer that. I know that one the things that's been testified to repeatedly by the producer-handlers is that the amount of exempt quota is kind of like frozen in time here, and that it's not going to increase or at least it is not foreseeable that it is going to increase. I have never given it any thought to say what would happen if the State of California decides to increase it. I never gave any consideration to that.

Q. And that's my way of saying you have incorporated California Code Sections into a proposal for Federal Order language, and if the California Code Sections change, then by definition, what's in the Federal Order language is going to change, correct?

A. That seems to be correct.
Q. Are you aware, in all your years of dealing with Federal Orders, of any other provision in the Federal Order that incorporates either state law or state regulation as part of the Order?

A. I may be mistaken about this, but back in the late '60's there was a kind of a joint state/federal overlap, if you will, on the operation of a base excess program in the State of Oregon and Washington where there was sort of like a joint administration in that regard. I kind of see that as being kind of different than here in the sense that I think the scope here is much greater.

Q. Okay. All right. So let me turn to Exhibit A, it's easier for me to look at Exhibit A rather than the language in your testimony. And I do want to look at how this works and sort of connect up. So let me look at, first, your definitions and I want to start with, for me sometimes it's easier to start smaller and work bigger. Looking at 17(e), if you see 17(e), there is a definition for exempt quota that after the Code Section says, "exempt quote" and then there's a line, "and exempt quota premium value mean the value." So I look at the phrase "and exempt quota premium value" and then I look in (f), which is another definition, and I looked over on the second page of Exhibit A in 1051.60 handlers value of milk, and finally I looked over in Section 73, the last page, which refers to the pounds of exempt quota nonfat solids, and I never
again see the words "and exempt quota premium value". So I guess my first question is, why is it there in the definition?

A. Why is it there in paragraph E?

Q. Yes.

A. I think the reason is because, I think the reason I put it in there is because when California, on their premium values had defined things in terms of, or there's a part where it defines things in terms of pounds of nonfat solids.

Q. I understand that, Mr. Tosi. I mean, I guess, I haven't actually written anywhere near as much language as you have, I have certainly written language and sometimes you have liked it and sometimes it disappeared and never made it anywhere, I'm not saying you actually liked it, but I think you would agree that we don't usually have extraneous language in Order language.

A. That's correct.

Q. Okay. So when I look at the language "and exempt quota premium value" which is a definition, I would expect to see the phrase, "and exempt quota premium value" somewhere else in the Order language so that having the language there in a definition has substance. So I'm asking, did I miss something? Is there another section I didn't see?

A. Well, in a way what we're doing here is, if you look at what would be reflected there in Paragraph B of the same Section 17 here, just two paragraphs up above we're kind of
talking about the same thing here, quota premium and quota
premium value and what it means. And what we're doing here is
we're just bringing in to make it absolutely clear where it
comes from. It comes from these sections of the California
State Code, where these sorts of things, the exempt quota
things, for exempt quota holders are in, and when you look at
the language of these sections there, they describe it in terms
of California producer-handlers.

Q. Okay. I understand, Mr. Tosi, but I think if you look
in the Order language, you might find that quota premium and
quota premium value actually are words that are then used later
in the Order. So again, I'm not going to belabor the point,
but I'm just trying to understand why that particular phrase is
there. So, let me -- let me actually maybe change it to
different idea, and see if I get at this somehow differently.

You -- you have defined exempt quota as meaning the
value established pursuant to California Code Sections. But
when I, when you go over to Section 60 you say, "multiply the
pounds of skim milk in Class 1, less that portion of milk", and
I'll get back to that in a second, "that is exempt quota."

Aren't you subtracting pounds from pounds in paragraph
60(a)(1)?

A. The intent therein 60(a)(1) is that when we're
determining what the handlers, or when we're determining what
the Class 1 value, skim value of milk would be is, that we want
to subtract out of that calculation that volume of milk. Or in other words, we're sort of crediting that volume of milk that would otherwise be part of that calculation.

Q. And I agree. I think what you are trying to get at is volume, you are subtracting volume. But as I read the language as you have written it, you are subtracting something that's called value subtracted from volume. And, you know, in my accountant days, I think, you know, you subtract volume from volume, you don't subtract --

A. I understand your point. I understand your point. In this regard here what we're trying to get at is volume.

Q. Okay. All right. So -- so you think that value means volume here, at least in terms of Section 60(a)(1) because what you are trying to do is subtract volume.

A. If I have understood what you have asked me, I would agree with that.

Q. Now, I think also in 60(a)(1) you, and I think the same is for (a)(2), but let's go to (a)(1), you say multiply the pounds of skim milk in Class 1, less that portion of milk that is exempt quota. And I'm wondering if it needs to be that portion of exempt quota that is skim milk.

A. Yes. I would have thought that that was obvious.

Q. I understand that, but you and I both know that in drafting Federal Order language that if somebody sees language, you know, so for instance if you had, and we have had a lot
examples so far here in the last two days of a hundred pounds. So an entity that has a hundred pounds, 20 pounds of exempt quota, of those hundred pounds, the skim is normally going to be at least, at test, around 96.5, correct?

A. Correct.

Q. And so if you subtract the portion of milk that is exempt quota, if you don't say it's skim milk, you would over subtract, wouldn't you?

A. That would be correct, yes, sir.

Q. All right. And again, listen, I'm just trying to get the language. And I understand that it might seem to be obvious, but I think you now in all your years of drafting language that you got to be precise in this stuff, right?

A. That's true. I mean, one of the vagaries of crafting Federal Order language is that for every time somebody thinks that you have done it correctly, somebody else is going to say that you have done it wrong. And then that's even before we get the Federal Register which is a whole other battle. I know that my former colleagues would remember some of the, you know, the pain and agony, that is a whole other hurdle that you jump over.

Q. I promise not to ask you questions about that, although it's something that's always intrigued me. And I also don't want to ask, you said something about the new rules, I'm not sure I want to know what those are.
So your intention is to be volume and your intention in (a)(1) would be the portion that's skim milk, not all the milk, correct?

A. That's correct.

JUDGE CLIFTON: Is that (a)(2), Mr. English?

MR. ENGLISH: I am on (a)(1) still.

JUDGE CLIFTON: Okay.

MR. ENGLISH: Now, turning to (a)(2), that also should be volume and that should be the butterfat in the milk, correct?

MR. TOSI: That's correct.

Q. Okay. And that's all I have, your Honor.

JUDGE CLIFTON: Mr. Tosi, how do you want to handle the suggestions that Mr. English has made? Do you want to think about that and give us more precise wording or what would you like to do?

MR. TOSI: I would appreciate just having a little bit of time to consult with counsel to make sure that -- I'll be back up here on the stand again on another issue, and I think we can be a little more precise as Mr. English I think is appropriate in bringing up.

JUDGE CLIFTON: Good. I like it. Who else has questions at this point? Mr. Beshore?

CROSS-EXAMINATION

BY MR. BESHORE:

Q. Marvin Beshore. Good afternoon, Mr. Tosi.
A. Good afternoon, Mr. Beshore.

Q. Good to see you, as always.

Let me start on page 3 with a question, and then I'm --

I want to try to -- try to get at how to -- how to best

represent this exempt quota, you know, in a potential Federal

Order pool. So in the paragraph towards the bottom begins

"because the California State Order," do you see that?

A. Yes, I do.

Q. "Provides that exempt quota holders essentially receive

the difference between the Class 1 price and the plant blend

price," and it goes on. I'm wondering if that totally

represents what goes on with exempt quota. And here's my,

here's my thought for you to react to, okay? And I have just

listened to the testimony of two of the producer-handlers last

two days, and as I heard them describe the operations of exempt

quota, the, essentially, the volumes of milk represented by

exempt quota are just removed from -- from their pool

obligation with the CDFA pool, from the Class 1 volume of their

pool obligation in the CDFA pool. And were you here to hear

both of their testimony or you read it, I'm sure?

A. Are you talking about the two people that testified

earlier today?

Q. Yes.

A. Yes, I was here.

Q. Okay. Does that -- did you hear it described
essentially that same way, functionally?

A. It -- I likened it to, this was my characterization of that.

Q. Okay. So another aspect of exempt quota and the way it operates in California now. I mean, there was testimony about how they, how they handle things between their plant operations and their farm. But is there a requirement in CDFA exempt quota regulations, to your knowledge, that places any particular stipulations on the transaction between the plant and the farm at all?

A. I know that with respect to the operation, that the separate legal entity that's the plant, that they are required to pay at least the blend price for that milk which is non-exempt quota.

Q. Right.

A. Right.

Q. Okay. But at least my understanding, and maybe you can, maybe I misunderstood it, and you would know more from your working with your clients there, but my understanding is that there's no particular requirements at all in CDFA that the plant and the farm be different entities or any such thing, that there's a consanguinity of ownership requirement if they are separate, but they could all be the same, under the same roof to the best of my knowledge. Do you have a different understanding?
A. Mr. Beshore, I'm not quite sure how to answer that. I was taking the limited, my testimony was geared at not, even if I didn't understand completely what the legal structures were and all that, that said, that what the objective was, is that what would we need to say in a Federal Order to accomplish exactly what the California State Order does with exempt quota.

Q. Okay.

A. And that was the -- that was the very limited focused intent of my participation on this proposal.

Q. Okay. I appreciate that. Let me -- let me go, then, to just talk generally about how the -- how the exempt quota might be incorporated into a Federal Order. The handlers obligation in the Federal Order is represented by, I mean, there are two sections, there's the gross value section which is Section 60 that you focused on, correct?

A. Correct.

Q. And then the other side is the payments to, the equalization payments section, or payments to the Producer Settlement Fund, which is representing a reduction of the payroll value or the milk value payable to their milk suppliers, the minimum order obligation to their milk suppliers?

A. Okay.

Q. If there's any difference, it is either paid in or drawn out from the pool?
A. That's correct.

Q. Okay. So would potentially another way of incorporating exempt quota into the Federal Order language be not to address the handlers value side, but address it on the other side, I mean, just hypothetically and theoretically, you could handle that either way, could you not?

A. I think it might be possible. We chose to do it this way.

Q. Okay. And what I'm, you know, what I'm thinking is, that if the value is, the handlers gross value is calculated straight under the Federal Order system, that basically what the producer-handlers have said is that for their exempt volume they just pay the Class 1 price to their farms, that's been the testimony, right?

A. As I understood it, I agree with that, yes.

Q. So potentially you could just represent, if you wanted to incorporate the exempt quota into the system, you could just represent that value on the producer side, if you will, and you would get to where the plus/minus would need to be for exempt quota.

A. That seems correct.

Q. Okay.

JUDGE CLIFTON: Mr. Beshore, so when you say that value, you are talking Class 1 value? Is that what you meant by that value on the producer side?
MR. BESHORE: I probably have to have my sentence read back to be sure of the reference, but I -- but I believe that's correct, your Honor. I meant that the -- that the testimony I have heard is that the exempt quota value was paid to the farm, to the producer side, and that you could, in the Federal Order language equation, you could represent the Class 1 value being paid to the farm by crediting it on the payment side of the equation.

MR. TOSI: I think it could be handled that way as well, yes.

BY MR. BESHORE:

Q. Okay. Let me just look then on Exhibit A, just a small item. You were working with with Proposal 1, and in part 1051.31, at the bottom of the first page, Proposal 1 was amended by Dr. Erba to change the reporting day from the 6th to the 9th. And would you intend to reflect that in your incorporation of Proposal 1 also?

A. Yes, I would. If that, if the idea here was to support your client's basic structure and the continuation of quota and all of its aspects.

Q. Okay.

A. So if the testimony was changed from the 6th to the 9th, then that would be acceptable.

Q. Okay. Now, I also did not, we had a couple of references in our Proposal in Part 71, which is again, the
other side of the handler's settlement equation with the pool of the payments through the Producer's Settlement Fund. We had some references there to information being, to the credits and the payments being calculated as reported by CDFA to the Market Administrator. Do you remember seeing that?

A. I'm not sure that I remember that.

Q. Okay. I didn't note in any of your proposed language in Exhibit A, a provision for the Market Administrator getting information about the pounds of exempt quota that would show up in the CDFA record system as being owned by a particular entity. Did I miss that or was that something that you maybe didn't work in here?

A. I think I understand what you are asking. It was my opinion that when you look at, for example, for example, what's said in Paragraph C where it talks about things that are reported by CDFA, I took that to mean that, that, you know, to a certain extent there's a little bit of a joint administration what's going on here with respect to payment obligations.

Q. By seeing which --

A. Here in your Section 17. For example here where it talks about quota nonfat solids, within that subparagraph C it talks about, "as determined and reported by CDFA".

Q. Okay.

A. So I took -- I took it -- I took all this to to mean that -- that the participation of CDFA with a Market
Administrator is more or less defined within the context of this entire provision as if, you know, it does refer to CDFA in paragraph A, for example, that's responsible for the administration of the California Dairy Producer Quota Program, for example.

Q. Okay. And you would -- you would understand that, or would want to have that apply to CDFA reporting to the Federal Market Administrator, volumes relating to exempt quota as well as regular quota?

A. Yes. Yes.

Q. Okay.

A. In fact, I, in the way that I have come to understand what CDFA's role here is, is that it would be whatever joint cooperation that would need to take place between the state and the Federal Order to accomplish its purposes.

Q. And there was testimony by Dr. Erba that the contemplation was that that would be represented in some type of Memorandum of Understanding between the entities as has been entered into in the past between the USDA and the New York and --

A. And yes, and I was just going to mention that, that we had such an arrangement with, between the old New York-New Jersey Order and with the State of New York.

Q. And, in fact, those, at least one of, well, two of those agreements have been entered into the record as possible
models or examples.

A. I wasn't aware of that, but it is interesting to know that, thank you.

Q. Good. There's been, with respect to preservation of exempt quota under Proposal 2, under Proposal 2 is it -- is it your view that adding language to Proposal 2 as you have suggested, would accomplish your objective? And I ask that in view of the testimony that in the Economic Impact Statement, for instance, that regular quota basically would be, in the view of those Economists doing that for USDA, the regular quota would be gone in two or thee decision points, and then we had additional testimony that, from Mr. Hatamiya that that would occur, also. If that would occur with regular quota, how would exempt quota be preserved? Do you have -- did you think about that at all?

A. I'm -- if I think I understand, let me state back to you what I think you are asking me. Are you asking me that with respect to the DI Proposal, what is it that we would need to say that would accomplish the intent of bringing this over? Well, we're doing something, I would think that we need to do something similar, and I tried to say that. You identify these definitions in your Section 17. The DI Proposal, as I have read it, these ideas of what, of what you are seeing there in paragraphs A, B, and C in your Section 17 is more or less articulated in DI's Proposal under their Section 11, 1051.11.
And that what I'm basically saying is that the information that is contained in Paragraphs E and F of this proposal, that would be added to, or that would amend your Section 17 would similarly need to be added to the DI Proposal under their section 11.

Q. And hopefully it would work out as you, to meet your objectives?

A. Yes.

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

A. Thank you.

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

Mr. Richmond?

CROSS-EXAMINATION

BY MR. RICHMOND:

Q. Bill Richmond, USDA. I have been looking forward to this.

A. It's a pleasure to have to answer to you, Mr. Richmond, sir.

Q. Pleasure is all mine.

I think in general we're pretty clear on the intent of the Proposal, but we're having some trouble, as you can imagine, in regards to the references back to the California Code. And I'm specifically looking at 1051.17(e) and (f). So I think our real conundrum here is, what happens when we have this reference to the California Code, and it somehow changes,
as Mr. English questioned you about. Can you offer us any advice as to how we may handle a situation like that in the future?

A. Well, put the shoe on the other foot for a minute. What if there's another Federal Order hearing, let's assume that there is a California Federal Order and it says whatever it says, and then now you are going to go out and change some feature of the Federal Order and how is that going to impact what the state does. I guess you deal with it as you need to deal with it at the time.

Q. And so does that mean that we would perhaps need to hold a hearing to reflect the changes or --

A. Well, I would imagine that if the state is going to change some feature that has a direct impact on how the Federal Order is going to operate in the joint administration of the thing, then -- I know, for example, in the, in the joint agreement that we had there like with the State of New York, anytime that there was a Federal Order hearing, the state also sort of signed off and participated in the same capacity as the as the Federal Government.

Q. Okay. In Sections (e) and (f), when we say that the exempt quota and exempt quota premium values mean the value per pound of nonfat solids as calculated, and so on, we're having a hard time finding direction, if you will, in the reference Sections of California Code. And we're unclear on how exactly
we should do those calculations.

    A. Right.

Q. I think what would really help us is if we had the referenced sections of the California Code entered into the record so we all had kind of a common ground to reference and --

    A. If after this, if you would allow me to consult with, you know with counsel on that, I have an idea, but I don't want to speak out of turn without -- without --

Q. Understood.

A. -- counsel in that regard. Thank you.

Q. Okay. That would, it would definitely help us. I think otherwise we're clear on the intent of the proposal, and we feel comfortable enough at this point with the rest of your proposed language, so I think that's all we have.

    A. Thank you, Mr. Richmond. I appreciate it.

    Q. Thank you, Mr. Tosi.

JUDGE CLIFTON: Before I invite redirect, are there other cross-examination questions for Mr. Tosi on this topic?

Mr. English?

CROSS-EXAMINATION

BY MR. ENGLISH:

Q. In a way, there's a little bit of follow up. If, when you are doing that. Those sections are actually pretty long, and so I guess to the extent that you can also sort of pinpoint...
what we should be looking at, because even had I had a little
trouble, Mr. Tosi, trying to figure out where these all fit
together, so if you are doing that, I would just say if you
could also look at whether there are sub parts of it or clauses
you can point it to, or if you put the statute in, maybe you
highlight the sections that you are relying on, something to
give us all something to attach it to.

JUDGE CLIFTON: All right. Let's see. How are we doing
time-wise? We have got a lot of time. So was it your
intention, Ms. Hancock, to have him now testify with regard to
Proposal 4 when we're finished with Proposal 3?

MS. HANCOCK: It was, your Honor, but --

JUDGE CLIFTON: Why don't you come to the podium and let's
talk about what you and Mr. Tosi want to do.

MS. HANCOCK: So I mean, we can either pause here, leave
his testimony open, come back and address the California Code
provisions, and move to Mr. Tosi's testimony on the Ponderosa
Proposal --

JUDGE CLIFTON: You know, that might be good, because we
know Mr. Tosi's coming back with regard to Exhibit 168. And if
we had his statement with regard to Proposal 4, then people
would have that overnight and that would be good. So I think
it would be good to begin the Proposal Number 4, testimony even
though we won't make much progress on it tonight. Would that
be all right?
MS. HANCOCK: You know, honestly, your Honor, I think what I would, given what time it is and by the time we get going, what I would prefer to do is give Mr. Tosi a little bit of opportunity to have us kind of pow-wow for a moment about where we are right now, and make sure that we have everything ready to go on the other proposal, and maybe give him a break. I know we're finishing 15 minutes or so early.

JUDGE CLIFTON: No, we wouldn't finish. We'd give you a little time and have you come back and give us a report.

MS. HANCOCK: What I'm proposing is that we just finish now, especially since the court reporter had a shorter lunch, maybe we can finish now, and then I can get everything organized ready to go and be a little more streamlined in the morning, and Mr. Tosi will be fresh and ready to go.

JUDGE CLIFTON: All right. Tell me what your proposal is for tomorrow, then, Ms. Hancock.

MS. HANCOCK: So tomorrow my proposal would be to put on the California Code Sections with Mr. Tosi, and clean up the language that we have talked about modifying tonight, and see if we can get that in as clean of shape as we can for tomorrow. And then we will put him on for, in fact, since Mr. DeGroot will be here, it will be nice to break him up, so then I will put on Mr. DeGroot which will finish up our California Producer Handler Association presentation of evidence. And then I will officially move to Ponderosa's Proposal, which will then be
Mr. DeGroot and Mr. Tosi again on just those two topics.

JUDGE CLIFTON: Okay. Now, we have the gentleman from Maine tomorrow. Let's talk about what else we know we have coming tomorrow. Mr. Beshore?

MR. BESHORE: Yes. We do have a producer and a second producer, two producer witnesses whose time window, I just learned, is basically 11:00 to 1:00.

JUDGE CLIFTON: Okay. And what else do we know about tomorrow? Are we expecting other people that we haven't identified yet that we know about? Pardon? You are talking about beginning rebuttal?

MR. BESHORE: If we -- if we do reach that point, we would be prepared to start our rebuttal case tomorrow with some testimony from Mr. Hollon.

JUDGE CLIFTON: Okay.

MR. BESHORE: Hollon X plus 1, X plus 2.

JUDGE CLIFTON: Mr. English?

MR. ENGLISH: I have something to help fill the time. I think I mentioned earlier today that I was seeding the time because I knew we were in a hurry to get things done, that I had a couple of housekeeping things.

JUDGE CLIFTON: Oh, you did, as a matter of fact.

MR. ENGLISH: And the housekeeping is ready to go and since we have time, we could, you know, it won't take long.

JUDGE CLIFTON: All right. Well, then may I allow Mr. Tosi
to step down?

    MR. ENGLISH: Yes.

JUDGE CLIFTON: Mr. Tosi, to be continued.

MR. TOSI: Yes, your Honor, I understand thank you.

JUDGE CLIFTON: Thank you so much. You may step down. So, Judge Palmer -- Judge Clifton?

    MR. ENGLISH: Well, and one of them is called the Grievance Board, which is very funny, but it is obviously not correct.

JUDGE CLIFTON: Yeah, we had a court reporting service that couldn't quite get United States Department of Agriculture on the top line of the heading, and then the second line saying Before the Secretary of Agriculture, rather it always came out Grievance Board United States Department of Agriculture.

    MR. ENGLISH: So your Honor, just by way of explanation, earlier in the proceeding we had a number of witnesses, and I asked questions about previous testimony. And we never really had, we got that for CDI, and we had that with DPA, we never really had that with Land O'Lakes, because the witness who testified for Land O'Lakes in the pooling, P-O-O-L-I-N-G, hearings post-Federal Order Reform, was a Mr. Jim Hahn, another former USDA employee, who then went to work for Land O'Lakes, and he testified at two different proceedings. And these would be admissible under Rule 801(d)(2), which are the statements of a party. They are authenticated on the ground that they are sworn transcript statements, and so they are clearly admissible
under 801(d)(2). And if Mr. Beshore wants to stand up, he can do so.

MR. BESHORE: So I object to the testimony of Mr. Hahn being offered here. He's not here, will not be here, and it's certainly hearsay -- hearsay as to him clearly. With respect to Federal Rule of Evidence 801(d)(2), it is abundantly clear that the Federal Rules of Evidence do not apply in these proceedings. They certainly do not apply as a shield, since objections to the, to the non-admissibility of items under the Federal Rules of Evidence have been uniformly overruled.

By the same token, the Federal Rules of Evidence should not be able to be used as a sword, which is the manner in which, 801(d)(2) is proposed to be used with respect to these documents. So, Federal Rules of Evidence don't apply; it's clear they have been held not to apply; they don't apply as a shield, they should not be able to be used a sword; Mr. Hahn is not here; it is inappropriate for his testimony to be brought in presumably against his then employer, you know, we don't have parties, etcetera, I won't even go beyond that in objecting, but I do object.

JUDGE CLIFTON: So, Mr. Beshore, can I be, can I take official notice of testimony in prior Milk Marketing hearings?

MR. BESHORE: I don't think that comes within the purview of Administrative or Official Notice. I mean, certainly decisions of the Department do, but the testimony of, at
hearings is of a completely different character.

JUDGE CLIFTON: All right. Mr. English, I'll hear you.

First of all, let's mark these so that whatever I decide we
know what we're talking about. Which one --

MR. BESHORE: Well, I think we marked them in order, your
Honor, which is to say the one that is unhappily labeled
Grievance Board, United States Department of Agriculture, and I
didn't mean the pun there. But the Grievance Board one that is
dated June 2001, where you were the Presiding Judge, I would
say would be the next number.

JUDGE CLIFTON: All right. Let's call that 168, Ms. May?

No, 169. Thank you. Mr. Tosi's is 168, yes.

That's interesting that I was doing this in 2001. You
would think I would know more by now, wouldn't you? All right.
I need to do it more often.

(Thereafter, Exhibit Number 169, was
marked for identification.)

MR. ENGLISH: And then the other one would be 170, your
Honor.

JUDGE CLIFTON: 170, yes.

(Thereafter, Exhibit Number 170, was
marked for identification.)

MR. ENGLISH: The Grievance Board is the first one, which
is 2001, and the 2004 one, which is before the Secretary of
Agriculture, dated August 16, 2004, would be the second one.
JUDGE CLIFTON: So Mr. English, I hope in your response you will give me some idea why testimony in 2001 with regard to a whole different region of the country would be relevant, and same thing with regard to 170?

MR. ENGLISH: Well, both of them, your Honor, in those two, Mr. Hahn was speaking to two issues that we have heard a lot about, that is performance standards and their importance in Federal Order and depooling, which we have heard a lot about. And Land O'Lakes position with respect to performance standards and depooling. So that would go to relevance.

They are clearly authentic, they are sworn transcript statements taken from USDA's web sites, and I disagree with Mr. Beshore with respect to the extent that Federal Rules of Evidence don't apply, it's because in Administrative Proceedings evidence is more freely available, not less. His statement that this is hearsay is precisely what Rule 801(d)(2) goes to. Rule 801 is, these are statements that are not hearsay, that is the express determination. So this would be material that could be admitted in a Federal Court, if we were marching down next Monday to see Judge Ishi in the Federal District Court here in Fresno, these statements would be admissible. They do not have to be admitted against, that's the critical part of 801(d)(2).

You only need to meet one of six categories, and we meet four of five of them. The first one is, was the person
speaking for himself or in a representative capacity? He's clearly speaking in a representative capacity for Land O'Lakes. It's not hearsay, it is authentic, and it is relevant. It is clearly admissible. And to simply say no, something that is not hearsay under the Federal Rules can't be admitted in an Administrative Proceeding, is to overturn the entire concept of how evidence comes into these proceedings.

JUDGE CLIFTON: Why is he talking about California in Exhibit 169?

MR. ENGLISH: Because, your Honor, at that time there were some provisions in the Federal Orders that permitted the ability to pool milk both on the Federal Orders and on California State Order at the same time. Do you recall that now?

JUDGE CLIFTON: I do. That makes me more interested in it.

MR. ENGLISH: So I mean, your Honor, the idea that this is hearsay is preposterous. It has been expressly found not to be hearsay. If it is admissible in a Federal court, the whole idea of evidence for administrative proceedings is to make it easier, not harder. So this idea of a sword/shield analysis, it simply doesn't hold water. I move admission of these documents.

JUDGE CLIFTON: Were there any corrections to the transcript that would affect these pages, Mr. English?

MR. ENGLISH: I, your Honor, these were the official pages
as put up on the website by USDA. If there were transcript
corrections, I would hope that they were included. I, if they
weren't, all I can say is this is what came from the USDA
website, as the transcripts that were published.

JUDGE CLIFTON: Okay. You can't -- you can't assume that
corrections are incorporated. What normally happens is,
transcript's posted, people propose corrections, the Judge
indicates what corrections are being made, those are separate
documents. And the separate documents may or may not get
posted. They are in the file somewhere, which this long ago,
14 years ago, may be somewhat difficult even for me to
retrieve.

MR. ENGLISH: Actually, your Honor, they, I mean, I don't
know if the transcript, I'll have to look at website, but I
would think that maybe the transcript corrections would also be
posted. If you want me to go look, I will. We certainly have
had other transcripts and we know there were some errors in
some of the CDFA materials, so I guess I can't answer that
question. But this is the testimony as is currently available,
and you know, I do think that they, they are plainly
admissible. And I will indicate that, you know, whether they
have been expressly somehow overruled, as Mr. Beshore says, the
interesting thing is that they often, the Rules of Evidence
nonetheless get cited in a lot of Administrative Law cases.
And again, for the proposition if it is admissible in Federal
Court, it ought to be admissible here.

JUDGE CLIFTON: Mr. Beshore?

MR. BESHORE: If I might very quickly. As far as official notice goes, your Honor, 900.8, I think it is (d)(5) defines official notice in these proceedings as "matters that are subject, that may be officially noticed by the courts of the United States, or any other matter of technical, scientific, or commercial fact of established character," and hasn't even been argued that it fits into those things, relating to official notice, but I was responding to Judge Clifton's inquiry.

One the reasons that the Federal Rules of Evidence don't apply, there are all kinds of reasons, and why the rules that are made for court proceedings don't apply is we don't have parties in these rule making proceedings in the same way that you have parties in adjudicatory matters of litigation, to which, the admission of a party opponent (d)(1) and (d)(2) is addressed to situations where you have parties and that sort of thing. I'm not sure -- I'm not sure what else to say.

It is not, performance standards is such a, you know, I mean, a general topic of relevance in Federal Order hearings, if something said by someone employed by one of the participates in this hearing 15 years ago can come in because it was a Federal Order hearing, there's absolutely no limit to the scope of what, what might come in. And, you know, I object to its admission.
JUDGE CLIFTON: Ms. Hancock, would you like to be heard?

MS. HANCOCK: Your Honor, I don't really have a dog in this fight, but my concern is the precedent that we set for something that might come into the record down the road, so just for my two cents, I believe that the Hearing Notice specifically even said if someone is going to provide testimony, it has to be subject to cross-examination. And that's my understanding of how this is designed to work. And by putting in evidence from, you know, other hearings where the context is different, the parties have different information, I'm hoping that we have evolved at least some since then. I think that it risks taking information out of context, and certainly I wasn't present at those hearings, and I don't have the opportunity to cross-examination and flesh out any issues that might pertain to my witnesses or may parties or my position. And I don't feel that it's appropriate to put testimony in.

If there was a witness on the stand and this information was used to contradict them or somehow, you know, flesh out whether there's a difference compared to what had happened historically in another proceeding, that would be different. But just to put a testimony into the record cold without it, somebody putting it into context or somehow authenticating or standing for the propositions that it's being proposed for, I think it raises some significant concerns.
Now, I recognize that there's a different risk here because there's not a jury, and you have a very smart group of people that is our audience, but I still think for purposes of building our record, it risks some confusion and it just does also invite kind of a document dump at the end of any proceeding just to fill the record full of information that people would have to wade through in order to preserve positions that nobody has had an opportunity to consider. So that's just my two cents on it.

JUDGE CLIFTON: Mr. English?

MR. ENGLISH: Your Honor, the whole point of 801(d)(2), and I have done it repeatedly in my career, and I have had this fight repeatedly in my career, and I'm not going to tell you how it all comes out because I'm not trying to influence you on that, but the bottom line is, the reason the rule exists is actually to allow exactly what I just did.

It doesn't matter about cross-examination. I will note that Mr. Schad is here and he can come back up on the stand, he's going to be apparently on rebuttal, I think, but that's not necessary. That's the point of 801(d)(2). Is it authentic, is it relevant, is it a statement? To say that we don't have parties in this proceeding, please, we have parties in these proceedings.

JUDGE CLIFTON: When you say Mr. Schad, is he identical with Mr. Hahn?
MR. ENGLISH: He doesn't have -- the point is, Mr. Hahn was testifying in a representative capacity for Land O'Lakes. He's not testifying for Mr. Hahn. If I were to try to say this is Mr. Hahn's statement, that's different. This is Land O'Lakes statement.

JUDGE CLIFTON: Okay. Thank you. In this case, I agree with Mr. Beshore and Ms. Hancock. If this were an ordinary hearing, if I were doing an ordinary administrative hearing in which I would be deciding a case between two parties usually, the USDA on one side somebody else on the other, I would not let this in. I would take official notice of what the Judge ruled in a proceeding where people testified and I had a transcript, but I wouldn't necessarily be bound by it, but I would take official notice of it.

Here, I have got a witness in a whole different proceeding, in a whole different situation, a whole different timeframe, and I reject Exhibits 169 and 170.

Now, if employees of the Department want to thumb through them for ideas, they are welcome to, but they may not rely on either the testimony in 169 or 170 as evidence in this case.

I love how we use the time. Let us call it a day. And I'll see you -- oh, it's casual Friday tomorrow. And I realize that we have a high official from Maine, and so if you want to dress up, you may. I forgot to tell him it is casual Friday.
We'll go off record now at 4:56, and I'll see you in the morning.

(Whereupon, the evening recess was taken.)

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COURT REPORTERS CERTIFICATE

STATE OF CALIFORNIA  )
                     ) ss.
COUNTY OF FRESNO    )

I, MYRA A. PISH, hereby certify:

I am a duly qualified Certified Shorthand Reporter, in
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11613, issued by the Court Reporters Board of California and
which is in full force and effect.

I am not financially interested in this action and am
not a relative or employee of any attorney of the parties, or
of any of the parties.

I am the reporter that stenographically recorded the
testimony in the foregoing proceeding and the foregoing
transcript is a true record of the testimony given.

DATED:    December 31, 2015
FRESNO, CALIFORNIA

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<table>
<thead>
<tr>
<th>Page</th>
<th>Comment</th>
<th>Term</th>
<th>Occurrences</th>
</tr>
</thead>
<tbody>
<tr>
<td>7253:14</td>
<td>abbreviation (1)</td>
<td>7404:12</td>
<td></td>
</tr>
<tr>
<td>7347:3;7366:3;</td>
<td>7372:9</td>
<td></td>
<td></td>
</tr>
<tr>
<td>accordingly (2)</td>
<td>7300:5;7313:19</td>
<td></td>
<td></td>
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<tr>
<td>account (8)</td>
<td>7231:6;7265:8;</td>
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<tr>
<td>7315:16,22;7316:17;</td>
<td>7353:19;7376:22;</td>
<td></td>
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<td>7378:2</td>
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<td>accountable (1)</td>
<td>7332:19</td>
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<td>accountant (1)</td>
<td>7417:8</td>
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<td>Accounting (3)</td>
<td>7223:18;7301:16;</td>
<td>7293:29</td>
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<td>accounts (1)</td>
<td>7330:21</td>
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<td>accuracy (3)</td>
<td>7245:11;7294:9</td>
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<td>accused (1)</td>
<td>7308:17</td>
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<td>achieve (2)</td>
<td>7310:19;7361:10</td>
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<td>acknowledge (1)</td>
<td>7253:14</td>
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<td>acquire (1)</td>
<td>7307:9</td>
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<td>acquired (3)</td>
<td>7305:12;7322:9,</td>
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<td>12</td>
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<tr>
<td>acres (2)</td>
<td>7338:9,11</td>
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<tr>
<td>across (9)</td>
<td>7237:10;7248:9;</td>
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<td>7640:20;7343:23;</td>
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<td>7341:21;7342:18;</td>
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<td>7347:21;7365:1;</td>
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<td>7368:24</td>
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<tr>
<td>Act (4)</td>
<td>7306:3,7;10;</td>
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<td>7393:19</td>
<td></td>
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<tr>
<td>actions (4)</td>
<td>7362:23;7376:20;</td>
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<td>7393:6;7396:19</td>
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<tr>
<td>active (1)</td>
<td>7368:21</td>
<td></td>
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<tr>
<td>activities (2)</td>
<td>7319:7;7330:25</td>
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<tr>
<td>actual (7)</td>
<td>7255:17;7323:5;</td>
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<tr>
<td>7350:16;7355:5,8;</td>
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<tr>
<td>7369:25;7411:22</td>
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<tr>
<td>actually (25)</td>
<td>7245:18;7260:5;</td>
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<td>7268:3;7289:14;</td>
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<td>7294:2;7316:21;</td>
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<td>7322:3;7326:15;</td>
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<td>7350:12,13,17;</td>
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<td>7334:18;7335:18;</td>
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<td>7365:7;7377:18;</td>
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<td>7380:3;7382:4;</td>
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<td>7411:24;7415:10,13;</td>
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<tr>
<td>7416:11,14;7430:24;</td>
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<tr>
<td>7439:13;7442:16</td>
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<tr>
<td>add (17)</td>
<td>7230:16;7258:13;</td>
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<tr>
<td>7266:11,14;7288:3;</td>
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<tr>
<td>7310:4,6;7312:4;</td>
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<tr>
<td>7327:17;7333:3;</td>
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<td>7346:1,18;7358:14;</td>
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<tr>
<td>7359:14;7364:14;</td>
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<tr>
<td>7387:10;7393:20</td>
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<tr>
<td>added (3)</td>
<td>7408:12;7428:3,4</td>
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<tr>
<td>adding (11)</td>
<td>7252:5;7309:16;</td>
<td></td>
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<tr>
<td>23;7310:9,10;</td>
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<tr>
<td>7398:7;7399:8;</td>
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<tr>
<td>7402:22;7403:22;</td>
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<tr>
<td>7411:1;7427:6</td>
<td></td>
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<tr>
<td>addition (6)</td>
<td>7257:22;7307:16;</td>
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<tr>
<td>7310:3;7341:16;</td>
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<tr>
<td>7362:26;7367:24</td>
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<tr>
<td>additional (24)</td>
<td>7255:18;7261:8;</td>
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<tr>
<td>7268:9,11;7296:17;</td>
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<tr>
<td>20;7307:3,11,19;</td>
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<td>7317:5;7327:16;</td>
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<td>7354:22;7358:11;</td>
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<tr>
<td>7366:19;7367:2;</td>
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<td>7371:18,20,22;</td>
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<tr>
<td>7372:3;7375:17;</td>
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<td>7410:3;7411:8,22;</td>
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<td>7427:12</td>
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<tr>
<td>additionally (2)</td>
<td>7257:21;7399:12</td>
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<tr>
<td>address (10)</td>
<td>7303:22;7426:25;</td>
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<td>7337:22,25;7359:9;</td>
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<td>7360:23;7361:1;</td>
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<td>7423:4,4;7431:16</td>
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<td>addressed (1)</td>
<td>7440:17</td>
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<td>addressing (1)</td>
<td>7358:23</td>
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<td>adds (2)</td>
<td>7366:10;7397:9</td>
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<tr>
<td>adequate (3)</td>
<td>7342:1;7345:3;</td>
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<td>7412:2</td>
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<td>adjourn (1)</td>
<td>7269:6</td>
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<td>adjudicatory (1)</td>
<td>7440:15</td>
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<tr>
<td>adjust (2)</td>
<td>7265:3;7295:8</td>
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<td>adjusted (3)</td>
<td>7254:11,12;</td>
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<td>7282:2</td>
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<td>adjustment (5)</td>
<td>7268:4;7295:19;</td>
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<td>22;7345:14,22</td>
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<td>adjustments (3)</td>
<td>7243:11;7275:18;</td>
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<td>$1,000 - advance</td>
<td>7368:25</td>
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<td>Administration (5)</td>
<td>7392:19;7414:9;</td>
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<td>7425:17;7426:4;</td>
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<td>7429:15</td>
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<td>Administrative (20)</td>
<td>7221:7;7288:17;</td>
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<td>19;7294:14;</td>
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<td>7296:25;7303:19;</td>
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<td>7330:5,6,8,9,25;</td>
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<td>7331:6,12,14;</td>
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<td>7435:24;7437:14;</td>
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<td>7438:6,19;7439:24;</td>
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<td>7443:8</td>
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<td>administratively (1)</td>
<td>7358:24</td>
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<td>Administrator (6)</td>
<td>7221:19;7346:13;</td>
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<td>7425:8;7426:1;8</td>
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<td>Administrator’s (1)</td>
<td>7372:11</td>
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<td>admire (1)</td>
<td>7389:5</td>
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<td>admissible (8)</td>
<td>7434:23,25;</td>
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<td>7437:22;7438:4,18;</td>
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<td>7439:21,25;7440:1</td>
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<td>admission (17)</td>
<td>7266:21;7267:10;</td>
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<td>7298:18,25;7299:9;</td>
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<td>7311:19,22;7347:24;</td>
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<td>7381:15,18;7407:20;</td>
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<td>7408:9;7411:14;</td>
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<td>7412:7;7438:21;</td>
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<td>7440:16,25</td>
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<td>admit (4)</td>
<td>7266:16;7298:13;</td>
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<td>7381:12;7412:3</td>
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<td>admitted (17)</td>
<td>7266:20,22;</td>
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<td>7267:3,11;7298:19;</td>
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<td>7299:10;7311:23;</td>
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<td>7333:10,10;7348:15;</td>
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<tr>
<td>16,17;7381:20;</td>
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<td>7412:8;7437:19,22;</td>
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<td>7438:5</td>
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<td>adopt (8)</td>
<td>7288:25;7343:3;</td>
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<td>7362:5;7363:3;</td>
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<td>7377:2,7378:5;</td>
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<td>7410:14</td>
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<td>adopted (8)</td>
<td>7245:23,7251:13;</td>
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<td>7272:15;7278:2,2;</td>
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<td>7435:7;7354:21;</td>
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<td>7377:22</td>
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<td>adoption (2)</td>
<td>7310:19;7324:15</td>
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<td>adopts (2)</td>
<td>7272:20;7398:6</td>
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</table>
begin (19)  
7248:8;7256:13;  
7257:2,7259:9;  
7261:7,16;7279:21;  
7298:10;7312:8,13;  
7325:18;7348:25;  
7381:25;7395:11;  
7401:23;7402:21;  
7412:14;7431:23  
beginning (14)  
7221:10;7248:7;  
7256:14,22;7257:8;  
7259:18;7261:9,17;  
7263:18;7310:9;  
7375:4;7403:16;  
7433:11  
beings (6)  
7327:9;7261:4;  
7403:17;7404:7;  
7405:14;7420:6  
behalf (15)  
7223:4,25;7224:2;  
15;7269:20,21;  
7339:23;7345:9;  
7352:18;7361:4;  
7362:2;7376:18;  
7397:24;7390:16  
belabor (2)  
7271:12;7416:12  
belief (1)  
7384:17  
believes (1)  
7362:24  
below (4)  
7231:23,24;  
7266:7;7376:16  
beneficial (1)  
7289:6  
benefit (11)  
7304:15,19,21;  
7305:11;7307:5;  
7308:16;7312:20;  
7317:18,19;7327:7;  
7362:1  
benefits (5)  
7307:25,7308:25;  
7310:15;7313:16;  
7369:16  
Berea (1)  
7392:12  
BESHORE (92)  
7222:11,11;  
7229:21,21;7320:12;  
7257:4;7269:5,6;  
7272:2,5;7273:15;  
16;7274:22;7275:4;  
7,9;7276:5,10,18;  
22;7277:2,9,12,14;  
728:19;7279:2,3;  
7280:2,3,12,16,21;  
7281:22,24;7282:10;  
7283:12,20,21;  
7285:21;7287:24;  
7296:13,15,17;  
7297:22,24,25;  
7298:24,25;7299:5;  
7,7318:5,7,8,21,25;  
7319:2;7320:11;  
7351:4,6;7356:12,16;  
14;7357:1;7383:4,6;  
7,7385:11,13;  
7419:22,24,25;  
7420:1;7421:1;  
7423:23;7424:1,11;  
43:4,5,12,16;  
35:1,3,21,23;  
65;7437:13;  
39:22;7440:2,3;  
7443:7  
B-E-S-H-O-R-E (1)  
7222:12  
best (10)  
7229:7;7302:10;  
7344:23;7357:12;  
7367:16;7384:22;  
45:20;7420:4;7421:7  
better (2)  
7329:20;7384:24  
beyond (4)  
7305:25;7328:3;  
7407:3;7435:19  
bid (3)  
7309:7,9,11  
bidding (1)  
7310:14  
bids (4)  
7308:18;7309:12,  
15;7310:13  
big (2)  
7425:9;7357:7  
bigger (1)  
7414:17  
Bill (7)  
7323:24;7331:1;  
7332:13;7356:6;  
7383:25;7384:3;  
7428:15  
billion (18)  
7340:25,7341:3,5;  
7;7342:6,8,9;  
7344:11,7355:9,15;  
7365:25,7366:2,4;  
5;7367:12,16;7375:9  
bit (21)  
7246:19;7250:18;  
7254:6;7255:3,3;  
7281:5;7294:24;  
3;7291:18,7321:15;  
7344:7;7349:6;  
7351:24,7353:16;  
7379:13;7384:4,21;  
406:14;7419:16;  
7425:17;7430:23;  
7432:3  
blaze (1)  
7228:16  
blend (15)  
7272:10,18,19,22;  
24;7277:4;7304:23;  
24;7286:18,22;  
23;7304:15;  
39;7385:10;7420:10;  
2;7413:  
blended (2)  
7305:2;7326:1  
bless (3)  
7335:15,15,15  
block (19)  
7233:12;7235:5,7;  
10,12;7238:2,16;  
7239:12;7241:10,14;  
16;7249:20;7263:4,  
6;7264:10;7291:9;  
7293:11;7294:10,11  
blocks (5)  
7354:10,11  
Board (15)  
7339:22,24;  
7340:14,20,21;  
7352:12,13;7354:5,  
9;7366:7;7434:8,13;  
7436:7,8,23  
body (1)  
7243:13  
bold (2)  
7397:1,6  
bolded (6)  
7397:7;7398:4,19;  
7399:4;7401:24;  
7402:2  
bolding (1)  
7399:7  
bonus (1)  
7321:5  
bones (2)  
7320:22,7332:15  
booked (7)  
7306:13;7308:9,  
12;7327:15,16;  
7329:11,21  
books (9)  
7326:16;7327:16;  
7328:24;7329:3,11;  
22,24;7330:1;  
7331:22  
borne (1)  
7366:10  
both (33)  
7229:2,15;7234:5;  
7235:10;7239:15;  
7244:25;7250:16;  
7253:5;7300:16;  
7301:3;7311:1;  
7314:7;7315:22;  
7318:5;7321:6;  
7322:4;7323:21;  
7325:16;7333:8;
IN RE: MILK IN CALIFORNIA

TRANSCRIPT OF PROCEEDINGS - VOLUME XXXVI
November 12, 2015

Min-U-Script®
Barkley Court Reporters
(5) bottom - capacity
IN RE: MILK IN CALIFORNIA
capital (2)
7305:20;7398:25
Capitol (1)
7394:20
capture (1)
7275:24
capturing (1)
7388:25
care (1)
7389:11
career (3)
7363:12;7442:12,
13
careers (1)
7368:5
careful (1)
7345:10
cares (1)
7269:17
CARMAN (2)
7221:18,18
C-A-R-M-A-N (1)
7221:19
Carolina (2)
7352:5,16
Carolinas (1)
7352:22
carried (1)
7257:24
carrier (8)
7251:16,19,20,22;
7256:2,10;7257:16,
19
carries (1)
7378:16
carry (3)
7234:17;7259:25;
7260:1
case (33)
7230:10,19;
7234:23;7235:3,13;
7236:18;7238:11;
7240:7;7241:13,15,
18;7244:25;
7249:19;7252:11,16;
7253:8;7270:18;
7289:23;7315:2;
7326:23;7331:11;
7336:1;7349:20;
7359:10;7382:9;
7394:23;7395:17;
7405:16,19;7433:13;
7443:6,9,21
case-in-chief (2)
7226:22;7228:12
cases (3)
7247:24;7366:9;
7439:24
cash (1)
7342:1
casual (3)
7328:3;7443:23,
25
Min-U-Script®

cat (1)
7247:17
catch (2)
7229:13;7382:6
categories (2)
7277:24;7437:24
category (1)
7340:11
cattle (1)
7334:21
cause (10)
7227:18;7316:14;
7343:7;7345:7;
7347:11;7354:24;
7361:25;7362:9;
7377:6,16
caused (1)
7375:10
caveat (1)
7324:12
CDFA (35)
7233:8;7235:22,
24;7244:24;
7246:13;7253:12,15,
24;7273:22;
7277:11;7280:14,24;
7282:12,21;7304:25;
7314:3,8;7315:24;
7320:19;7332:19,21;
7396:25;7408:25;
7420:18,19;7421:7,
20;7425:4,10,16,22,
25;7426:2,7;7439:18
CDFA's (1)
7426:13
CDI (2)
7222:13;7434:17
cell (1)
7321:6
cent (22)
7235:25;7236:15,
16,17;7240:12;
7246:13;7259:1,3;
7281:21;7291:18;
7292:5,9,18;
7294:14;7340:4;
7343:22;7346:25;
7347:2,7;7373:10,
13,14
center (1)
7326:1
centers (2)
7303:23;7305:21
Central (3)
7235:16;7303:24;
7360:23
cents (56)
7246:11;7249:21,
24,25;7255:12,15;
7266:7,8;7277:20;
7278:3,4,9,11,23;
7279:4,6;7280:6,18;
7281:22,23;7282:2,

TRANSCRIPT OF PROCEEDINGS - VOLUME XXXVI
November 12, 2015
3,7,15;7283:1,5;
7291:15,15,16,21,
25;7292:3,6,7,20;
7293:7,9,10,23;
7294:7;7295:14;
7296:23;7326:21;
7343:21,21,23,24;
7346:24,25;7347:5,
6,6;7359:8;7380:24;
7441:5;7442:9
CEO (1)
7301:15
certain (7)
7233:17;7320:13;
7386:3;7394:25;
7395:18;7405:22;
7425:17
Certainly (20)
7233:1;7236:7;
7237:14;7242:17;
7245:16;7253:21;
7263:4,20;7268:9,
21;7290:25;
7312:21;7342:15;
7390:15;7415:11;
7435:5,8,24;
7439:16;7441:13
certified (1)
7322:3
challenge (4)
7341:25;7342:14;
7345:3;7366:22
challenges (3)
7365:21;7366:20;
7369:14
challenging (1)
7365:19
change (29)
7256:21;7257:21;
7259:11;7285:15;
7291:20;7292:8;
7293:8,9,21,24;
7294:19;7296:21,25;
7311:4;7318:23;
7330:13,16;7343:20;
7346:6;7384:23;
7386:4,10;7391:22;
7413:22,24;7416:14;
7424:15;7429:7,14
changed (5)
7264:1;7269:11;
7386:5;7407:16;
7424:22
changes (24)
7239:19;7258:4,5,
9;7274:20;7291:5;
7292:19;7315:6;
7327:1;7331:11;
7332:1,2;7365:8,11,
17;7375:4;7376:1;
7386:23;7393:10;
7404:22;7408:11;
7413:4;7428:25;

7429:12
character (2)
7436:1;7440:8
characterization (2)
7285:20;7421:2
characterize (1)
7254:13
charge (6)
7330:23,23;
7331:1,1,3,10
charged (1)
7330:24
chart (2)
7283:25;7343:19
charts (2)
7276:14;7346:23
chase (1)
7289:15
check (3)
7283:12;7323:14;
7325:11
checkbooks (1)
7323:4
checked (1)
7315:3
checks (2)
7331:4;7380:5
cheddar (21)
7235:3;7236:21;
7237:25;7238:16;
7239:10,11,14;
7240:7,13,17;
7241:10,13,15;
7293:3,6,11,13,15,
18;7294:3,11
cheese (19)
7235:8,8;7236:22;
7238:2;7239:10;
7250:15;7293:1,15;
7295:1,17;7302:2,6;
7303:25;7321:19;
7334:21;7364:16,17,
20,25
children (1)
7302:11
Chip (9)
7223:2;7226:7;
7259:12;7267:16;
7299:20;7312:16;
7381:13;7382:3;
7412:17
Chip's (1)
7337:16
choose (1)
7327:19
chooses (2)
7231:4;7362:15
chose (3)
7254:22;7322:22;
7423:7
Cincinnati (2)
7363:13,17
circumstance (1)

Barkley Court Reporters

7342:20
circumstances (1)
7343:4
cite (1)
7409:1
cited (1)
7439:24
cites (1)
7343:12
cities (1)
7393:8
city (2)
7396:6,8
claim (2)
7309:25;7310:12
claiming (1)
7281:10
clarification (4)
7245:19;7285:19;
7318:11;7348:1
clarified (1)
7325:7
clarify (8)
7237:14;7242:25;
7243:16;7263:20;
7313:20;7325:1;
7326:17;7384:21
clarity (1)
7402:9
class (156)
7234:20;7235:1,
21;7236:22;7240:5;
7241:3,4,20;
7242:10,11,12,12,14,
19;7243:25;7245:17,
24;7246:5,10,12,18;
7247:15;7248:4;
7249:4,8;7250:10,
12,24;7251:1,5,7,8,
10,10,16,23,24;
7253:9;7254:1,4,4,
12,14,17,23;
7255:19;7257:15;
7258:20;7260:21;
7261:4;7263:5,10,
11,13,21;7264:4,6,
14,14,16,16,17,20,
21,22,24,25;7265:4,
4,23;7266:6,7,8,9;
7269:17;7274:4;
7276:18,24;7277:18,
24;7278:21,22;
7279:8,10,11,12;
7280:4,17;7281:2,3,
5;7282:11,14,20;
7283:3,15,23;
7288:5;7289:15,21;
7290:13;7291:2,7,9,
20,24;7292:10,16,
20,22,24;7293:2;
7297:9;7298:14;
7301:21;7304:3,12,
13;7305:4,9,10;
(6) capital - class


IN RE: MILK IN CALIFORNIA

TRANSCRIPT OF PROCEEDINGS - VOLUME XXXVI

November 12, 2015

Min-U-Script®

Barclay Court Reporters

(11) differential - early
7432:7
earn (1)
7396:5
earned (4)
7325:24;7326:8,10,12
easier (8)
7243:2;7256:21;
7291:6;7353:9;
7370:13;7414:13,16;
7438:20
easiest (2)
7259:18;7291:6
easily (1)
7250:8
East (1)
7365:7
easy (3)
7256:19;7335:22;
7407:16
echo (1)
7342:15
econometric (3)
7274:18;7284:17;
7285:18
economic (3)
7285:17;7384:19;
7427:8
Economics (2)
7392:16;7396:3
Economist (3)
7222:1;7223:10;
7392:21
Economists (1)
7427:10
economy (3)
7341:4,6;7379:25
educate (3)
7340:7;7367:21,25
education (1)
7340:6
educational (1)
7341:11
effect (6)
7241:24;7339:3;
7346:8;7347:12;
7355:17;7365:7
effective (1)
7247:17
effectively (2)
7250:14;7254:9
efficient (1)
7267:17
efficiently (1)
7308:21
effort (6)
7342:20;7343:3;
7361:9;7365:19;
7387:24;7394:17
efforts (1)
7331:13
eight (2)
7334:7
earned (1)
12
TRANTSCRIPT OF PROCEEDINGS - VOLUME XXXVINovember 12, 2015
7435:19;7439:11; 7440:8;7441:6
evening (3) 7283:22;7287:25; 7444:3
event (8) 7272:23;7233:16; 7390:24;7391:14; 7393:9;7398:6; 7403:23;7410:14
events (2) 7316:9;7393:6
Everett (9) 7224:9;7336:14, 16,19,22;7337:4;21; 7361:6;7382:5
E-V-E-R-E-T-T (2) 7224:10;7336:14
everybody (10) 7227:20;7228:7,8; 7322:22;7233:1; 7255:17;7269:17; 7290:11;7350:25; 7380:11
everyone (10) 7229:22;7231:4; 7261:11;7267:6; 7273:14;7300:14; 7359:25;7405:12; 7406:15;7408:7
evidence (57) 7221:8;7266:21; 23,25;7267:3,10,11, 13;7298:18,20,22; 7299:9,10,12; 7300:23;7311:22,23, 25;7237:18,20; 7334:3;7336:10; 7348:3,15,16,17,19; 7360:7;7362:12,13; 17;7363:3;7375:4; 7377:10,11;7378:6, 41;7381:19,20,22; 7389:24;7412:7,9; 11,7432:24;7435:6, 7,10,11,14;7437:14, 15;7438:7,19; 7439:23;7440:11; 7441:9;7443:20
evolved (2) 7229:24;7441:11
exact (4) 7305:10;7308:22; 7402:2;7408:24
exactly (8) 7256:21;7258:8; 7296:16;7381:8; 7405:2;7422:6; 7429:25;7442:16
exam (1) 7250:5
EXAMINATION (8) 7232:15;7261:12;
<table>
<thead>
<tr>
<th>7338:10;7364:16;7388:13</th>
<th>7392:7</th>
</tr>
</thead>
<tbody>
<tr>
<td>heading (5)</td>
<td>7256:8,11;7365:13;7373:20;7434:11</td>
</tr>
<tr>
<td>7233:21,22;7234:4;7365:12;</td>
<td></td>
</tr>
<tr>
<td></td>
<td>7392:7</td>
</tr>
<tr>
<td>headlined (1)</td>
<td>7290:12</td>
</tr>
<tr>
<td>heads (1)</td>
<td>7283:19</td>
</tr>
<tr>
<td>health (3)</td>
<td>7339:8;7340:10;7341:22</td>
</tr>
<tr>
<td>7227:7;7229:15;7268:10;7269:4;</td>
<td></td>
</tr>
<tr>
<td>7270:3;7285:17;7286:24;7332:11;740:20;7424:4;7437:6;8;7441:1</td>
<td></td>
</tr>
<tr>
<td>heart (18)</td>
<td>9,16,19,20;7227:8;13,17,23;7223:8;7236:2;7243:11;7270:11;7284:23;</td>
</tr>
<tr>
<td>7285:8,15;7295:15;7308:16;7318:10;7330:22;7331:22;7335:2;7342:4;22;7343:10;14;7345:6;7347:16;7354:17;7359:8;7362:13;7365:9;7369:19;7374:2;7377:10;7382:10,11,13,14;7388:6;7390:18;7393:8,13;7407:2,4;7429:5,12,18;7440:22,23,7441:5;7443:8,8</td>
<td></td>
</tr>
<tr>
<td>hearing (56)</td>
<td>7221:4,8,7225:6,7;9,16,19,20;7227:8;13,17,23;7223:8;7236:2;7243:11;7270:11;7284:23;7285:8,15;7295:15;7308:16;7318:10;7330:22;7331:22;7335:2;7342:4;22;7343:10;14;7345:6;7347:16;7354:17;7359:8;7362:13;7365:9;7369:19;7374:2;7377:10;7382:10,11,13,14;7388:6;7390:18;7393:8,13;7407:2,4;7429:5,12,18;7440:22,23,7441:5;7443:8,8</td>
</tr>
<tr>
<td>7338:9,21,7340:3,14</td>
<td>7341:22</td>
</tr>
<tr>
<td>held (4)</td>
<td>7307:21;7328:22;7393:8;7435:15</td>
</tr>
<tr>
<td>help (15)</td>
<td>7225:23;7226:8;7259:13;7273:9;7311:15;7321:12;7325:6;7329:20;7330:4;7348:2;7363:16;7373:3;7430:3,12;7433:18</td>
</tr>
<tr>
<td>hospitals (12)</td>
<td>7308:17;7311:11;7327:23;7379:20;7391:7,17;7397:11;7398:14;7411:9,11;7416:6;7420:9</td>
</tr>
<tr>
<td>helpful (9)</td>
<td>7231:7;7234:4,12;7289:13,18,25;7338:7;408:7</td>
</tr>
<tr>
<td>helping (2)</td>
<td>7393:20;7396:19</td>
</tr>
<tr>
<td>holds (3)</td>
<td>7249:7;7320:7;7358:11</td>
</tr>
<tr>
<td>Henry (1)</td>
<td>7221:25</td>
</tr>
<tr>
<td>H-E-N-R-Y (1)</td>
<td>7221:25</td>
</tr>
<tr>
<td>herd (3)</td>
<td>7338:24;7339:4;7371:8</td>
</tr>
<tr>
<td>Here's (3)</td>
<td>7374:23;7420:12;7432:13</td>
</tr>
<tr>
<td>hey (1)</td>
<td>7331:2</td>
</tr>
<tr>
<td>Hickman (2)</td>
<td>7303:18;7319:5</td>
</tr>
<tr>
<td>hide (1)</td>
<td>7335:13</td>
</tr>
<tr>
<td>high (7)</td>
<td>7255:4;7338:1;7341:24;7346:11;7364:19;7396:5;7443:24</td>
</tr>
<tr>
<td>higher (12)</td>
<td>7250:14,22;7251:11,14;7266:8;7326:18,22;7328:6;7342:2;7366:23;7371:4</td>
</tr>
<tr>
<td>highlight (4)</td>
<td>7239:3;7283:14;7369:7431:6</td>
</tr>
<tr>
<td>highlighted (10)</td>
<td>7295:16;7399:12;7408:5,19,23;7409:24;7410:2;20;7411:23</td>
</tr>
<tr>
<td>Hillside (3)</td>
<td>7394:23;7395:17;7405:16</td>
</tr>
<tr>
<td>Hilmar (1)</td>
<td>7334:21</td>
</tr>
<tr>
<td>himself (1)</td>
<td>7438:1</td>
</tr>
<tr>
<td>hinged (2)</td>
<td>7239:9;7421:6</td>
</tr>
<tr>
<td>historically (1)</td>
<td>7441:21</td>
</tr>
<tr>
<td>history (1)</td>
<td>7319:16</td>
</tr>
<tr>
<td>hold (4)</td>
<td>7270:9;7392:14;7429:12;7438:21</td>
</tr>
<tr>
<td>holders (12)</td>
<td>7308:17;7311:11;7327:23;7379:20;7391:7,17;7397:11;7398:14;7411:9,11;7416:6;7420:9</td>
</tr>
<tr>
<td>holding (2)</td>
<td>7305:18;7317:13</td>
</tr>
<tr>
<td>holds (3)</td>
<td>7327:27;7329:7;7367:6</td>
</tr>
<tr>
<td>Hollon (5)</td>
<td>7230:1,6;7281:8;7433:14,16</td>
</tr>
<tr>
<td>home (5)</td>
<td>7341:14;7364:10;17;7389:7;7392:19</td>
</tr>
<tr>
<td>honestly (3)</td>
<td>7328:2;7331:25;7432:13</td>
</tr>
<tr>
<td>Honor (76)</td>
<td>7221:18;7223:1;7224:13;7226:11;7229:4;7231:24;7237:7;7256:17;7257:25;7258:11;7259:8;7261:3,14;19;7262;19,23;7266:16;7267:14,16;7269:14;7270:8;7273:7;7274:22;7275:15;7276:10;7283:17;7285:21;7288:14;7289:7;7298:12,13;7299:20;7300:10;7311:18;7312:1,6;7318:21;7337:10;7347:23;7359:13;7382:3;7389:15;7390:6;7391:21;7392:4;7394:2,7;7397:3;7399:24;7403:3;7404:24;7406:5,19;7407:20;7408:10,17;7411:14,25;7412:12;7419:11;7424:3</td>
</tr>
<tr>
<td>hundreds (6)</td>
<td>7314:19;7338:11;7384:15;7418:12,3</td>
</tr>
<tr>
<td>hundreds (1)</td>
<td>7305:19</td>
</tr>
<tr>
<td>hundredweight (44)</td>
<td>7244:1,15,17;7245:8;7246:11;7247:15;7248:4;7249:8;7252:5;7254:3;7256:2,9;7263:8,13,14;7264:6,17;7265:7;7266:5;7273:25;7276:15;7277:18;7280:6;7291:22,24;24;7292:7,9,17,18,20;21;7293:10;7308:11;7340:5;7342:2,11;7371:20;7372:8;7373:2;7375:9;7380:23,24</td>
</tr>
<tr>
<td>hundredsweights (1)</td>
<td>7244:20</td>
</tr>
<tr>
<td>hungry (1)</td>
<td>7271:6</td>
</tr>
<tr>
<td>hurdle (1)</td>
<td>7418:20</td>
</tr>
<tr>
<td>hurry (1)</td>
<td>7433:20</td>
</tr>
<tr>
<td>hypothetically (1)</td>
<td>7432:5</td>
</tr>
<tr>
<td>hypotheticals (1)</td>
<td>7315:14</td>
</tr>
</tbody>
</table>
imagine (4) 7229:13,15; 7428:22;7429:13
improve (6) 7339:9,10,19; 7342:20,22;7434:4
improved (1) 7359:2
improvement (2) 7368:14;7371:8
inaccurate (1) 7274:5
inappropriate (1) 7453:17
Inc (5) 7222:13,14,15,25; 7363:20
Incentive (6) 7368:17;7369:9,20;7370:5,23; 7375:12
inclusion (1) 7369:10
inclusion (1) 7366:8,20;7367:18
including (8) 7305:19
includes (1) 7243:12;7295:24,25;7298:5;7301:21;7391:20;7394:21
indexed (1) 7305:19
including (8) 7221:13;7267:3;7307:19;7310:25;7314:4;7317:5;7364:6;7408:4
inclusion (1) 7391:15
inclusive (1) 7254:19
income (2) 7327:10;7329:2
incorporate (1) 7423:17
Incorporated (11) 7224:8;7234:12;7337:7,24;7339:21;7340:19;7361:7;7393:19;7413:20;7422:12;7439:6
incorporates (1) 7414:3
incorporating (1) 7423:3
incorporation (1) 7423:3
information (24) 7227:6;7229:22;7231:12;7259:14;7280:25;7285:7,9;7281:17;7237:7;7335:2;7343:8,15;7354:18;7355:5;7368:16;7372:10;7387:25;7412:2;7425:3,9;7428:1;7441:10,12,19;7442:6
incorrect (1) 7387:2
incorrectly (1) 7404:24
increased (6) 7254:5;7306:15;7338:23;7341:13;7369:11;7386:21
increases (2) 7249:24;7247:347:3
increasing (1) 7247:347:3
increased (6) 7236:1;7255:18;7281:6;7296:22;7311:10;7340:9;7365:5;7377:23;7378:8;7393:8;7360:18;7408:24
include (12) 7236:1;7255:18;7281:6;7296:22;7311:10;7340:9;7365:5;7377:23;7378:8;7393:8;7360:18;7408:24
impossible (4) 7268:11;7284:19;7287:6;7306:10;7336:17,18
increased (6) 7254:5;7306:15;7338:23;7341:13;7369:11;7386:21
increases (2) 7249:24;7247:347:3
increasing (1) 7247:347:3
increased (6) 7236:1;7255:18;7281:6;7296:22;7311:10;7340:9;7365:5;7377:23;7378:8;7393:8;7360:18;7408:24
indexes (1) 7241:14
indicate (5) 7269:16,25;7312:10;7379:1;7439:21
indicated (5) 7273:21;7339:20;7345:1;7354:23;7361:16
indicates (4) 7348:8;7347:14;7350:20;7439:8
indicating (4) 7320:1;7343:13;7364:14;7377:11
indication (1) 7261:20
individual (2) 7239:7;7292:12
industry (15) 7340:9;7341:23;7352:6;7361:1,18;7364:14;16,23;7365:4;7367:24;7368:7,10,11;7374:5;7381:7
industry's (1) 7365:9
influence (1) 7442:14
influx (1)
initial (6) 7268:11;7284:19;7287:6;7306:10;7336:17,18
initially (2) 7312:21;7353:25
initials (3) 7357:24;7358:1;7371:6
initiative (2) 7353:15;7368:20
inn (1) 7252:25
inner (1) 7396:6
integrated (1) 7339:12
intend (4) 7276:11;7398:4;7402:1;7424:16
intense (1) 7389:13
interest (14) 7390:22;7391:2,4;7400:8,25;7401:18;7402:10;7410:17;7411:7;7416:23;7422:9;7427:19;7428:20;7430:13
intention (4) 7334:13;7419:1,11;7431:10
intents (1) 7411:5
interest (7) 7245:10;7334:17;17;7356:16;7367:22;7394:6;7411:25
interested (4) 7250:6;7285:10;7268:21;7438:15
interesting (3) 7427:2;7436:13;7439:23
interests (2) 7393:23;7394:8
interference (1) 7331:23

Min-U-Script® Barkley Court Reporters

(18) imagine - interfere
interpret (1) 7364:18
interrupt (6) 7338:18,21;7341:5; 7,9,7344:14,18; 7348:1,6,12,20,25; 7351:3;7356:4,10, 25;7357:14,16,24; 7358:3,5,8,10,19; 7359:3,11,14,17,20, 25;7360:9,13; 7365:12;7367:14; 7370:9,13,15,17; 7371:2,4,9,12; 7372:1,15,17,19,22; 7373:1,4,9,12,16,19, 22;7374:9,13; 7375:2,7,7376:3,7,9,12,15;7377:17,21; 7381:11,16,25; 7382:9,11,16,19; 7383:1,21;7385:11; 7386:6,17,23; 7388:23;7389:6,12, 17,20;7390:1,5; 7391:24;7392:5,9; 7393:24;7394:5,9, 11,15;7395:3,10; 7397:2,4,19,21; 7398:2,21;7399:3,6, 17,22,25;7400:18,20;23;7401:16; 7402:18,21,24; 7403:2,4,6,9,13; 7404:3,6,13,22,25; 7405:24;7406:3,6,9, 11,14,14;7407:7,13; 16,22;7408:14,18; 7409:8,14,16; 7411:16;7412:4,14; 7415:5,7,12,21; 7423:24;7428:11; 7430:18;7431:8,13; 19;7432:8,15; 7433:2,8,15,17,22; 25;7434:3,5,6,9, 7,9,7435:3,6,9,12;7436:2,9, 11,20;7437:1,20; 7438:8,15,23; 7393:5,7;7440:2,10; 7441:1,7442:10,24; 7443:6,11

K
KDC (1) 7379:4
KDDC (13) 7360:25;7361:1,4; 7362:2,24;7367:4, 21;7368:3,6,9,12;7369:21;7367:24
KDDC's (3) 7362:22;7368:7; 7374:19
KDIP (2) 7368:15,23
keep (8) 7228:2,6,7254:22; 7258:3,7317:20,22; 7318:2,7385:2
keeping (1) 7329:24
Kentucky (44) 7224:6,12;7337:6; 7346:2,7360:23,24, 25;7361:1,2;7363:9; 7364:10,13;7367:2, 3,8,9,22,25;7368:15, 14,16,17;7369:6,9; 10;7370:6,24; 7371:11,23;7372:4, 12,7379:10,14,17; 20,22,23,25; 7380:12;7383:11,12, 13,17,18
Kentucky's (6) 7367:6,23; 7369:21,23;7370:20; 7371:13
key (2) 7306:2,7,374:15
kind (18) 7232:24,7234:9; 7237:10,12;7290:23, 24;7352:20; 7369:12;7396:14; 7406:13;7413:14; 7414:6,9,10; 7415:25;7430:5; 7432:4,7442:5
kinds (2) 7317:9,7440:12
knew (2) 7396:14;7433:20
knowing (2) 7227:2,7268:11
knowledge (2) 7421:8,24
knowledgeable (1) 7231:9
known (2) 7332:9,7336:19
knows (1)
loose (2) 7229:5,7262:15
lunch (6) 7228:16,7269:2;
7333:14,20,7335:24;
7422:11
LUND (54) 7223:17,17;
7228:12,7270:7;
7271:5,7301:2,15;
7312:9,7313:20;
20,7314:7,10,14,23;
7315:1,6,11,18;
7316:1,4,12,20,23;
7318:5,7321:8;
7322:17,20,24;
7323:3,9,14,17,21;
7325:1,7326:16,17;
21,7327:14,15;
7328:16,23,7329:5,
10,14,18,23,25;
7330:8,14,7332:13,
21,7333:3
L-U-N-D (1) 7223:17

 Ma'am (13) 7365:13,14;
7370:14,16;7371:16;
7372:2,18;7373:15;
7374:12,7375:6;
7377:20;7387:22;
7388:4
Madison (1) 7377:23
mailbox (2) 7276:20;7371:19
main (1) 7340:7
Maine (4) 7223:7,7334:12;
7433:7,7443:24
maintain (6) 7305:7,7317:10;
7324:18,20,7340:3,
7366:15
maintaining (6) 7307:18,20;
7317:4,7341:21;
7342:17
make (1) 7377:23
makes (5) 7260:11,7311:10;
7347:11,7380:6;
7348:15
making (10) 7221:8,7256:21;
7347:4,7361:11;
7332:2,7380:7;
7393:14,7394:20;
7412:2,7440:14
Man (1) 7363:13
manage (1) 7313:18
managed (1) 7375:8
management (5) 7313:18,7357:12,
19,7368:20,7369:2
manager (4) 7331:8,7363:25,
25,7364:4
manner (3) 7353:21,7404:18;
7435:12
manufacture (1) 7303:24
manufactured (5) 7254:14,7303:22;
7316:10,15,7352:18
manufacturing (3) 7274:13,7350:20,
21
manure (6) 7339:10,7353:12,
18,20,22,7357:20
many (9) 7222:2,7274:20;
7315:13,7391:10;
7351:13,7369:17;
7388:2,7408:15
March (2) 7307:3,10
marching (1) 7437:20
marginal (2) 7287:11,14
mark (10) 7232:3,7273:7,10;
7283:9,19,7290:14;
7300:5,7359:22;
7389:14,7436:3
marked (14) 7273:12,7283:8,
11,14,16,7290:17;
7300:8,7337:2,14;
7359:24,7389:19;
7436:5,17,22
Market (35) 7235:15,7239:19;
7241:17,7285:6;
7308:24,7322:19,23;
7329:18,22,7342:3,
11,20,7343:1,4,7,11;
7346:12,7347:17;
7349:11,13,7352:7;
7346:2,7367:4,5;
7368:17,7369:8;
7372:10,7374:8,11;
7386:18,7392:25;
7425:8,25,7426:8
marketed (1) 7369:25
Marketing (45) 7221:20,22;
7222:1,7265:19;
7288:17,19,7294:14;
7299:6,7327:22;
7341:20,7343:6,8,
22,7350:6,7352:23;
7353:3,7358:23;
7361:10,7362:10;
7363:10,20,7365:5,
15,7375:16;
7380:15,7384:9;
7390:25,7391:6;
7393:7,14,18;
7394:17,19,7402:11;
7406:20,7407:5,10,
12,14,18,19,7409:7;
7413:5,7435:22
marketplace (6) 7275:25,7308:18;
7341:18,7432:23;
7349:11,7378:21
markets (12) 7303:24,7307:7,
7308:13,7313:3,5,7,
8,9,11,7356:17,20;
7380:11
market's (1) 7285:3
marking (2) 7257:4,7363:26
married (1) 7302:10
Marvin (9) 7222:2,7229:21;
7277:7,7286:9;
7297:25,7318:8;
7351:7,7383:7;
7419:25
IN RE: MILK IN CALIFORNIA

TRANSCRIPT OF PROCEEDINGS - VOLUME XXXVII
November 12, 2015

Minor (3)
730:17; 7397:14; 7410:11

Minority (4)
730:24, 24, 25; 7303:2

Negative (20)
7285:8

Nature (1)
7285:8

NDPSR (12)
7233:20; 7234:21, 22, 2, 23; 7235:8, 8; 7236:13; 7239:9; 7241:14; 7292:4; 7295:8, 20

Near (7)
7226:23, 23; 7317:3; 7372:8, 25; 7375:21; 7415:10

Nearly (3)
7301:19; 7371:24; 7395:21

Necessarily (1)
7443:13

Necessary (7)
7258:1; 7310:18, 25; 7398:15; 7399:24; 7401:22; 7442:20

Need (51)
7225:10; 7228:17; 7230:22, 23; 7231:6, 12, 7256:7; 7268:13, 20; 7269:24; 7270:2; 7271:15; 7273:13; 7274:1, 11; 7315:13; 7317:10; 7321:4; 7347:18, 20; 7348:1; 7350:22; 7358:23, 25; 7360:2; 4; 7366:20, 25; 7372:5; 7372:6; 7384:2; 7392:2; 7399:13; 7400:9; 7401:9, 18; 7403:22; 7404:18, 20; 7410:16; 7422:5; 7423:19; 7426:14; 7427:18, 20; 7428:4; 7429:9, 11; 7346:15; 7437:24

Needless (6)
7247:5; 7268:3; 7352:5; 7402:9, 2; 7409:2, 6

Negating (1)
7276:1

Needs (13)
7270:3, 5; 7271:13, 17, 19; 7300:13; 7304:6; 7349:10, 11; 7374:8, 11; 7382:21; 7417:20

Needle (1)
7396:20

Negative (20)
7278:4, 8, 11; 7282:3, 5; 7283:5; 7291:7; 7343:13, 21, 21, 22, 23, 24, 24; 7344:19; 7345:11, 13;
IN RE: MILK IN CALIFORNIA

TRANSCRIPT OF PROCEEDINGS - VOLUME XXXVI
November 12, 2015

Negatively (1)
7354:20;7361:15

7384:12

Negate (1)
7350:4

Negated (1)
7364:6

Negotiating (1)
7364:5

Negotiation (1)
7350:18

Negotiations (2)
7306:2,6

Neither (2)
7238:21;7391:18

Nets (1)
7317:25

Netting (1)
7281:11

Network (1)
7229:19

Nevertheless (6)
7351:19;7397:17;21,22;7400:4;7404:17

New (32)
7261:9;7273:20;7283:9;7299:2;7313:13;7334:20;7336:1,22;7339:17,18;7360:23;7362:25;7364:10;7365:10;7369:16;7386:5;7387:18,19;7388:16;7396:8,9;7398:8;7402:11;7403:23;7415:13;7418:24;7426:19,23;23;7429:17

Newly (1)
7267:5

News (9)
7227:17;7235:15;7241:17;7260:20;7355:4,5;7382:8,17,20

Next (26)
7226:18;7228:9;7230:3;7234:8;7255:24;7264:10;7270:11;7273:7;7283:8;7293:13;7300:2;7318:4;7323:20;7338:17;7351:1;7356:4;7359:18;7373:20;7378:25;7383:21;7389:9;7406:4,7;7428:11;7436:10;7437:20

Nice (3)
7296:7;7388:17;7432:22

Nicole (5)
7223:15;7228:10;7301:5;7329:9;7349:3

Night (1)
7229:16

Nine (1)
7230:3

Nobody (2)
7347:10;7442:8

Noise (2)
7252:9,14

Noisy (1)
7252:24

Non-admissibility (1)
7435:9

None (13)
7230:15;7231:19;7237:21;7266:22;7267:10;7298:19;7299:9,15;7311:23;7333:3;7348:17;7381:19;7393:17

Nonetheless (1)
7439:24

Non-exempt (2)
7332:22;7421:14

Nonfat (25)
7234:24;7236:16;7237:21;22;24;7238:12;7239:10,15;7279:9;7291:14,19;20;7304:1;7308:10;7326:22;7396:25;7397:12;7402:19,21;7405:4;7414:25;7415:8;7425:21;7429:23

Nonprofit (1)
7368:6

Non-quota (2)
7397:3,4

Nope (1)
7313:11

Nor (1)
7238:21

Normal (2)
7315:19,19

Normally (6)
7260:10;7264:8;7316:20;7388:1;7413:7;7439:6

North (3)
7352:5,16;7360:23

Northern (7)
7252:6;7264:10;11,21;7265:3;7303:24;7305:24

Notable (1)
7393:21

Notation (1)
7261:21

Note (11)
7223:5;7307:21;7325:5;7400:7,24;25;7401:16,17;7402:2;7425:7;7442:17

Noted (10)
7246:25;7247:25;7246:6;7256:11;7274:9,10;7294:12;7327:6;7365:22;7402:7

Noteworthy (1)
7393:7

Notice (11)
7224:25;7390:18;7408:22;7435:22,24;7440:4,5,10;7441:5;7443:11,14

Noticed (2)
7287:25;7440:6

No-till (1)
7339:9

Notwithstanding (2)
7361:14;7362:1

NOVEMBER (5)
7221:1,2;7334:1;7392:12;7395:24

Nuance (4)
7244:11;7249:5;7259:21

Number (64)
7222:13,19,23;7262:12;7230:9,9;7232:6;7237:12;7244:22;7254:8;7260:7;7261:5;7266:24;7267:12;7273:11;7275:1,5,6;7,10;7279:10;7280:16;7283:10,15;7284:7,8,11;7289:23;7290:16;7291:2;7294:23;7297:14;7298:21;7299:11;7300:2,7;7301:24,25;7311:24;7315:6;7316:1;7327:3;7334:18;7337:1;7348:18;7359:23;7365:25;7367:10,25;7376:13;7378:23;7379:8;7381:14,15,21;7389:18;7393:9;7404:12;7412:10;7435:9

Objective (6)
7340:7;7368:18;7369:15;7373:25;7422:4;7427:7

Objectives (2)
7361:12;7428:7

Objection (10)
7266:20;7267:3;7298:17,18;7299:8;7333:9;7348:16;7407:8,9;7412:4

Objections (6)
7266:21;7267:9;7311:22;7381:18;7412:7;7435:9

Ohio (2)
7392:12,16

Ohio-based (1)
7363:15

O’Lakes (10)
7222:15,21;7245:7,16;7256:6;7348:18,19;21;7437:9;7438:2,4

Old (2)
7360:23;7426:22

Oliver (2)
7222:16,16

Omits (1)
7258:20

Omitted (2)
7257:6;7294:14

Once (4)
7235:19;7241:5;7245:20;7263:20
IN RE: MILK IN CALIFORNIA

TRANSCRIPT OF PROCEEDINGS - VOLUME XXXVI

November 12, 2015

per (40)
7246:11;7247:7, 12;7256:9;7257:8; 7263:10,11,12,14; 7265:5,6;7273:24; 7276:15;7277:18; 7291:23;7292:6,7, 18,20;7293:9,24; 7309:16,21;7310:6, 7;7319:16,17;7320:1; 7324:15,16,17,21; 7328:15,21;7400:18,22; 7429:22

percent (33)
7243:23,23; 7244:18,18;7304:2, 4,6,9;9,10,11,12; 13;7315:4,10; 7317:16;7319:24,25; 7320:1,6,10,17; 7323:12;7327:3; 7331:10;7342:10; 7380:9,15,16,22,23; 7384:15

percentage (3)
7316:24,7351:20; 7369:25

perfectly (1)
7412:1

performance (4)
7321:1;7347:7,9; 7440:19

performing (1)
7364:20

perhaps (5)
7297:11;7325:8; 7334:9;7348:2; 7429:11

period (18)
7233:2,3,6; 7235:24;7244:3; 7255:9,7264:3; 7268:24;7268:7; 7326:8,10,7327:2; 7346:25;7371:17; 7372:19;7373:17; 7385:7,7395:22

periods (4)
7235:17;7248:21; 7287:4,9

perjury (4)
7300:23;7336:10; 7360:7;7389:24

permanent (5)
7233:9;7244:8,11; 7246:13;7253:15

permit (1)
7230:19

permitted (2)
7299:14;7438:11

person (2)
7337:3;7473:25

personal (1)
7334:17

personally (1)
7328:25

perspective (3)
7343:17;7380:2; 7387:19

pertain (1)
7441:15

petitioned (1)
7342:22

PhD (1)
7269:21

Philadelphia (1)
7302:2

phrase (5)
7317:5;7405:25; 7414:21,7415:19; 7416:13

physical (1)
7332:14

Piccadilly (1)
7252:25

pick (5)
7243:7;7248:16; 7252:21,7371:14; 7376:16

picked (1)
7259:23

picks (1)
7256:4

piece (6)
7235:12;7240:6; 7242:11,7253:10; 7258:19;7263:22

pieces (5)
7230:4,8;7253:12; 7269:14,7293:3

piling (1)
7297:5

pinpoint (1)
7430:25

pinpointing (1)
7256:21

pizza (4)
7269:2;7271:5; 7335:5,6

pizzas (2)
7228:15,7270:15

place (7)
7255:23,7324:3;

pound (15)
7245:10;7247:11,
7391:14;7397:8,24;7399:8;7400:3;7419:9;7417:11;7430:11;7431:10,20;21;7437:2,4
regarding (3) 7258:13;7272:21;7345:18
regardless (2) 7305:13;7410:14
regards (2) 7266:11;7428:22
region (15) 7341:14;7342:9;7345:4,7,16;7361:21,23,25;7364:5;7365:20,21;7368:17;7378:7;7385:19;7437:3
regional (7) 7285:5;7363:19;25,25;7364:2,4;7368:15
regionally (1) 7364:24
regions (11) 7345:16,20;7362:4,8;7363:4;7366:9;7376:23;7377:1,5;7378:9
region's (1) 7344:20
regions's (1) 7342:12
Register (3) 7403:25;7409:10;7418:18
registered (1) 7364:11
reg (1) 7408:25
regular (25) 7408:25
regularly (2) 7306:17,23;7307:1,6,24;7311:1,9;7322:14,19,20,23;7327:10,22,25;7328:5,7,9,11,20;7329:1,7;7426:9;7427:9,10,13
regulated (15) 7233:6,5;7242:20;7253:15;7272:18;7273:6;7275:24;7276:2,8,21,7277:1;7291:17;7315:23;7324:17;7342:23
regulation (4) 7246:13;7342:25;7343:6;7414:3
regulations (6) 7340:10;7353:14;7357:11;7409:4;7411:19;7421:8
Regulatory (4) 7222:2;7341:12;7345:18;7204:7
reject (1) 7443:17
relabel (1) 7258:23
related (7) 7239:11,17;7242:11;7292:19;7307:19;7317:5;7361:20
relating (2) 7426:8;7440:9
relation (1) 7349:10
relations (1) 7305:23
relative (16) 7426:13,16
relations (2) 7242:6
relative relationships (2) 7285:5,14
relative (16) 7338:7,7408:4;7411:17,18;7432:11
reporting (3) 7424:15;7426:7;7434:9
reports (6) 7364:3;7401:23,25,25;7409:18,20
represent (12) 7236:7,7255:4;7307:14;7318:9;7349:4;7351:8;7367:21;7383:9;7420:5;7423:16,18;7424:6
representative (5) 7223:9;7272:16;7438:1,2;7443:2
representatives (3) 7363:21;7364:1;7368:10
represented (6) 7240:6;7251:5;7299:5;7420:16;7422:13;7426:17
representing (8) 7223:15;7224:6;7231:3;7301:5;
IN RE: MILK IN CALIFORNIA

TRANSCRIPT OF PROCEEDINGS - VOLUME XXXVI
November 12, 2015

Min-U-Script® Barkley Court Reporters

represents (2) 7367:5;7420:12
request (6) 7259:9;7277:23;7345:9;7385:18;7408:5;7411:18
requested (1) 7378:4
requesting (1) 7284:21
requests (1) 7384:5
require (2) 7230:25;7321:9;7401:22;7409:20
required (9) 7241:9;7342:12;7353:14;7363:6;7366:20;7369:25;7378:9;7421:12
requirement (3) 7231:2;7421:7,22
requirements (7) 7327:20;7353:24;7374:1;7380:17,19;7393:18;7421:20
requires (2) 7227:23;7365:25
re-read (2) 7395:14;7401:13
re-running (1) 7260:4
researching (1) 7339:17
resembles (1) 7391:15
reserved (1) 7397:16
reside (1) 7368:9
resident (1) 7226:3
respect (22) 7229:22;7297:25;7298:1;7314:8;7319:23;7320:17;7353:12;7354:14,14;7385:19;7386:20;7388:19;7409:12,12;7421:11;7425:18;7427:4,18;7435:5;13;7437:9,13
respectful (1) 7229:12
respectfully (1) 7345:9
respective (6) 7252:5;7391:20;7392:3;7399:21,22;7404:15
re-spell (1) 7308:5
respond (5) 7226:24;7231:14;7276:7;7300:18;7312:11
responding (1) 7440:10
response (3) 7282:4;7300:19;7437:1
responsibility (2) 7320:9;7343:5
responsible (4) 7334:22;7353:21;7364:4;7426:3
rest (9) 7270:10;7275:8;7309:18;7311:9;7325:15;7384:11;7386:22;7390:23;7430:14
restate (1) 7248:21
restated (7) 7248:19;7253:13;15;7263:6;7264:7;17;7265:23
restaurants (1) 7396:7
result (5) 7265:2;7274:12;7285:16;7375:18;7391:18
resulted (3) 7306:4;7374:3
resulting (2) 7363:19;7394:17
results (4) 7291:16;7372:3;7373:17;7384:19
resume (2) 7261:12;7275:14
retail (1) 7396:7
retailers (1) 7305:23
retain (2) 7391:4,8
retained (1) 7402:11
retired (2) 7364:9;7392:11
retirement (2) 7395:24;7396:1
retrieve (1) 7439:12
return (3) 7226:17,24;7338:8
returned (2) 7338:6,13
revenue (2) 7326:1;7371:23
review (5) 7294:24;7331:10;7344:21;7357:11,19
reviewed (2) 7294:8,12
reviewing (1) 7289:2
revised (2) 7362:17;7377:15
revoked (1) 7365:18
Richard (9) 7224:11;7359:19;21;7360:11,16,22;7370:21;7387:9;7391:3
R-I-C-H-A-R-D (1) 7360:12
richly (1) 7254:13
Richmond (18) 7221:21,21;7323:21,23,24;7356:5,6,6;7383:22,24,25;7384:3;7407:12;7428:12,14,15;17;7430:16
R-I-C-H-M-O-N-D (1) 7221:22
Right (149) 7227:6,15;7321:18;7324:6;7329:25;7244:7;7245:9;7247:24;7249:4;7254:5,5;7255:24;7256:3,8,19;7257:13;7258:7,24;7260:18;7262:13,15;7263:6,7;7270:25;7271:1,11;7273:9;7276:25;7277:8;7280:19;7282:17;7288:2,21;7290:21;7296:19,19,24;7298:9;7299:4,5,8,13,25;7300:21;7302:22;7303:4;7308:4,9,7313:25;7315:4,8,11;7316:22;7318:22;7323:18;7328:17,20;7329:4,13;7333:10,18;7335:4,7,16;7336:3,7,21;7338:18;7344:18;7348:12,13;7351:18;7352:19;7355:14;7358:4,8,11;7359:14,17,25;7360:5;7370:11,13,17;7371:2,12;7372:17,22;7373:3,4,12,16,19;7374:9,13,13;7375:2,7;7376:8,15,21;7377:17,18,21;7380:20;7381:8,11;7382:20,20;7385:25;7389:8,20,21;7392:5,7;395:3;7396:22;7397:5;7398:21;7399:17;7400:20,23;7404:6,13,12,22;7405:24;7406:3,6;7408:14;7409:4,8,25;7412:14;7417:12;7418:10,13;7421:15,16;7423:14;7430:2;7431:8,25;7432:5,15;7433:25;7436:2,11,14
rights (1) 7325:21
rise (1) 7382:3
risk (2) 7286:10;7442:1
risks (2) 7441:12;7442:4
Riva (5) 7223:19,19;7335:9,12,14
Riva's (1) 7335:8
Rives (5) 7223:15,20;7301:5;7335:12,13
Road (4) 7337:23;7338:1;7360:24;7441:4
Rob (2) 7224:3;7334:20
role (1) 7426:13
rolling (1) 7380:22
root (2) 7321:18;7421:24
room (9) 7224:19;7228:7,8;7229:5;7270:21,24,27;7271:15;7378:21;7406:15
rooted (1) 7254:13
rotary (1) 7338:22
round (2) 7287:7;7386:24
rounds (1) 7320:24
routine (1) 7323:13
row (9) 7233:22,23;
specified (3) 7309:20,7390:21; 7391:14
spelled (2) 7223:12,7251:19
spelling (1) 7326:14,7327:19
spent (2) 7221:12,7244:14
spending (2) 7388:9,7398:16
spend (3) 7324:25,7391:19,7392:19
stands (1) 7206:19
standing (1) 7210:12,7219:22
standardization (1) 7366:3
standards (5) 7263:14,7370:2,7371:7,7440:19
<table>
<thead>
<tr>
<th>Page</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>24th</td>
<td>November 12, 2015</td>
</tr>
<tr>
<td>3rd</td>
<td></td>
</tr>
<tr>
<td>7414:24</td>
<td>7418:4</td>
</tr>
<tr>
<td>75 (5)</td>
<td>99 (2)</td>
</tr>
<tr>
<td>7304:6,8,9; 7319:25;7320:17</td>
<td>7291:20;7292:5</td>
</tr>
<tr>
<td>75,000 (1)</td>
<td>9th (2)</td>
</tr>
<tr>
<td>7344:2</td>
<td>7424:16,23</td>
</tr>
<tr>
<td>7378:21</td>
<td>8</td>
</tr>
<tr>
<td>7365:23</td>
<td>8,240 (1)</td>
</tr>
<tr>
<td>7278:11</td>
<td>7372:5</td>
</tr>
<tr>
<td>76.5 (1)</td>
<td>8,240,000 (1)</td>
</tr>
<tr>
<td>7344:2</td>
<td>7372:13</td>
</tr>
<tr>
<td>7378:21</td>
<td>8.685 (5)</td>
</tr>
<tr>
<td>7365:23</td>
<td>7243:23;7244:19; 7245:10;7256:9; 7291:23</td>
</tr>
<tr>
<td>7278:11</td>
<td>8.7 (3)</td>
</tr>
<tr>
<td>7342:6;7366:2</td>
<td>7244:18,22; 7245:10</td>
</tr>
<tr>
<td>7342:6;7366:2</td>
<td>801 (2)</td>
</tr>
<tr>
<td>7319:20; 7338:8</td>
<td>7437:17;7442:11</td>
</tr>
<tr>
<td>7315:21;7316:8; 7319:20; 7338:8</td>
<td>801d2 (7)</td>
</tr>
<tr>
<td>7315;10,15;7403:25</td>
<td>7226:22;7434:23; 7435:1,6;7437:16; 23;7442:20</td>
</tr>
<tr>
<td>7317:16;7320:17</td>
<td>801d2is (1)</td>
</tr>
<tr>
<td>95 (5)</td>
<td>7435:13</td>
</tr>
<tr>
<td>7247:12;7294:3; 7315:10,15;7403:25</td>
<td>85 (3)</td>
</tr>
<tr>
<td>7294:7</td>
<td>7249:21;7319:20; 7323:12</td>
</tr>
<tr>
<td>7221:3</td>
<td>86 (1)</td>
</tr>
<tr>
<td>7256:9</td>
<td>9 (1)</td>
</tr>
<tr>
<td>7367:18</td>
<td>9 (1)</td>
</tr>
<tr>
<td>9 (5)</td>
<td>9.5 (2)</td>
</tr>
<tr>
<td>7221:3</td>
<td>7342:6;7366:2</td>
</tr>
<tr>
<td>90 (2)</td>
<td>9:01 (1)</td>
</tr>
<tr>
<td>7319:20;7338:8</td>
<td>7221:3</td>
</tr>
<tr>
<td>900.8 (1)</td>
<td>90 (2)</td>
</tr>
<tr>
<td>7440:4</td>
<td>7319:20;7338:8</td>
</tr>
<tr>
<td>91 (5)</td>
<td>95 (1)</td>
</tr>
<tr>
<td>7315:21;7316:1, 10,16,18</td>
<td>7317:16</td>
</tr>
<tr>
<td>96.5 (1)</td>
<td>96.5 (1)</td>
</tr>
</tbody>
</table>