UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

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

VOLUME XXXVIII

<u>TRANSCRIPT OF PROCEEDINGS</u>

November 16, 2015

1   UNITED STATES DEPARTMENT OF AGRICULTURE

2   BEFORE THE SECRETARY OF AGRICULTURE

3   _____

4   In re:)   [AO]
)   Docket No. 15-0071
5   )
        Milk in California   )
6   _____)

7

8   BEFORE U.S. ADMINISTRATIVE LAW JUDGE
                     JILL S. CLIFTON
9
               Monday, November 16, 2015
10
                      9:00 a.m.
11

12   THE FALLS EVENT CENTER
             4105 West Figarden Drive
13   Fresno, California 93722

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             TRANSCRIPT OF PROCEEDINGS
16
                 VOLUME XXXVIII
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23 Reported by:

24 Myra A. Pish CSR
    Certificate No. 11613
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1   MONDAY, NOVEMBER 16, 2015 - - MORNING SESSION

2   JUDGE CLIFTON: We're back on record on November 16, 2015.

3 It is a Monday. This is Day 38 of the milk hearing. We are in

4 Fresno, California.

5   My name is Jill Clifton. I'm the United States

6 Administrative Law Judge who is assigned to take in the

7 evidence at this hearing. I would like to take appearances

8 now. I would like each of you to come to the microphone and

9 identify yourself. It's helpful if you say not only who you

10 are and who you work for, but what your job is.

11   I'm going to have my fellow United States Department of

12 Agriculture employees go first, and whether you are actively

13 participating or observing, I would like you to come forward.

14 And then after the USDA employees, I would like the proponents

15 and opponents, and then other participants to do likewise.

16   Let me talk to you a little bit about this microphone.

17 We will get very bad feedback if you don't talk right into it.

18 And so you need to speak loudly enough and talk right into it

19 so that the sound man does not have to increase the volume,

20 which would increase the feedback from the speaker that's very

21 near the microphone. All right. You may proceed.

22   MR. FRANCIS: Good morning, William Francis, Agricultural

23 Marketing Service, USDA Dairy Programs, Dairy Marketing

24 Specialist.

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

1   Program. I'm a Marketing Specialist with the Dairy Order

2   Formulation and Enforcement Division.

3   MS. ELLIOTT: Hello, my name is Pamela Elliott,

4   E-L-L-I-O-T-T, I am a Marketing Specialist with the USDA AMS

5   Dairy Program.

6   MS. BECKER: Good morning, Lauren Becker, I'm an Attorney

7   in the Office of the General Counsel.

8   MR. HILL: Good morning, Brian Hill, also an Attorney with

9   the Office of the General Counsel.

10   MS. DINH: Mai Dinh, M-A-I, D-I-N-H, I'm Assistant General

11 Counsel in the Office the General Counsel.

12   MR. VIERRA: Good morning, Brad Vierra, V-I-E-R-R-A, on

13 duty with the Federal Market Administrator's Office in Dallas,

14 Texas, Order 126.

15   MR. CARMAN: Good morning, Clifford Carman, C-A-R-M-A-N,

16 Assistant to the Deputy Administrator, Dairy Programs,

17 Agricultural Marketing Service, USDA.

18   MR. SCHAEFER: Henry Schaefer, H-E-N-R-Y, S-C-H-A-E-F-E-R,

19 Agricultural Economist for the Upper Midwest Milk Marketing

20 Order Federal Order 30 on detail with USDA Dairy Programs.

21   MS. COALE: Good morning, Dana Coale, C-O-A-L-E, Deputy

22 Administrator with Dairy Programs, Agricultural Marketing

23 Service, U.S. Department of Agriculture.

24   MR. BESHORE: Good morning, Marvin Beshore, M-A-R-V-I-N,

25 B-E-S-H-O-R-E, Attorney for the Proponents of Proposal

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1 Number 1, California Dairies, Inc., Land O'Lakes, Inc., and

2 Dairy Farmers of America, Inc.

3   MR. SCHAD: Good morning, my name is Dennis Schad,

4 S-C-H-A-D, I'm the Director of Milk Sourcing, Northeast,

5 Land O'Lakes.

6   MR. HOLLON: Hello, Elvin Hollon, E-L-V-I-N, H-O-L-L-O-N,

7 Dairy Farmers of America, Agricultural Economist.

8   MR. GARBANI: Pete Garbani with Land O'Lakes.

9   MR. ERBA: Eric Erba, E-R-I-C, E-R-B-A, with California

10 Dairies, Senior Vice President and Chief Strategy Officer.

11   MR. ENGLISH: Your Honor, good morning. Chip English,

12 E-N-G-L-I-S-H, Attorney with the law firm of Davis, Wright,

13 Tremaine, with my office in Washington, DC, and I'm here on

14 behalf of the Dairy Institute of California, Proponents of

15 Proposal 2.

16   MS. VULIN: Good morning, Ashley Vulin, A-S-H-L-E-Y. V --

17 as in Victor -- U-L-I-N, also an Attorney with Davis, Wright,

18 Tremaine, representing the Dairy Institute of California.

19   DR. SCHIEK: Good morning, William Schiek, S-C-H-I-E-K,

20 Economist with the Dairy Institute of California.

21   MR. DeJONG: James DeJong, D-e, J-O-N-G, Dairy Policy and

22 Economic Analyst for Hilmar Cheese, dairy farmer-owned

23 manufacturer of cheese, whey, and milk powder.

24   MS. HANCOCK: Nicole Hancock, an Attorney with Stoel Rives

25 representing the California Producer Handlers Association and

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1 Ponderosa Dairy.

2   MR. VANDENHEUVEL: Good morning, Rob Vandenheuvel,

3 V-A-N-D-E-N-H-E-U-V-E-L, with the Milk Producers Council.

4   JUDGE CLIFTON: Is there anyone who has not yet come to the

5 podium who expects to testify today? If so, would you please

6 come forward and tell us who you are?

7   MR. AIROSO: Good morning, Joey Airoso, J-O-E-Y,

8 A-I-R-O-S-O, and I'm here representing Airoso Dairy Family farm

9 located in the Southern San Joaquin Valley.

10   MR. BARCELLOS: Good morning, Tom Barcellos, T-O-M,

11 B -- as in boy -- A-R-C-E-L-L-O-S, representing T-Bar Dairy.

12   MR. VAN STEYN: Good morning, Case Van Steyn. That's

13 C-A-S-E, last name, V-A-N, space, S-T-E-Y-N, I'm a dairy farmer

14 in Southern Sacramento County.

15   JUDGE CLIFTON: Is there anyone else who has not yet come

16 to the podium who would like to come forward and identify? I

17 see no hands. Oh, good, Ryan Miltner. I was wondering if we

18 had no Ohio people.

19   MR. MILTNER: You have at least one, your Honor.

20 Ryan Miltner, M-I-L-T-N-E-R, counsel for Select Milk Producers.

21   JUDGE CLIFTON: Thank you. I would like for us now to go

22 to a very abbreviated portion of preliminary matters and

23 announcements. Only those necessary before we call our first

24 witness, and that is because we have Mr. Hollon for such a

25 short time this morning. Mr. Beshore?

1   MR. BESHORE: Just very briefly. Mr. Hollon, our testimony

 2   for today will start with Mr. Hollon, and Mr. Schad will

 3   continue seamlessly, pick up with Elvin's testimony so we can

 4   continue with full day. We also have expected a fourth dairy

 5   farmer in addition to the three who are testifying who have

 6   appeared so far to be here today to testify.

 7   JUDGE CLIFTON: Thank you. Yeah, all of you, please, as

 8   you approach, be very mindful of your feet because there are

 9   wires and tripod stands and the like. When you come forward to

10   testify, please step up onto this platform in the middle

11   between my desk and the witness desk. It will be the least

12   dangerous place. Ms. May?

13   MS. MAY: I just have a couple of things to tell you about

14   this Event Falls -- the Falls Event Center. It's a brand new

15   building, as you can tell, and they are still showing the rooms

16   to prospective customers, and so we have been asked to kind of

17   confine our activities to this room, although we have been

18   allowed to put the copier in the room to the ride behind this

19   room. If you need to make copies you can go through the double

20   doors there and keep the doors closed so we don't hear it, and

21   make copies back in there. The rest rooms are out this door in

22   the back and around this hallway to the right, or you can go

23   out this way, so there, over there.

24   To access the Internet here, you just go onto the Falls

25   Guest, which should come up in your network browser choices,

1 and there's no password for that. They are showing facility,

2 like I said, so that's why we have been asked to keep the doors

3 close and confine ourselves to this room.

4   We did not bring a bunch of extra exhibits with us

5 today, so if you want to look for past exhibits, I checked this

6 morning we are up to Exhibit number 74 on the AMS Dairy

7 website. I can help you find that if you need to. Also, just

8 one little thing. Pam and I discovered there are brakes on the

9 wheels on your tables, so if you haven't figured that out yet,

10 you can set the brakes and that will keep your wheels from

11 rolling around, and that is all I think I have.

12   JUDGE CLIFTON: Thank you. We'll take more preliminary

13 matters and announcements after Mr. Hollon's departure. We

14 want to maximize the use of his time today. All right.

15   Mr. Hollon, if you would come forward.

16   MR. BESHORE: Your Honor, I would ask that two documents be

17 marked as the next consecutive exhibit numbers. First one,

18 Testimony of Elvin Hollon, Fifth Statement, Rebuttal. And then

19 the second document, Exhibits of Elvin Hollon, Fifth Statement,

20 Rebuttal, which has Exhibit Tables 9.A, 9.B, and 9.C. I would

21 ask that those two documents be marked for identification with

22 the next two consecutive numbers, which I don't have any idea

23 what they are.

24   JUDGE CLIFTON: Ms. Elliott, I believe Mr. Hollon's Fifth

25 Statement will be Exhibit 180. Do you agree?

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1   MS. ELLIOTT: That's correct.

2   JUDGE CLIFTON: All right. We're marking that as

3   Exhibit 180. 180.

4   (Thereafter, Exhibit 180, was

5   marked for identification.)

6   JUDGE CLIFTON: And the Exhibits of Elvin Hollon, Fifth

7   Statement, Rebuttal, will be Exhibit 181. 181.

8   (Thereafter, Exhibit 181, was

9   marked for identification.)

10   MR. BESHORE: I would just note for everyone there were

11   some references to CDFA Z, which is part of Exhibit 61 in his

12   testimony, which might be helpful to have that potentially

13   available, and there's also references to Exhibit 64, and

14   Exhibit 20, which are prior statements and exhibits of

15   Mr. Hollon.

16   DIRECT EXAMINATION

17   BY MR. BESHORE:

18   Q. With that preliminary, could you proceed with your

19   statement, Exhibit 180, please, Mr. Hollon?

20   JUDGE CLIFTON: Mr. Hollon, you remain sworn. Would you

21   again state and spell your name?

22   MR. HOLLON: Elvin Hollon, E-L-V-I-N, H-O-L-L-O-N.

23   The Value of Regulating Interstate Transactions

24   We noted in our earlier testimony that one of the

25   reasons the Cooperatives initiated this proposal was to

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1 regulate all milk that competes in the marketing area. Since

2 January 2009 --

3   Q. You missed the last clause of the first sentence.

4   A. Okay. I'll start over from the beginning.

5   We noted in our earlier testimony that one of the

6 reasons the Cooperatives initiated this proposal was to

7 regulate all milk that competes in the marketing area,

8 including interstate transactions. Since January 2009, data

9 published by the California Department of Food and Agriculture

10 (CDFA) indicate an average of 54.5 million pounds of milk per

11 month came from farms located outside of the proposed marketing

12 area, and were marketed to processing plants located inside the

13 proposed Order boundaries. The same data series indicates that

14 an average of 36 million pounds of milk per month is produced

15 inside the marketing area and sold to plants located outside

16 the marketing area, including these volumes in the pool, will

17 increase the blend prices by an average of 4 cents per

18 hundredweight per month.

19   A California Federal Milk Marketing Order (FMMO) will

20 enable this milk to be fully pooled. Currently these milk

21 movements escape regulation because the state cannot regulate

22 interstate commerce. Milk delivered to Section 1051.7(a) or

23 (b) plants, whether the plants are located inside or outside

24 the marketing area, will be fully pooled.

25   At this point I'm going to stop the testimony and go

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1 over to the tables and go through how they work, and then come

2 back to the testimony.

3   Q. So you are going to Exhibit 181?

4   A. Going to Exhibit 181. And I'll start with Table 9.A,

5 and the purpose of Table 9.A, there's a 9.A, B, and C, and the

6 purpose of 9.A is entitled Added Pool Value with Milk Produced

7 Out-of-State and Marketed in California, included in the

8 Proposed FMMO Pool. This table computes data from 2009 to

9 July of 2015. There are columns A through W.

10   A and B are date references.

11   Column C is the volume of monthly production entering

12 the state, and that comes from CDFA Exhibit 61, Table Z.

13   Column D is the pounds of Class 1 as published in CDFA

14 Exhibit 61, Table Z.

15   Column E is a Class I, a Federal Order Class I price,

16 and that is taken from Exhibit 64, Table 5.A, Column D.

17   Column F of the exhibit is a new value that is the

18 pounds of Class 1 milk, times the Class 1 price.

19   So these references and these steps are then repeated

20 for Federal Order Class II, for a Federal Order Class II

21 calculation, which is columns G, H, and I.

22   The pounds of California Classified 2 and 3 are

23 combined, to represent a Federal Order Class II volume, that's

24 Column G.

25   The Class II price taken from Exhibit 64, Table 5.A

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1 | Column H, and the value in Column I is pounds times price.

 2 | Columns J, K, and L repeat that process to establish a

 3 | new value for the Federal Order Class III pounds.

 4 | And columns M, N, and O, would repeat the same process,

 5 | to compute a value for Federal Order Class IV pounds.

 6 | Column P adds together all of the new values, those

 7 | resulting from the Class 1, Class 2, Class 3, and Class 4

 8 | calculation.

 9 | Now, for example, in January of 2009, that would result

10 | in $11,098,335.

11 | Column Q is the estimated blend price that we made

12 | earlier in the hearing that is taken from Exhibit 64, Table

13 | 5.C, Column I, that's labeled Top Line Estimated Federal Milk

14 | Order Blend. So using the methodology that we use, we

15 | established, again, earlier in the hearing and computed what

16 | would be a blend price without any of the out-of-state milk

17 | being included.

18 | Table R would be the total pool that, of pounds that

19 | were reported by CDFA. And again, Exhibit 61, Table D.

20 | Column S says if we took that blend price that we had

21 | computed before, multiplied by the pool pounds, we would get a

22 | pool total dollars of $359,547,992.

23 | If we take the new dollars that we created by

24 | regulating the out-of-state milk coming in, and add it to the

25 | existing pool dollars, we get a new pool value that's in

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1 Column T, that's 370,646,327.

2   We also take the pounds that come with those dollars

3 and add them into the old pool, that results in Column U. So

4 now we have new dollars and new pounds and a new estimated

5 blend price in Column V of $11.39, and comparing new versus

6 old, an additional value of 10.8 cents.

7   So these steps are repeated for each month all the way

8 down through 2015. I would note that the largest number on the

9 calculation is this month, and then looking back at the data,

10 that was a month where the relationship of prices due to the

11 different timings of the way they were put together resulted in

12 a pretty big number. As you just run your finger down those

13 columns you can see 2, 3, 4 cents worth of difference. And if

14 you look on Page 4 of this set up, there is a monthly average

15 total dollars of an additional 10.2 million average per month

16 and an average per hundredweight of 2.9 cents.

17   Table 9.B.1, in order to do the milk from inside going

18 out, the data was not as much available, so I'll address that

19 in the written statement. You needed a utilization factor in

20 order to do the same type of calculation I just outlined, so

21 absent any other data, we simply took the data reported for the

22 pounds of milk outside coming in as reported by CDFA, converted

23 those pounds to a utilization based on the shipments, and that

24 would be in Table 9.B.1. So for example, in 2009, January, the

25 reported information yielded 67 million pounds and a break down

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1 of 1, 2, 3, 4a and 4b. And so column, the columns labeled

2 Class I, Class II, Class III, and Class IV are simply the

3 percentages that are derived from that calculation.

4   Finally, Tables 9.C do the same type of calculation I

5 just described. The working through the columns are roughly

6 the same. There are two differences, so I wanted to point out.

7 In Column D, because we do, and I'll -- I will cover this in

8 the testimony, we feel only one of the two primary destinations

9 for that would be included in the California pool, so absent

10 any more information, we simply took half of the volume for our

11 estimate. And that plant is in the $2.10 differential zone, so

12 the Class I price in Column E of Table 9.C reflects that added

13 value.

14   Q. The rest of the calculations on C going across the

15 columns to W are the same format as Table A.

16   A. Correct. Same format, same methodology. And so if you

17 get all the way over to Column W, you can see some monthly

18 estimates. And looking at Page 4, there is an additional

19 $3.4 million per month and an average of 1.1 cent per

20 hundredweight addition.

21   JUDGE CLIFTON: Mr. Hollon, would you state again, please,

22 what this table shows that the first table does not show?

23   MR. HOLLON: Good question. The first table is the

24 attempting to calculate the value of milk located outside the

25 state and marketed inside. The second table is attempting to

1 calculate the milk from inside, but marketed outside.

2 BY MR. BESHORE:

3   Q. But which the testimony, as indicated, will be pool,

4 part of the pool, if there's a California Federal Order.

5   A. That is correct.

6   Q. Okay.

7   A. So back to the testimony on Page 2, subheading A.

8 A. Milk Originating Outside the Market and Delivered to

9 Processors Located Inside the Market

10   Exhibit 61, CDFA, Table Z, details the data for milk

11 originating outside the state and delivered to handlers inside

12 the state. This data is reported by the receiving processors,

13 and is neither price nor pooled by the California State Order

14 (CSO). Monthly data is available on the total pounds received

15 and the usage by classification. Regulating this milk in a

16 California FMMO would have resulted in an average blend price

17 improvement of 2.9 cents per hundredweight for the period

18 January 2009 through July 2015.

19   Cooperatives Table 9.A (4 pages) "Added Pool Value with

20 Milk Produced Out-of-State and Marketed in California Included

21 in the Proposed FMMO Pool" shows the monthly calculations we

22 made for the period January 2009 through July 2015.

23   1. Columns C-O are the result of multiplying the pounds by

24 class as reported by CDFA, by the respective FMMO class prices

25 that we determined would apply for each month, as noted in

Exhibit 64, Table 5.A. Since we do not have exact pounds
delivered to specific plant locations, we used the weighted
average differential of $1.92 per hundredweight calculated in
earlier testimony for the Class I portion of this estimate.

The total sum of additional dollars accruing to the pool is
posted in Column P.

3. The monthly FMMO blend price we computed in Exhibit 64,
Table 5.C multiplied by the existing total CDFA pool pounds
yields the total dollars available in the FMMO pool without the
"outside" milk included and as shown in Column S.

4. Adding the additional dollars gain (Column P) to the
existing pool dollars (Column S) and dividing by the existing
pool pounds plus the new pounds resulting from adding the new
milk to the pool (Column U) yields a new estimated blend price
(Column V).

5. The difference gained from pooling the new volumes is
shown in Column W. For the 79 months shown, the average
increase is 2.9 cents per hundredweight. The smallest increase
was 3 cents of a cent, and the largest 10.8 cents. The average
monthly increase in pool revenues was $10,213,208.
B. Milk Originating Inside the Market and Delivered to
Processors Located Outside the Market

Additionally, an estimate can be made of the impact of
milk produced inside the state and marketed to a plant located
outside the state, which is expected to be pooled. Two

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1 additional assumptions are made for this calculation since the

2 available data is not as complete.

3   The pounds are available because of data from the

4 producer promotion check-off program. However, because the use

5 classification is not needed for that payment, it is not

6 available. We chose to use the same classification that is

7 available for milk from outside the state, delivered to plants

8 located in the state. This data is shown in Table 9.B

9 (3 pages), "Classification Percentage of Milk Produced Outside

10 of the State and Marketed in California."

11   The destinations of the milk shipments are generally to

12 the distributing plants owned by Dean Foods in Las Vegas,

13 Nevada, and the GH Processing and/or Sarah Farms plants in

14 Yuma, Arizona. We have little knowledge of other destinations

15 but acknowledge there may be some. We expect that the

16 Las Vegas plant will not be fully regulated in a California

17 FMMO, but one of the Yuma plants will be fully regulated. So

18 absent any significant additional information, we treated the

19 pounds as shipped equally to the two locations and estimate

20 shipments to the Arizona location only the total volume was

21 reduced by 50 percent.

22   Cooperatives Table 9.C (4 pages) "Added Pool Value With

23 Milk Produced in the State and Marketed out of California

24 Included in the Proposed FMMO Pool" details our estimate. The

25 process follows the same pattern as done for the calculation of

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milk delivered from farms located outside the state to

processors located inside the state with the following

adjustments. The Class 1 differential in Yuma, Arizona of

$2.10 was used to calculate the added value of milk used in

Class I. California FMMO would result in an average blend

price improvement of 1.1 cents per hundredweight. The smallest

increase was 2 cents of a cent, and the largest, 3.6 cents.

The average monthly increase in pool revenue was $3,429,333.

     The promulgation of a California FMMO results in a more

orderly market. The California State Order cannot regulate

these interstate transactions. Currently, the out-of-state

producers delivering to California plants are able to extract a

higher plant blend price than in-state producers serving the

same market. Additionally, the costs of serving and balancing

the market are shifted to the in-state producers who are

regulated by the State Order. Similarly, processors who

receive these milk supplies are able to pay lower prices than

their competitors, otherwise there would be no incentive to

purchase the supplies. Likewise, the milk supply to an

out-of-state plant with the majority of its sales in California

that is not currently the California pool, will become part of

the California pool. The creation of an FMMO will bring all

these transactions into the pool adding an estimated average of

4 cents per hundredweight to the blend price.

     Q. Very good. Thank you, Mr. Hollon. Do you have

```
 1  anything to add before we make you available for other

 2  questions?

 3      A.  I do not.

 4      Q.  Your Honor, I'd move for the admission of Exhibits 180

 5  and 181 and Mr. Hollon will be available for cross-examination.

 6      JUDGE CLIFTON:  Thank you.  Does anyone wish to question

 7  Mr. Hollon further before determining whether you would object

 8  to either Exhibit 180 or 181 being admitted?  No one.  Is there

 9  any objection to the admission into evidence of Exhibit 180?

10  There are none.  Exhibit 180 is admitted into evidence.

11              (Thereafter, Exhibit 180, was

12               received into evidence.)

13      JUDGE CLIFTON:  Is there any objection to the admission

14  into evidence of Exhibit 181?  There are none.  Exhibit 181 is

15  admitted into evidence.

16              (Thereafter, Exhibit 181, was

17               received into evidence.)

18      JUDGE CLIFTON:  Who will begin the cross-examination of

19  Mr. Hollon?  Mr. English?

20                    CROSS-EXAMINATION

21  BY MR. ENGLISH:

22      Q.  Good morning, Chip English.

23          Good morning, Mr. Hollon.

24      A.  Good morning, Mr. English.  I see no green sheets so

25  that's a good thing.  All of your questions seem to originate
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1   from green sheets of paper.

2   Q. I ran out. I don't think this will take all that long.

3   But let's divide it up and talk first about the milk

4   originating outside the market and delivered to plants in the

5   market. And I mostly want to note that the bottom of Page 3,

6   of Exhibit 180, in Paragraph 5, the average you provided that

7   appears on Exhibit 181 --

8   A. Yes.

9   Q. -- Page 4, is for the entire timeframe January 2009

10   through the most recent data available July of 2015, correct?

11   A. Correct.

12   Q. And you referenced the largest difference and the

13   smallest difference.

14   A. Yes.

15   Q. The smallest difference was in 2014; is that correct?

16   A. I think so.

17   Q. Okay. The largest difference happened to have been in

18   January of 2009?

19   A. Correct.

20   Q. Okay. And in addition to the .003 that you referenced,

21   now I have lost it -- where was the .003? I'm sorry.

22   Just generally, you would agree that the number has

23   been going down, correct? I mean, you started at 10.8 and now

24   it averages in January of 2009, and now it's 2.9. If you did

25   an average over the last two years it would likely be average

1 less than 2.9 cents, corrects?

2   A. I didn't do an average for the last two years, and just

3 to answer the first question, February of 2011 was the .003.

4   Q. Thank you.

5   A. I did, from memory, look at the average of each year,

6 and they were close, I'll use that term. And I did note that

7 the high number appeared to me to be a result of timing of

8 announced prices that for like November/December the prior into

9 January. So, and whatever the average is in the last year is a

10 matter of record.

11   Q. All right. I want to test more the idea of the milk

12 originating inside the market and delivered to processors

13 located outside the market.

14   A. Okay.

15   Q. And your underlying assumption that the -- as I take

16 it, you know the number of pounds total produced in California

17 from the promotion program; is that correct?

18   A. Yes.

19   Q. And then we know from other --

20   A. I will say that's -- that's a CDFA published number,

21 and that's my understanding of how it is derived. I don't know

22 exactly how it is derived, but I know it is related to someone

23 collecting data for the promotion program.

24   Q. And then you took that and you netted from other CDFA

25 data the pounds that we know are produced in California and

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1 received in California plants, correct? Is that what you did?

2   A. Say that again.

3   Q. Well, okay. So you, if you looked at that CDFA data --

4   A. That's the inside going out.

5   Q. Yes.

6   A. Yes.

7   Q. And is that actually a number by itself or is that --

8   A. Yeah.

9   Q. -- so it's not a derived number of total pounds

10 subtracting some other pounds. It is a number that's actually

11 available through CDFA?

12   A. It is.

13   Q. Do you have the source of that data?

14   A. I do. I didn't, I neglected to read it, but it's on

15 the bottom of Table 9.C, Page 4. My apologies.

16   Q. That's okay. I just was trying to move this through

17 pretty quickly, no apology necessary. You are saying it's --

18   A. It's not an easy find, I might add, you have to go to

19 more than one click to get to it.

20   JUDGE CLIFTON: Oh boy, this is very small. So what you

21 have at the bottom of that table is you have a website, and is

22 that what you are talking about?

23   MR. HOLLON: I'll read the footnote that's on that table.

24   This data is not in Exhibit 61. It can be found on the

25 regular CDFA web page. First, navigate to the following link:

1   https://

2   JUDGE CLIFTON: Okay. So that's a colon --

3   MR. HOLLON: www --

4   JUDGE CLIFTON: -- rather than a semi-colon, right?

5   MR. HOLLON: Correct.

6   JUDGE CLIFTON: So a colon and then a couple of slashes.

7   MR. HOLLON:

8   www.cdfa.ca.gov/dairy/uploader/postings/datastats/

9   Once you are on that site, then look to the September Excel

10   table, or the archived statistical data tables. The data is

11   listed on the table Commercial Milk Production in California,

12   Production Entering and Leaving by Month.

13   JUDGE CLIFTON: I'm so glad you were able to find it and

14   share it with us.

15   BY MR. ENGLISH:

16   Q. All right. So that, then, is the total product that

17   you listed in the first column of Table 9.B.2; is that correct?

18   Of Exhibit 181?

19   A. No, Table 9.B.2, Table 9.B --

20   Q. I'm sorry.

21   A. If you go to Table 9.C.

22   Q. All right.

23   A. And Column C is the total pounds that could be found at

24   the location I just described.

25   Q. And then --

1   A. Column C gave me a total pound figure and I apportioned

2 it out by class using the assumption that the distribution from

3 this plant would be similar to the distribution of

4 classification that was given from the outside milk coming in.

5   Q. Which -- which gives it a pretty high percentage of

6 Class 1 utilization?

7   A. It does.

8   Q. Okay.

9   A. That data is in Table 9.B.

10   Q. But it nonetheless it is an assumption, correct?

11   A. It is.

12   Q. And so, for instance, that milk could include milk that

13 ends up, for instance, at the United Dairymen Arizona Powder

14 Operations in Arizona, correct?

15   A. The, again, the classification is 1, 2, 3 and 4, so

16 there would be some, whatever the allocation was. There was a

17 period of time over this 2009 to 2015 period, that that may be

18 true. I don't think that is any longer true.

19   Q. Okay. But unlike, as you have testified, you know, the

20 reason why in your view, as I understand it, that the milk from

21 out-of-state comes to the in-state is it gets a plant blend,

22 correct? Which gives it economic value, correct?

23   A. Correct.

24   Q. Okay. You wouldn't necessarily have that same economic

25 value for moving out-of-state if the milk is being diverted for

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1 other uses, correct?

2   A. You mean, wouldn't that, are you asking me do I think

3 the inside milk going out would have the same utilization?

4   Q. Yes.

5   A. My assumption is it would.

6   Q. But wouldn't the economic motivations be different to

7 the extent that you don't get that plant blend the way you do

8 under California regulations?

9   A. Well, we don't know what it's paid, but we can only

10 assume that it's paid higher than if the farm delivered to an

11 in-state plant.

12   Q. But we have also heard some testimony that may exclude

13 this testimony, that during this timeframe at times when there

14 were issues with pricing or whatever, that milk moved out of

15 California to other locations because of capacity issues,

16 correct?

17   A. Correct.

18   Q. Okay. So now let me turn to the second part of the

19 assumption. And in terms of how, as soon as even the

20 classification's correct what that impact would be, you

21 acknowledge that the Las Vegas plant would not become fully

22 regulated, correct?

23   A. That's my assumption.

24   Q. Yeah. And, in fact, were you here when Mr. Blaufuss

25 testified about where that milk was mostly distributed? For

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1   the packages?

2   A. I don't recall that. I don't think I was here during

3   that testimony.

4   Q. The plant is located in Las Vegas, right?

5   A. Correct.

6   Q. And the population center is down, in Nevada and

7   California, are pretty much higher in Nevada than they are in

8   California, correct? The population center for Las Vegas,

9   there isn't a lot of population West of the Nevada border in

10   California, West of Las Vegas, right?

11   A. Yes, I would agree.

12   Q. If the plant is not fully regulated, your assumption is

13   that that plant is going to be paying in under .76A, which is

14   the difference between the Class 1 and the blend, correct?

15   A. I didn't make any assumptions regarding that milk,

16   that's why I used half.

17   Q. Okay. Well, but if the milk used the Wichita Option

18   that we have had a fair amount of discussion about, 76.B, there

19   actually would be no payment into the California pool under

20   that, correct?

21   A. I think that's right.

22   Q. That's all the questions I have, your Honor.

23   JUDGE CLIFTON: Who next has questions for Mr. Hollon?

24   Ms. Hancock?

25   CROSS-EXAMINATION

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1   BY MS. HANCOCK:

2   Q. Mr. Hollon, I'm on Page 180 of your, or Page 5 of

3   Exhibit 180, your prepared -- it felt longer than it was.

4   Exhibit 180, Page 5. The second sentence in the last paragraph

5   says, "Currently the out-of-state producers delivering to

6   California plants are able to extract a higher plant blend

7   price than in-state producers serving the same market."

8   Do you see that?

9   A. I do.

10   Q. You would agree with me that those out-of-state

11   producers are not allowed to participate in the quota program?

12   A. Correct.

13   Q. And they receive no transportation benefits?

14   A. Correct.

15   Q. So there's a downside to being on out-of-state producer

16   as well, right?

17   A. In that regard they don't get quota or transportation

18   so, yes.

19   Q. And we've heard lots of testimony about how important

20   quota is to producers --

21   A. I have.

22   Q. -- to their operations? Okay. And under the

23   Cooperatives' proposal, they would not be able to receive that

24   quota or participate in the quota program or the transportation

25   allowances that are offered under the California State, under a

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1 California Federal Milk Marketing Order?

2   A. First, the participation in quota has no -- Proposal 1

3 doesn't grant or deny that, that's State pools. As far as the

4 transportation allowance, under our proposal now, there would

5 not be a transportation allowance for out-of-state milk.

6   I would like to back up to the earlier question you

7 asked me about benefits from coming to California. I think you

8 have to evaluate the answer to that in light of their

9 alternatives, and so they wouldn't get quota payments or

10 transportation payments if they delivered to someone who bought

11 their milk in Nevada, either. So my assumption is that they

12 are making the best economic decision they can make and coming

13 into California for an advantage.

14   Q. And you mentioned, you are not, you are not making any

15 proposal with respect to how out-of-state producers are treated

16 with respect to the quota program. And that's because the

17 quota program under the Cooperatives proposal would continue to

18 be run under the state statute. The state statute of

19 California entitling in-state producers to receive the

20 opportunity to participate in the quota program?

21   A. That is correct.

22   Q. Okay. So that would continue even under the

23 Cooperatives' Proposal to be a way that the out-of-state

24 producers would be treated differently, though, just based on

25 the demarkation line or the state border?

1   A. Of the Marketing Order boundary. In that case, yes,

 2   that would be true.

 3   Q. Okay. And it wouldn't be based on a Federal Milk

 4   Marketing Order, it would just be because it would continue to

 5   be a state statutory entitled benefit?

 6   A. Correct.

 7   Q. And under the Cooperatives' Proposal, have you made a

 8   proposal with respect to transportation allowances for

 9   producers?

10   A. We have.

11   Q. And have you made that proposal to allow both in-state

12   and out-of-state producers to receive the opportunity to

13   participate in the transportation allowances?

14   A. No.

15   Q. Okay. Can you help me understand why under your, under

16   the Cooperatives' Proposal, out-of-state producers would not be

17   allowed to participate in the Transportation Allowance Program?

18   A. I think there's two reasons that that's the way it is

19   today, is one. And secondly, we felt like that the benefit,

20   the Transportation Program, that there's adequate milk supplies

21   in the state to meet the needs, and that that benefit would not

22   be, it wouldn't be a need for it to be extended the

23   out-of-state or out of the marketing area. There's adequate

24   milk supplies in the state to feel the needs.

25   Q. Okay. So the first reason you said, that's the way

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1 that it is today, right?

2   A. Correct.

3   Q. But you would agree with me that the way it is today is

4 that they are able to get their plant blend price as well?

5   A. Yes.

6   Q. Okay. So that justification would be the same for

7 both, right? If under the Cooperative, or under the

8 Ponderosa's Proposal Number 4, the justification is that's the

9 way it is today?

10   A. Yes.

11   Q. The same as what you are suggesting is one of the

12 reasons why you haven't included transportation allowances in

13 the Cooperatives' Proposal?

14   A. With regard to transportation, I would agree with you.

15   Q. Okay. And then the second one is adequate milk supply,

16 so it is your position if there's adequate milk supply then

17 there's no reason to give benefits to out-of-state producers?

18   A. Yes.

19   Q. Okay. And that's just, again, the separation is only

20 because of where the state line is?

21   A. Yes. Well, where the Marketing Order is, the Marketing

22 Order boundaries. In this case they happen to be the same, but

23 it would be the Marketing Order boundary.

24   Q. So if the effect is that it's the state boundary line

25 that would determine whether or not an out-of-state milk

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1   supplier should receive transportation allowances assuming that

2   their, or depending on whether or not there is an adequate milk

3   supply in the state?

4   A. Try that question again.

5   Q. Yeah, that was bad, sorry.

6   Okay. So as long as there's adequate milk supply

7   in-state within the boundaries of California, your position

8   would be, then, that's justification for why an out-of-state

9   producer should not receive transportation allowances?

10   A. Yes.

11   Q. Okay. Would you agree with me, though, that if you did

12 pay an out-of-state milk producer a transportation allowance,

13 that your calculation in Table 9.A.1, that you have averaged

14 2.9 cents benefit to the pool would be reduced?

15   A. I agree.

16   Q. Okay. And have you done that calculation to determine

17 how much the transportation allowances, if paid to out-of-state

18 producers, would reduce that 2.9 cent calculation?

19   A. I have not.

20   Q. Okay.

21   A. I'm sorry, I thought you had finished. You trailed off

22 there.

23   Q. I was just going to say calculation, but the answer

24 would stand; is that right?

25   A. It would.

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

2   A. You're welcome.

3   JUDGE CLIFTON: Who next has questions for Mr. Hollon on

4   this topic? Would USDA like to wait for redirect to determine

5   whether you have any questions? Let's see if there is any

6   redirect. Mr. Beshore?

7   MR. BESHORE: I have no redirect.

8   JUDGE CLIFTON: Thank you. Mr. Beshore has no redirect.

9   Would USDA like a moment to confer? There are no questions

10   from USDA on this topic at this time.

11   Are there any other questions for Mr. Hollon on this

12   topic? There are none. Mr. Hollon, isn't that a first?

13   MR. HOLLON: That is a good thing. I'm sure it is directly

14   related to Mr. English being out of green pages.

15   MR. BESHORE: Mr. Hollon, do you have -- let me ask, well,

16   we're going to distribute those. We have a document being

17   distributed, Testimony of Elvin Hollon, Sixth Statement,

18   Rebuttal, also identified as Cooperatives' Exhibit 10 in the

19   bottom right.

20   JUDGE CLIFTON: It will be marked as Exhibit 182.

21   Exhibit 182.

22   (Thereafter, Exhibit 182, was

23   marked for identification.)

24   DIRECT EXAMINATION

25   BY MR. BESHORE:

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1   Q.   Do you have your Sixth Statement, Mr. Hollon, which is

2   marked as Exhibit 182?

3   A.   I do.

4   Q.   Okay. And does this address a proposed modification to

5   Proposal 1 relating to exempt plant and producer-handler

6   language?

7   A.   It does.

8   Q.   Okay. Would you please proceed to present your

9   testimony, Exhibit 182?

10   A.   Exempt Plant Producer Handler Language Modifications.

11   The Cooperatives have a modification to their proposal

12 which will extend exempt plant and producer handler status to

13 small plants which process products other than fluid milk

14 products or in addition to fluid milk products. After

15 reviewing our initial proposal, we have concluded there is a

16 benefit to making this change. First, it addresses the matter

17 of administrative convenience on the part of the Market

18 Administrator by reducing (but not eliminating) the reporting

19 requirements of pooling, pricing, and audit over a small volume

20 of milk at small non-Class I plants. Secondly, it reduces the

21 issues of meeting more detailed reporting requirements by a

22 group of small volume processors.

23   Additionally, it makes consistent the pool plant

24 characteristics and the exempt plant characteristics.

25 Proposal 1 requires inclusive pooling but allows that

1 requirement to be relaxed on certain small producers who

2 process and distribute Class I products. Extending this

3 exemption to similarly situated dairy producers who manufacture

4 products other than Class I products will make our proposal

5 more equitable. It also addresses issues raised with regard to

6 the impact of price level and small processors.

7   The language we are proposing will create an additional

8 definition for an exempt plant and will be titled in Order 1051

9 as Section 1051.8(a), additional exempt plants. The language

10 for this section (all new language) is as follows:

11 Section 1051.8(a) Additional Exempt Plants

12   The following plants shall also be exempt plants.

13   (a) A plant which uses milk to produce Class II, III,

14 or IV products (as defined in Section 1051.40) and that is

15 exempt from the pricing and pooling provisions of any order

16 provided that the operator of the plant files reports as

17 prescribed by the Market Administrator to enable determination

18 of the handler's exempt status; and

19   Returning back to the testimony for a moment. This

20 language makes it clear that this section will apply to a plant

21 that processes manufactured dairy products classified as

22 Class II, Class III, or Class IV.

23   Returning now back to the language:

24   (1) Is a plant that meets the requirements of Section

25 1051.7(c) or (cl); and

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1   (2) Does not process or distribute fluid milk

2 products; and

3   (3) uses 300,000 pounds of milk or less per month to

4 produce products classified as Class II, Class III, or IV.

5   Subparagraph -- that is the end of the language cite.

6 Back to the testimony.

7   Subparagraph (a)(1) establishes that these plants meet

8 the requirements of Section 1051.7(c) and (c1). Subparagraph

9 (a)(2) further identifies that the plant under Section (a) is a

10 plant other than a distributing plant. Subparagraph (a)(3)

11 establishes that the processing volume limitation allowed for

12 this class of plant is 300,000 pounds or less per month and

13 those products must be classified as Class II, or Class III, or

14 Class IV.

15   We chose to increase the traditional size for an exempt

16 plant to 300,000 pounds in order to give recognition to the

17 fact that an exempt plant may process other than fluid milk

18 products and to put a limit on the total pounds that maybe

19 exempted. This volume approximates the 315,000 pounds per

20 month estimate of a dairy farm as a small business.

21   In order to account for a plant in a similar situation,

22 but which processes Class I products in addition to Class II,

23 III, or IV products, we created Section 1051.8(6). Plants in

24 Section (6) also meet the requirements of Section 1051.7(c) or

25 (c)(1), but the sectionadds the additional qualifiers in

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 1  paragraphs 1 through 4 --

 2      Q.  Could I interrupt you there, Mr. Hollon?  I think we

 3  have a typo there.  It should be 1051.8, maybe --

 4      A.  I'm sorry, I'm not following you.

 5      Q.  Okay.  The language that follows this text at the

 6  beginning of page 4 starts with (b) as opposed to (6).

 7      A.  I'm with you now.

 8      Q.  So it should be 1051.8 (a)(b).

 9      A.  Okay.  I'll start this paragraph over.

10          In order to account for a plant in a similar situation

11  but which processes Class I products in addition to Class II,

12  III, or IV products, we created Section 1051.8(b).

13      Q.  8(a)(b).  So we're under 1051.8(a), we had, you

14  discussed part (a) already, and this is, this is subpart (b),

15  so that, typo there, I'm sorry.

16      JUDGE CLIFTON:  So -- so let me ask you, Mr. Beshore.  When

17  I look back at the bottom of Page 2 and I see your proposed

18  language for Section 1051.8(a), then I get the clue for what

19  this should look like in 8(b).

20      MR. BESHORE:  Yes.

21      JUDGE CLIFTON:  So it won't have any parentheses and it

22  will be a capital B that will be right up against the 8.

23      MR. BESHORE:  Actually, it should be a capital A, and then

24  a paren small (b) so we had an 8A(a) starting at the bottom of

25  2, now we have 8A(b), which the text of which is at the top of
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1 Page 4, so --

 2   JUDGE CLIFTON: Oh, so what we need is 8 capital A (b) and

 3 then a space, and then a paren, and then a small b?

 4   MR. BESHORE: Correct.

 5   JUDGE CLIFTON: Okay. So Ms. Elliott is right with me.

 6 But I'm going to have Mr. Hollon read it again from the top.

 7 So Mr. Hollon, were you able to make notes?

 8   MR. HOLLON: I'm ready.

 9   JUDGE CLIFTON: Okay. Good. You may proceed from the

10 beginning of that last paragraph on Page 3.

11   MR. HOLLON: In order to account for a plant in a similar

12 situation, but which processes Class I products in addition to

13 Class II, III, or IV products, we created Section 1051.8A (b).

14 Plants in Section (b) also meet the requirements of

15 Section 1051.7(c) or (c)(1), but the section adds the

16 additional qualifiers in paragraphs 1 through 4 that allow

17 exempt plant status for a plant with 150,000 pounds or less of

18 route disposition, and sales of packaged fluid milk products to

19 other plants, and if it chooses to manufacture other products,

20 it may do so as long as the sum of the total distribution of

21 packaged sales and milk used to manufacture other dairy

22 products does not exceed 300,000 pounds.

23   I'm going to now read the language in Section (b):

24   (b) A plant which processes and distributes packaged fluid

25 milk products and uses milk to produce Class II, III, or IV

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1 products, (as defined in Section 1051.40) and that is the

2 operator, and that is exempt from the pricing and pooling

3 provisions of any order, provided that the operator of the

4 plant files reports as prescribed by the Market Administrator,

5 to enable to determination of the handler's exempt status; and

6   (1) Is a plant that meets the requirements of

7 Section 1051.7 (c) or (c)(1); and

8   (2) Has route disposition and sales of packaged fluid

9 milk products to other plants of 150,000 pounds or less during

10 the month; and

11   (3) Uses milk to produce Class II, Class III, or

12 Class IV products; and

13   (4) Whose total pounds of usage under Sections (2) and

14 (3) above does not exceed 300,000 thousand pounds.

15   For the same reasons -- I'm through reading the

16 language now, I'm back to the testimony. For the same reasons

17 we also chose to extend the producer-handler definition to a

18 farm that may process its own milk other than fluid milk

19 products. The language in Section 1051.10 below accomplishes

20 this change by retaining the framework of the existing

21 producer-handler language and adding the provision that a

22 producer-handler may also retain his status, if it only

23 processes Class II, Class III, or Class IV products, or

24 processes the same products in some combination where fluid

25 milk products, but the total pounds processed and to all

1   products cannot exceed 3 million pounds.

2   I'm going to now read the language with the changes

3   that we have proposed.

4   JUDGE CLIFTON: And Mr. Hollon, before you read that

5   language, I'd just like to you re-read the opening sentence of

6   the paragraph you just completed.

7   MR. HOLLON: Okay.

8   For the same reasons, we also choose to extend the

9   producer-handler definition to a farm that may process its own

10 milk into other than fluid milk products.

11   JUDGE CLIFTON: Thank you. And now you may proceed with

12 the proposed language.

13   MR. HOLLON: Section 1051.10 Producer-handler.

14   Producer-handler means a person who:

15   (a) Operates a dairy farm and a -- insert milk

16 processing -- delete distributing -- plant -- insert for Class

17 I, Class II, Class III or Class IV products in which the milk

18 used -- delete, from which there is route disposition in the

19 marketing area and from which total route disposition and

20 packaged sales of fluid milk products to other plants -- return

21 to the original language -- during the month does not exceed 3

22 million pounds.

23 BY MR. BESHORE:

24   Q. Now, perhaps you could just read proposed 1051.10(a),

25 now, with the language as we intend it to read under the

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1   modification then, and eliminating, not reading the language

2   which has been deleted.

3   A. (a) Operates a dairy farm and a milk processing plant

4   for Class I, Class II, Class III, or Class IV products, in

5   which the milk used during the month does not exceed 3 million

6   pounds.

7   Q. Thank you. Continue then with the proposed language,

8   and sub B has no changes from the current proposal, correct?

9   A. Sub B has no changes from the current proposal.

10   (b) Receives fluid milk from own farm production for milk

11   that is fully subject to the pricing and pooling provisions of

12   the Order in this part or in any other Federal Order;

13   (c) Subpart (c), which does have changes:

14   Receives at its plant or acquires -- strike for route

15   disposition -- back to the language -- no more than 150,000

16   pounds of -- insert fluid milk or -- back to the original

17   language -- fluid milk products from handlers fully regulated

18   under any Federal Order. This limitation shall not apply if

19   the producer-handlers own farm production is less than 150,000

20   pounds during the month.

21   Reading paragraph (c) again, this time with only the

22   language that would be affected:

23   (c) Receives at its plant or acquires no more than 150,000

24   pounds of fluid milk or fluid milk products from handlers fully

25   regulated under any Federal Order. This limitation shall not

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1 apply if the producer-handlers own farm production is less than

2 150,000 pounds during the month.

3   Subparagraph (d) would contain no changes:

4   (d) Disposes of no other source milk as Class I milk,

5 except by increasing the nonfat milk solids content of the

6 fluid milk products.

7   Paragraph (e) does have changes:

8   (e) Provides proof satisfactory to the Market Administrator

9 that the care and management of the dairy animals and other

10 resources necessary to produce all -- delete Class I -- revert

11 to the original language -- milk handled (excluding receipts

12 from handlers fully regulated under any Federal Order) and the

13 processing and packaging operations -- insert, (Class I) --

14   Q. IV, make sure you have all the words in the parens.

15   A. (for Class I, II, III, and IV products) are the

16 producer-handlers own enterprise and at its own risk; and.

17   So re-reading Section (e):

18   (e) Provides proof satisfactory to the Market Administrator

19 that the care and management of the dairy animals and other

20 resources necessary to produce all milk handled (excluding

21 receipts from handlers fully regulated under any Federal Order)

22 and the processing and packaging operations (for Class I, II,

23 III, and IV products) are the producer-handlers own enterprise

24 and at its own risk; and.

25   Q. Can you stop there? First of all, the classes in this

1 subparagraph are Roman numerals as opposed to Arabic numbers,

2 correct?

3   A. They are, since we are referring all of this to be

4 Federal Order language.

5   Q. And I would like to propose that you do not read sub

6 (f) which is part of the current language, it's not modified,

7 and isn't pertinent to this discussion, although it's been

8 reprinted on Page 5 of Exhibit 182 here, and go onto the new

9 sub (g) which is a new subparagraph that is proposed to be

10 added through this modification.

11   A. Paragraph (g) would be all new language:

12   (g) Transfers and diversions to producer-handlers which

13 produce Class II, III, or IV products shall be classified in

14 accordance with Section 1000.42(c)(3).

15   Q. Now, is it the intention of new (g) to apply to bulk

16 transfers and diversions and not packaged transfers and

17 diversions if there's any case there was any question about

18 that?

19   A. That is correct.

20   Q. So for clarification we could insert the word bulk

21 before transfers and diversions in proposed language (g)?

22   A. That would be correct.

23   Q. Okay.

24   JUDGE CLIFTON: Mr. Beshore, let's go back to that

25 subsection (f).

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1   MR. BESHORE: Yes.

2   JUDGE CLIFTON: It appears to have been modeled over some

3 other order, but the numbers still refer to that other order.

4 Am I right?

5   MR. BESHORE: Well, yeah, it's a provision that's in the

6 language of the uniform provision which we have adopted.

7 There's been some questions about it and, it's --

8   MR. HOLLON: Mr. Wise discussed it.

9   MR. BESHORE: Mr. Wise discussed it, and it's something

10 that we really don't need to discuss and at this time.

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

12   MR. BESHORE: Thank you, your Honor.

13 BY MR. BESHORE:

14   Q. Okay. Mr. Hollon, let's -- do you happen to have --

15 still have a few minutes?

16   A. Uh-huh.

17   Q. Do you have Exhibit 96?

18   A. I do not.

19   Q. Could we make Exhibit 96 available to Mr. Hollon?

20 Okay. So I'm going to direct your attention to Exhibit 96 in

21 the hearing, Mr. Hollon.

22   A. Yes.

23   Q. Which is an exhibit prepared by CDFA, correct?

24   A. It is.

25   Q. Okay. Now, if you look at Group 1, which has 17 plants

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1 in it. How would the Cooperatives proposed modification

2 hearing 182, impact the potential regulation of those 17 small

3 cheese plants?

4   A. They would fall under the exempt category as we

5 proposed.

6   Q. Okay. Because all of the plants are under the exempt

7 category that, the volume in the proposed exempt category?

8   A. That's right. The column on this exhibit labeled

9 Average Monthly Pounds per Plant for Group 1 is 33,014, and

10 that would be under the 300,000 pound limit that we have

11 proposed to create for an exempt plant.

12   Q. Okay. How about plants in Group 2, there are eight

13 smaller cheese plants here.

14   A. There are eight plants in Group 2, and again, that same

15 average monthly pounds per plant indicates 309,039 pounds and

16 it seems likely that perhaps seven of the eight would also fall

17 under that category, and perhaps in some months all eight

18 would.

19   Q. Or at least some of the eight would since the average

20 is just slightly above the 300,000 exempt line?

21   A. Correct.

22   Q. Okay. Now, except for the proposed modification here,

23 would, assuming these small plants are purchasing from sources

24 other than their own production, would they have been regulated

25 under Proposal 1?

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1   A. Yes.

2   Q. Okay. If any of the plants on, in groups, in Group 2

3 of Exhibit 96 were plants that were operating just with their

4 own production, would they be impacted then by the, or affected

5 by the proposed modification of the producer-handler

6 definitions, potentially affected, by the producer-handler

7 modification in Exhibit 182?

8   A. They would not.

9   Q. If they were using only their own production, would

10 they become exempt producer-handlers as processors of Class II

11 or Class III products with under 3 million pounds per month?

12   A. I think the answer is yes, but you kind of, your

13 question kind of moved up and down. Let's try this again.

14   Q. Let's just talk about how, if you have a cheese plant

15 that's under 3,000 pounds per month using its own farm

16 production, would it become exempt under our modification?

17   A. Yes, it would.

18   Q. Okay. And if any of those plants in Group 2 happen to

19 be plants which just use only their own production, then they

20 would be producer-handlers under the proposed modification of

21 Proposal 1?

22   A. That is correct.

23   Q. Okay. And there was some testimony earlier in the,

24 earlier in this hearing from a producer who used his own, his

25 own farm production. I'm not sure of the volume, but used his

1 own farm production for Class I and Class II products, such as

2 ice cream mix and cream products also. Is that the type of

3 operation, if it's less than 3 million pounds, that would now

4 be surely exempt under our proposal?

5   A. It would be.

6   Q. Okay. Do you have anything to add?

7   A. Not at this time.

8   Q. Okay. I would move the admission of 182 by Mr. Hollon,

9 and make Mr. Hollon available for cross-examination.

10   JUDGE CLIFTON: Thank you. Does anyone wish to question

11 Mr. Hollon with regard to Exhibit 182 to determine whether you

12 object? No one. Is there any objection to the admission into

13 evidence of Exhibit 182? There is none. Exhibit 182 is

14 admitted into evidence.

15   (Thereafter, Exhibit 182, was

16   received into evidence.)

17   JUDGE CLIFTON: Mr. Hollon, what time do you need to leave

18 the room?

19   MR. HOLLON: I have a good 20 minutes or so, at least,

20 maybe a little more.

21   JUDGE CLIFTON: So right now it is 10:20. So you are

22 saying if you are out of here by 10:40, that will work?

23   MR. HOLLON: That would work.

24   JUDGE CLIFTON: Who will begin. Mr. English?

25   CROSS-EXAMINATION

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BY MR. ENGLISH:

Q. Chip English. I will try to be short, but mostly about clarification and make sure that we're not creating a new loophole, so let me just discuss it that way, Mr. Hollon.

First, to the extent you are proposing to create a 1051.8(a), do you object if the Secretary were to, instead, in lieu of that, remove the reference pointer to 1000.8 and insert this language in a 1051.8 so that it's just all in one place?

A. I think in general that would be acceptable, but I would want to say, our goal was to not modify Section 1000. So as long as the end result doesn't, you know, cause some discussion about that, I think that would be fine.

Q. Okay. Do you understand that you wouldn't necessarily be opening up Part 1000 if all did you was remove the pointer, the reference pointer?

A. That's correct. I would agree.

Q. Okay. So let me turn to the producer-handler and ask a couple of questions here. Again, sort of trying to make sure that we're not opening up something new.

In, on the bottom of Page 4 in your proposed Section 10, you talk about "operates a dairy farm and a milk processing plant." What if the operator operates two, what if the dairy farm operates two plants?

A. I think our goal here would be that the volume limitation would be the cap. And if -- if that -- if that were

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designed to be something that maybe would try to circumvent the

rule, that the Market Administrator would say, you know, no,

the dairy farm that is the one entity and if the volume cap is

the guideline.

Q.   Another way would be insert language that says,

"operates a dairy farm and one or more milk processing plants"?

A.   Yes.

Q.   Okay. But the bottom line is, you are not looking to

say, okay, here's the farm on one side and it can have a

2,900,000 Class I plant, and pounds, or 2,900,000 pounds,

Class I plant, and down the street have a 2,900,000 pound

cheese plant, correct?

A.   Absolutely not. So your description is matches our

intent.

Q.   Okay. Now, you haven't proposed changing Paragraph D

on Page 5, dispose of no other source milk as Class I milk.

So I'm remembering back to a dairy farmer a number of weeks

ago, and I may have misheard, so it really may not matter, take

a hypothetical dairy farmer who operates a farm, and let me

simplify it now, just one processing plant. And that one is

2.9 billion pounds, so it doesn't quite make the cap. But the

farm produces, say 10 million pounds, and they ship the other

7,100,000 pounds to a plant 4a, California 4a, Class IV, Roman

numeral IV, Federal Order plant, and they are located in

California and he's got say 5 billion pounds of quota.

1   Could he, both be exempt on the 2,900,000, and at the

2   same time collect a quota blend price on his own milk?

3   A. I think we'll have to take that up in our brief.

4   Q. You agree that could be a problem?

5   A. That could possibly be a problem, and there's more

6   options than I can sort through sitting here today.

7   Q. And I understand that, I'm mostly wanted to see if you

8   could identify with me the problem.

9   A. There could be some issues there.

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

11   JUDGE CLIFTON: Who next has questions for Mr. Hollon on

12 this topic? Mr. Hollon, you wowed 'em. Is Mr. Hollon, would

13 this be a unique provision among Federal Orders?

14   MR. HOLLON: The exempt plants and the producer-handler

15 plants are common. The application, as we described it, to,

16 first of all, raise the volume to 300,000 would be different,

17 and the application of a producer-handler to products other

18 than Class I, and that having a regulatory impact would also be

19 somewhat different.

20   JUDGE CLIFTON: Is the primary motivation the testimony you

21 have heard here from the small cheese plants?

22   MR. HOLLON: That's a part of it. And we did list some

23 administrative convenience matters and pricing matters. There

24 has been quite a bit of conversation about impact on smaller

25 processors, and so we're trying to take all of that into

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1 account. Let me give you your exhibit back before I forget.

2   JUDGE CLIFTON: Thank you.

3   Are there further questions for Mr. Hollon before I

4 invite redirect, or shall I invite redirect and then see if

5 USDA has any questions, either way.

6   MR. FRANCIS: Yeah, either way.

7   JUDGE CLIFTON: Why don't I invite redirect, first.

8   REDIRECT EXAMINATION

9 BY MR. BESHORE:

10   Q. Just one thought following up Chip's question on sales

11 of surplus milk, milk at a producer-handler farm that is not

12 used in its own farm production. Would it be your

13 understanding that under the terms of the producer-handler

14 language and the classification, the uniform classification and

15 rules, that when those volumes are shipped to another plant

16 such as a 4a plant, they would not be pooled but would get the

17 4a lowest utilization at the plant?

18   A. I think that's correct.

19   Q. Okay. And whether -- whether they would continue to be

20 entitled to quota would be something that would be by operation

21 of the quota rules under the, with CDFA, as opposed to the

22 order itself, correct?

23   A. That would be true.

24   Q. Okay. But in terms of, just in terms of our proposal,

25 the proposal continues, the fact that milk sold from

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1   producer-handler owned farm is not going, to plants, is not

2   pooled?

3   A.   I'm sorry, say that again.

4   Q.   Surplus milk sold from a producer-handler farm to other

5   plants is not able to be pooled.

6   A.   Yes.

7   Q.   Okay. Now, just one thought. In looking at language

8   (d) on Page 5. "Disposes of no other source milk as Class I

9   except by increasing nonfat milk solids content of fluid milk

10 products."

11   Would it be, if a -- if a producer-handler otherwise

12 within the ownership limits and within the production limits

13 used powder or condensed to, in cheese production or ice cream

14 production, would it be the intent to prohibit that or would it

15 be okay in your view? I mean, it's okay here for fortification

16 of Class I, this comes from the traditional language. Do you

17 have a thought on that?

18   A.   At this point, I don't have a thought.

19   Q.   Okay. Thank you.

20   JUDGE CLIFTON: Does the USDA have questions for

21 Mr. Hollon?

22   MR. FRANCIS: Will Francis, USDA. Just want to clarify if

23 it is your intent to change Exhibit 182, you referenced the

24 word bulk in (g) on Page 5. Did you want us to insert that?

25   MR. HOLLON: Yes.

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1   MR. FRANCIS: Thank you.

2   JUDGE CLIFTON: And specify for us, Mr. Hollon, where?

3   MR. HOLLON: On Page 5 of the testimony, paragraph (g), the

4 new language should read, "bulk transfers and diversions to

5 producer-handlers which produce Class II, III, or IV products,

6 shall be classified in accordance with 1000.42 (c) (3).

7   JUDGE CLIFTON: All right. Ms. Elliott, do you have it?

8 Thank you. Are there any questions for Mr. Hollon on this

9 topic? There are none. We have ten minutes of his time.

10 Mr. Beshore.

11   MR. BESHORE: We have -- the next testimony will be the

12 Testimony of Elvin Hollon, Seventh Statement, which Mr. Schad

13 would be a co-presenter on. And I actually -- my thought is,

14 so Mr. Hollon, we're not going to get through it in ten

15 minutes, but we should probably just --

16   MR. HOLLON: Do our seamlessly shift.

17   MR. BESHORE: Yeah, seamlessly move to Mr. Schad and so

18 that would make this a good time for a short break this

19 morning.

20   JUDGE CLIFTON: All right. Good. When you say short, if

21 we're not going to be recalling Mr. Hollon, then I would take

22 15 minutes now.

23   MR. BESHORE: Yes.

24   JUDGE CLIFTON: Is that fine? Please be ready to go at

25 10:45.

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1   (Whereupon, a break was taken.)

2   JUDGE CLIFTON: We're back on record at 10:46.

3 Mr. Beshore?

4   MR. BESHORE: Thank you, your Honor. At this time,

5 Mr. Airoso, Mr. Joey Airoso, who entered his appearance this

6 morning, or his presence known, is prepared to testify. We

7 would like to do that at this time and we will yield to him.

8   JUDGE CLIFTON: Thank you, Mr. Beshore.

9   MR. AIROSO: Good morning.

10   JUDGE CLIFTON: Let me swear you in first.

11   MR. AIROSO: Okay.

12   JUDGE CLIFTON: Then we'll know you are telling the truth

13 when you tell us your name. Would you raise your right hand,

14 please.

15   Do you solemnly swear or affirm under penalty of

16 perjury that the evidence you will present will be the truth?

17   MR. AIROSO: I do.

18   JUDGE CLIFTON: Thank you. And please state and spell your

19 name again, even though you have already done it once.

20   MR. AIROSO: My legal name is Joseph, J-O-S-E-P-H, Charles,

21 C-H-A-R-L-E-S, Airoso, A-I-R-O-S-O. A little bit about my

22 family's history. I brought a little poster board to kind of

23 give you a little bit of a visual of our family's history here

24 in California.

25   Our family came here in 1912. My great grandfather and

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1   their family were originally from Terceira Islands in the

2   Azores. And in 1912 they came over for a chance at opportunity

3   here in the United States. And they were dairy farmers in the

4   Azores. So here is a picture that was taken in about 1915.

5   And it's my great, my grandfather is on the horse, three of his

6   brothers are standing on the ground with my grandfather, and

7   then they had three cousins came over also.

8   They started milking cows out near Corcoran, and

9   there's a road out there called Dairy Avenue. And a lot of the

10   early settlers would come out and milk cows out there close to

11   the lake, probably because there was some feed that grew next

12   to the lake, and so it gave them an opportunity to graze their

13   cattle. They each milked about 10 to 15 cows apiece, until

14   1938. And then my great grandfather went back to the Azores.

15   The brothers all went kind of their separate way and my

16   grandfather started his farm in 1938 in Tulare, California.

17   And it's still, the farm still operates today shipping

18   Grade A milk. And in fact, in 1927 my grandfather became a

19   DCCA shipper, and that plant was, we merged with Land O'Lakes

20   in 1997. And so that little barn that was built in 1938 for my

21   grandfather who purchased it two years later, is still shipping

22   milk to the same plant it did in 1927, which is kind of amazing

23   really. And so it's something that I'm real proud of.

24   The next picture on the bottom right is a picture taken

25   of our family in 1967. And I was seven-years old, my brother

was six. It's with my mom and dad. And that was when we

started 4H. And so those are our four registered animals that

we had that we used to start our 4H projects.

In 2012, we celebrated our 100th anniversary of our

family of doing business in California, so there's a picture of

our family on a facility that we built in 2006. On the bottom

here there's a picture of a cow and a race car, and those have

some major significances.

My dad, in his 20's, was a drag racer, and actually

won, if you know anything about racing of any sort,

Indianapolis is where it happens, whether it is NASCAR, or drag

racing, that's the biggest race in the United States. Well, my

dad WON that race in 1967. And he sold that race car and

bought the business from my grandmother. And that's how,

that's how, what he used to, for our family to stay in the

business.

And so, and then the cow on the right was a cow that

kind of a famous cow that we bred and owned on our farm, who

was scored an excellent 94 and gave over 50,000 pounds of milk.

And so those two things are kind of, they have a historical

value to our family.

So our family is pretty deep-rooted in the state.

We're, we all live in the Tulare area, and so we're people that

are dedicated, we dedicated our lives to really the dairy

industry. And we have seen ups and downs.

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1   A little bit of my history. I got married in 1980. I

2   was born in '60, got married in '80. I have two children. My

3   daughter was born in 1982. She teaches school in the Elk Grove

4   School District up by Sacramento. And she as a granddaughter,

5   I have a one granddaughter that she has that's four. Then my

6   son is on the farm with me and my dad today, so that we have

7   three generations that are actually working on the farm. He

8   has a son that's five. That will be the sixth generation in

9   our family in the dairy industry, and he also has a little girl

10   that's one, and she might be interested, too. Only -- only

11   time will tell.

12   But -- so the reason why I'm here today is to testify,

13   just like many other dairy farmers have over the last couple of

14   weeks, how important it is to make sure that our pricing system

15   here in California is fair and equitable for the next

16   generation and the next generation after that.

17   A little bit about me. Again, I have been, I have

18   served -- I'm the Farm Bureau President for our county at the

19   moment. I'm the Vice Chair of the Farm Credit West Board that

20   is an $8 billion bank here in California, of which about $1.2

21   billion is strictly dairy financing. I have been a member of

22   the South San Joaquin Holstein Club, the Tulare HIA, College of

23   Sequoias and Tulare Union High School Ag Advisory Committees.

24   I have been a Land O'Lakes Delegate. I'm on the Holstein

25   U.S.A. Genetic Advancement Committee, and I also serve on the

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1 Cobank District Council, and a member of the St. John's

2 Catholic Church Finance Committee.

3   One of the things that I wanted to introduce that I

4 thought was really interesting. I have a copy here -- my

5 grandfather died in 1963 and my dad took over the business when

6 he was 21-years old. And when my grandmother died in 1999, she

7 gave me and my mother all the important papers that they had

8 accumulated over the years. And, of course, they didn't have

9 them in a safe. She had a chest and they were all wrapped in

10 aluminum foil. And I thought it was interesting. They had the

11 deeds, a copy of the original Will. But included in some of

12 those documents was State of California Stabilization and

13 Marketing Plan as Amended for Fluid Milk and the date was

14 July 1, 1948.

15   And the reason why I think this is important is that I

16 think change is inevitable in milk marketing. It's been going

17 on for a long time. This was a major change that happened that

18 took Tulare County into consideration, our own county. And

19 then in 1969, the next change took into consideration the whole

20 State of California. And in my mind, today we're here, we're

21 looking at getting an equitable price that is tied to the whole

22 United States. That's why we're here today. Because we're,

23 the, as the world changes, we're all, the movement of milk

24 becomes easier and it's easier for us to compete against each

25 other. And I believe the only change that's happened since

1 | 1969 to the California milk pricing system is a fixed

2 | differential on the quota.

3 | So anyway, kind of interesting. And I think, in my

4 | mind, the most interesting thing was that he thought that, he

5 | thought enough of this to wrap it in aluminum file and keep it

6 | in one of the safest places there was, so I'm sure this was

7 | kind of like the Bible on July 1, 1948.

8 | In 2007, I was elected to the Farm Credit West Board

9 | and I have served on that Board on various committees. I am

10 | currently the Vice Chairman of that Board. And for the last

11 | eight years I have watched how the credit, farm credit system

12 | and banks in general have viewed the California dairy industry

13 | different, and especially after 2009.

14 | 2009, if anybody's, hasn't heard already, it was, for

15 | dairy farmers it was like going through the Depression. It

16 | was, I mean, I remember the middle of 2009, we were, we got

17 | $8.72 a hundredweight for our milk and we were about close to

18 | $4.00 underwater. And when you start losing money like that,

19 | it happens so fast, that, you know, we were upside down. And I

20 | think it actually caught the banking industry off guard, too.

21 | I mean, we had an economic meltdown in this country and I know

22 | it impacted everybody, but I feel in the dairy industry, dairy

23 | farmers, especially here in California, took really the brunt

24 | of the risk in that particular time. And really I think the

25 | world changed a little bit when it comes to finance.

1   2010, I wasn't on the audit committee, but I was

2   sitting in a meeting where an auditor from D.C. comes in and

3   they looked at most all our dairy accounts that Farm Credit

4   West dealt with, and the first couple of words out of her mouth

5   were, "The dairy industry stinks in California." And, you

6   know, I think after 2009, I think people thought it would heal

7   back, but we have experienced the same volatility. We have had

8   high feed costs, we have had the ethanol thing was kind of a

9   game changer for feeding animals in California. And then, and

10   then the amount of regulations that we have to deal with in

11   California, and then now the drought. So it seems like it's

12   been one thing after another. And, you know, just Farm Credit

13   West alone, we're still financing over a billion dollars of

14   dairy, but in 2007, when I, when I got on the board we were,

15   about 27 percent of the portfolio was dairy, now it's about 13

16   percent.

17   I also had the opportunity to serve on the task force

18   that Secretary Ross put together, which was initiated in 2012.

19   Again, just kind of a painful process. You just, nobody wants

20   to give in. And I think, in my mind, it's, there was kind of

21   an interesting question that was one of the questions that we

22   had to answer when we went through the process, and the

23   question said, is it important for dairy farmers to be

24   profitable? And this committee was made up of about 50 percent

25   dairymen and 50 percent people on the processor's side. And so

1   when we got to the meeting, this question ranked about number 7

2   on the list of the importance. I said, well, how could that be

3   so low? And then it dawned on me that it's not really that

4   important for processors if we're profitable, and to dairy

5   producers, it was real important, so it ended up in the middle.

6   And I think we have a -- we have a little bit of a

7   challenge in our state. There is not a lot of competition

8   here, I think, for procuring milk. We have a state that has a

9   lot of, they are bigger processors, and so they don't really, I

10   think they sometimes take for granted the milk flow.

11   And I asked my dad when I got home. I was frustrated

12   about where that question ended up, and his answer was, he

13   says, you know, one of the differences -- I think what has

14   changed in our industry is, you know, if you go back 40 or 50

15   years, everybody had a pretty good relationship to milking a

16   cow, or they actually milked a cow. And he said, now, you

17   know, people don't, it's just, you kind of take for granted the

18   milk's coming, and -- and they have never experienced it

19   themselves. So a lot of people don't understand the hard work

20   and dedication it takes just to get one drop of milk, which it

21   takes two years to get one drop of milk. You have to raise an

22   animal for two years. So I think sometimes we lose a little

23   bit of respect for what each other does when we're looking at

24   trying to keep the pricing fair.

25   One of the things, and it's been brought up here today,

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that I seen, realized quickly when we were in the task force

meetings was the -- I think cheese processors, they like to use

the quota to divide producers up. They know that, you know,

not everybody has quota in our state, and so it's kind of an

easy way to divide dairy farmers up. And the one thing that

producers have always been insistent upon in this state is

that, you know, that quota system is producer-driven, and no

matter what happens to it it will be decided by the producers

through a fair vote. I don't think there's any producer in

this state that wants to see anything happen to the quota

without either something, a fair price being paid for it or

just leaving it alone. And so I think that's an important

thing to remember.

When you look at my experiences on the Farm Credit, and

looking at the industry as a whole, you know, it's pretty

simple. If you look over the last four our five years, we have

been discounting our milk. I think the average over the last

four years is about $1.93 a hundredweight. And when you look

at, it's not just the price, it's a lot more than that, because

it takes away opportunity to manage risk and it creates a

competitive disadvantage. And I think we're, more and more

we're working on a market where we're competing against each

other. And, you know, California dairymen have always been

leaders. I have had the chance to travel around the world and

to different parts of the world, and they always look to

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California as a leader in dairy innovation, Cow Care, you know,

the ability to be very efficient. And I think sometimes those

efficiencies have been used against us. You know, there was a

comment that likes to be used against us, if we give them more

money, they'll just make more milk.

And I think, you know, we're known for being some of

the most efficient producers in the world, and we're, and I

think that's been used against us. But we, you know, we have

learned how to take care of cows properly and well, and

facility, Cow Care. And you know, for the most part we have

done that with a milk price that was at or less than the rest

of the country, and then in 2007, you know, the rules changed a

bit and the spread has just become too wide for producers to

really take the volatility out of their business.

Over the last nine months we have had negative

production in California, so -- and that's coming off of a year

when we had some of the best milk prices in my lifetime. And I

think what's happening in California is that we're having to

compete against other crops. We have the almond industry, the

pistachio industry, there are, the tomato industry, there's a

lot of farming out there that's really starting to compete.

And we have to get enough value out of our price to be able to

compete for land, for water. And to give you a perfectly good

example in where we farm, within the last two years we have had

developers come in and buy ground for almonds for, in the

1 neighborhood of 23 to $25,000 an acre. And this is all

2 investment money that's coming in from different parts of the

3 country. And so we have to be able to compete against that.

4 And as one of my almond grower friends stated, he says, you

5 guys' problem is, you don't get enough value out of your milk,

6 that's the problem. And I think we have to be able to get the

7 value out of our milk price here in California to compete

8 against other commodities for water and land or the milk, the

9 flow will just keep going down.

10   The last thing I'll comment on, and I think it's an

11 issue that we're all, the whole, you know, what we're really

12 starting to deal within California is labor. We have cities

13 now that are charging $15 an hour for, their, set their minimum

14 wage standards at $15 an hour. We have to compete against

15 other crops for labor. There's strawberry growers that are

16 paying in excess of $20 an hour, and so we're going to have to

17 be able to get value out of our milk to be able to compete for

18 labor, for water, for the land that's required to do our

19 nutrient management plans on.

20   And the last thing, it just happened this weekend, it's

21 a tragic event, but I do think it's going to have an impact on

22 everyone here in the United States, is that, especially with

23 labor, when you look at what happened in France on Saturday,

24 it's going to have -- just like 9/11 had an impact that will

25 never go away, these kind of tragedies are going to have an

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1 impact on our border security, and I think it's going to make

2 labor more and more difficult. And so we have to be able to

3 get a fair milk price so that we can invest in technology as we

4 deal with labor, water, and, you know, different problems that

5 exist.

6   So again, I just -- I thank you for your time and

7 anybody has any questions, I'll try to answer them.

8   JUDGE CLIFTON: Mr. Airoso, your arrival here and now to

9 testify is perfect timing. You have touched on so many of the

10 issues that have been raised here during more than eight weeks.

11 I guess today begins our ninth week.

12   I would like to ask you specifically how I should spell

13 Cow Care, is that that program, is that two words?

14   MR. AIROSO: No, it's separate, C-O-W, C-A-R-E.

15   JUDGE CLIFTON: And is it a capital C?

16   MR. AIROSO: Capital C.

17   JUDGE CLIFTON: There's a space between Cow and Care?

18   MR. AIROSO: Yes.

19   JUDGE CLIFTON: And that's a program developed to make sure

20 that cows are properly cared for?

21   MR. AIROSO: Yes, we have animal husbandry programs here in

22 California, but --

23   JUDGE CLIFTON: And speak to the microphone. Otherwise, if

24 you look at me, the sound doesn't come through well.

25   MR. AIROSO: I'm glad you asked that question, because this

1 is something I had written down. I'll tell you when Cow Care

2 started in California.

3   In 1969, we had the second wettest year. Ironically,

4 we're talking drought now, but in 1969 we had the second

5 wettest year in the history here in California. And I was

6 nine-years old, and I can remember, I can remember my dad

7 feeding our cows with a Caterpillar, because that's how wet it

8 was. And I'm sure every other dairyman that is still dairying

9 in our state will remember that year. I remember cows being

10 stuck in the mud and they couldn't get to them.

11   And so after 1969, our creamery, Dairyman's Creamery

12 came out with programs to help all of its members take care of

13 their cows better. And the one that I remember the most was

14 buying concrete for a dollar a yard to put concrete in places

15 where cows, and then build shades, and do all kinds of things.

16 And that was really the beginning of people figuring out, if we

17 take care of cows better, they will be more efficient. And,

18 now it's, today it is really kind of a common thing, but, you

19 know, you don't really dairy if you can't take care of your

20 cows, or you won't be able to stay in the business.

21   JUDGE CLIFTON: Who would like to be the first to bring out

22 additional information from this witness? Mr. Beshore?

23   CROSS-EXAMINATION

24 BY MR. BESHORE:

25   Q. Marvin Beshore. Thank you, your Honor. Thank you,

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1 Mr. Airoso.

2   A couple, just a couple of follow up questions. You

3 mentioned negative production in California the last nine

4 months. What do you mean by negative production?

5   A. I mean, when you look at the percentage of milk that we

6 produced over the last, year since February we're -- we're

7 minus.

8   Q. So in other words, the production in the state has

9 declined versus the prior year on a month-to-month basis?

10   A. Yes.

11   Q. Total. Okay. Being on the Farm Credit Board, can

12 you -- can you tell us how Farm Credit looks at quota? If you

13 get involved in this at the Board level, looks at quota on

14 producer's balance sheets?

15   A. Farm Credit looks at quota as, you know, they -- they

16 put the value on the cow really, because it adds value to the

17 milk that the cow's going to give. So in today's environment,

18 you have, if you have an X amount of quota for each cow, then

19 they actually put the value on that cow for the added value

20 that the milk that is going to come out of the cow.

21   Q. So, on a -- if you have two dairies of the same number

22 of cows, the dairyman with the quota has, considered to have

23 more collateral or more net worth than the, more assets on the

24 balance sheet per cow?

25   A. Yeah, because the cow that's, the milk that's coming

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1 out of the cow is of added value, so they are going to give the

2 cow a little bit more value, because the quota itself is not a

3 tangible asset.

4   Q. You mentioned risk, or risk management a bit. You

5 eluded to that. Can you just tell us what experiences have you

6 had or observed with how it's possible or difficult for

7 California dairymen to use risk management?

8   A. I'll give you a specific example. So after 2009, 2010,

9 2011, that became the favorite buzz word for people that were

10 in the processing side. They need to risk manage. That's the

11 key to, we have to risk manage.

12   Q. Who has to risk manage?

13   A. The dairy farmer.

14   Q. That's what the processor --

15   A. They didn't manage their risk properly in 2009, that's

16 why this thing was really so serious. And, you know, so I

17 spent a year taking a class every Friday morning at 6:30 in the

18 morning, talking to a gentleman from Chicago. And what I found

19 out was that, for me, and I think pretty much for most dairy

20 farmers, the things that really make sense are really

21 expensive, and the things that don't make sense are real cheap.

22 And the other thing I found out, if I compared myself, my farm,

23 my costs to dairy farmers that were in, say, Michigan, the

24 difference would be, I'm minus $1.08 starting out, and they are

25 plus 3. $4.00 difference a hundredweight.

1   Well, I found myself trying to manage my risk to break

2   even all the time. And that's hard to do, because at some

3   point the bank wants you to make some money. You have to

4   figure out how to pay debt and, you know, have a positive cash

5   flow. And so for me it was a little, it was difficult.

6   Now, I will admit, I built a brand new dairy in 2006.

7   So our farm probably has a little bit of a higher debt load

8   maybe than some farms, but the reason why I built that dairy

9   was to be able to compete for the next 50 years, take care of

10 my cows better, manage people and employees better, you know,

11 and provide a better environment for my employees to work in.

12 Because if you look to the future you can't -- we operate two

13 farms right now, one farm is built in 1938, same original barn,

14 and there's going to come a day where I'm not going to be able

15 to find people to milk in that type of barn anymore. So you

16 have to look to the future, and so --

17   Q. So can you just tell us a little bit about, a little

18 bit more about your farm and your herd size, how many cows are

19 you milking? How many acres is your farm?

20   A. So we farm 1500 acres, of which we rent 320 from my

21 aunt and then a neighbor. And we milk 2900 cows. We milk 600

22 cows on the original home farm; and then the other farm we milk

23 2,000; and then the balance is dry cows.

24   And the new farm which was built in 2006, is a rotary

25 parlor with all the cows housed in a free-stall setting. And

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1 then the old facility is open corrals and then a flat barn,

2 which really is very similar to what they built in 1938. We

3 renovated it three times. About every 15 years we go through

4 and renovate it, but it is, really the structure of it is

5 pretty much the same.

6   Q. Just one final question. With the outstanding genetics

7 you have there, Excellent 94 cow you mentioned, 50,000 pound

8 production, where all have you sold breeding stock from your

9 herd?

10   A. We have sold breeding stock all over the United States,

11 and several different countries around the world, South Korea.

12 Just, starting in the '70's, you know, and I guess I didn't

13 expand on that a little bit more. But when my dad sold the

14 race car, that's when we got into registered Holsteins, and he

15 made the investments into genetics. And I think a lot of it is

16 just, if you look at our family background was dairy farming,

17 and that was, you know -- we have been -- we have been

18 dedicated dairy farmers in California for over a hundred years.

19   And, you know, in 2006, if I look back right now, would

20 have been, it would be easy for me to say, I should have just

21 planted that ranch into almond trees, I would look a lot

22 smarter right now, but it's not in my pedigree. And I think

23 that's the one thing that people need to understand about dairy

24 farmers, is that there's got to be, there's some love and

25 passion inside you and love for cows to be able to do it.

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1 Because it's, there's easier ways to make a living.

2 And I think what we're wanting the outcome of this

3 hearing, for myself, my family, and all the other families that

4 have testified here or do business in California is, we want a

5 fair and equitable price so that we can, I can be confident

6 that when my grandson takes over in 20 years, you know, he can

7 carry this thing forward.

8 Q. Thank you.

9 JUDGE CLIFTON: Who next has questions for Mr. Airoso?

10 Mr. Airoso, you have been an excellent witness. I love when

11 people can just give us so much information without notes

12 basically. You may have had a few prompting notes, but you

13 covered a great deal of territory.

14 MR. AIROSO: It's ground into me. There was one last thing

15 I wrote down AND I think it is something that's a take away.

16 Two years ago, some good friends of mine, they are both

17 28, and you know, it's easy to tell people not to do something,

18 but they called me up and had a great opportunity to get into

19 the dairy business. And, I, you know, I thought about it and I

20 go, man, this business, since 2009, it's been kind of, it's

21 been a little bit gut wrenching, but I know that they are both

22 hard working people, and I know they will make it. But the

23 point I want to make is, so they bought a dairy about a year

24 and a half ago. They got in at a good time. But I think if

25 you want to get new people into this industry, it's so

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1 important to make sure that this price is fair. I know it

2 can't be fair everyday, but at least fair in every segment of

3 the time that we have the chance to change it. Because without

4 those kind of people getting into this industry, I think at

5 some point the processors are going to look back and say, you

6 know what? We're missing the people that love this industry.

7 And there's people out there that will milk cows as long as

8 they are breaking even for a long time because they love to do

9 it. And I think, don't take that for granted. Thank you.

10   JUDGE CLIFTON: Let me ask you one other question. When

11 you studied risk management and you talked to the gentleman in

12 Chicago, you mentioned the difference minus $1.08 in California

13 and up 3 in Michigan, up $3.00, so there was a $4.00 per

14 hundredweight difference between those two. Help me understand

15 where those numbers came from.

16   MR. AIROSO: So those numbers, what were included in those

17 numbers were, we took all my costs to do business, and then the

18 difference between the Class III price and the California

19 overbase price. And so in California, we are -- we were used

20 to operating with hardly any premiums. So that one, that minus

21 $1.93 that I threw out earlier, I think that number is close to

22 accurate, is in that number.

23   When you go to Michigan or, and there was other states,

24 too, that weren't quite as high, like, he worked with some

25 people in Ohio and they were a little bit less than Michigan.

1 But the point is, that has their premiums built into it, and

2 their cost of production.

3   It also has built in there, feed costs. Which, you

4 know, in 2012, that was after the ethanol, that was when feed

5 prices were higher, too. So we had, there was cheaper to buy

6 feed in the Midwest and higher in California. So there's a lot

7 of things that go into that, but basically cost, premiums, and

8 your actual milk price, and that's how you get that number.

9   JUDGE CLIFTON: So in California you think that the average

10 result from subtracting the cost of production from what was

11 paid for the milk was minus $1.08 for the period of 2010 to

12 2011?

13   MR. AIROSO: My basis was minus .08 when I was working on

14 that. That was the number we established for me. And

15 everybody would be a little bit different, but he said the

16 average California producer were always close to minus a dollar

17 starting out.

18   And I -- and we don't have, our family doesn't have a

19 lot of quota, but that was actually figured in. We have about,

20 at the time we had about 350 pounds quota, and so that was

21 factored into that price, too.

22   JUDGE CLIFTON: How did the gentleman who helped you

23 understand this get his information?

24   MR. AIROSO: He worked with multiple dairy farmers across

25 the Midwest and California, so and I -- that was private

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information that their company had that, you know, he didn't

disclose to me the names of the people, it was just numbers.

JUDGE CLIFTON: And why did you regard the information he

gave you as reliable?

MR. AIROSO: Well, I took his word for it.

JUDGE CLIFTON: One of our difficulties, as you probably

know, is much of this information about cost of production and

what are you paid for your milk is private, proprietary, trade

secret, confidential. And it makes it difficult for us to

evaluate with solid factual evidence. So anything you can tell

us about your own situation will really be useful. So when you

figured during that time that you were losing about 8 cents for

every hundredweight of milk that you produced, tell us how you

made that calculation and if that's still true today?

MR. AIROSO: Well, my, at the time, that was my taken into

consideration my milk price and different, what all my hauling

and everything that came off my check, and then comparing my

overbase price to Class III. That's what my number was.

Every dairy farmer is going to have a little bit

different number. If you have all quota, if you have no quota,

if your hauling is more expensive or less expensive, but that's

what impacts that differential. And -- and the one thing that

we -- we came to the conclusion on, is if our number could be

close to Class III like it was prior to, if you look at how

Class IV and Class -- overbase and Class III attract ten years

1 ago, it was a much closer relationship. So it made it easier

2 to use some of the risk management tools. But when they are

3 tracking a $1.93 a part, then it becomes hard.

4   And I felt like, I'm not the guy that likes to go to

5 Vegas and play cards, I felt like it was, I felt like I was,

6 the way the tools were presented and the minus 08 was very, it

7 was risky for me to really make good decisions on what I should

8 do through the risk management tools that were available.

9   JUDGE CLIFTON: Thank you. Who else has questions for

10 Mr. Airoso. Mr. Hill?

11   CROSS-EXAMINATION

12 BY MR. HILL:

13   Q. Brian Hill. Thank you very much for coming. I want

14 your support to be very clear on this record, so I'm going to

15 ask you the obvious question. Which of the proposals are you

16 in support of?

17   A. I'm in support of the Cooperative Proposal.

18   Q. That's all I have to ask you.

19   A. And I should have said that right out of the gate.

20   Q. Thank you very much.

21   A. Thank you.

22   JUDGE CLIFTON: Is there anything you would like to add

23 before you step down, Mr. Airoso?

24   MR. AIROSO: No, I'd just like to thank you for your time

25 and thank you for listening.

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JUDGE CLIFTON: Thank you very much. We appreciate your

 2 contribution. Mr. Beshore?

 3   MR. BESHORE: Yes. At this time I would like to, and it's

 4 been distributed, have the document that is identified as

 5 Testimony of Elvin Hollon, Seventh Statement, Rebuttal,

 6 Cooperatives' Exhibit 11, marked as the next consecutive

 7 exhibit.

 8   JUDGE CLIFTON: Thank you. I think it's being distributed

 9 now. And I would like someone to close the doors in the back,

10 it goes clear through to a window and there's a flashing every

11 time a car goes by. So that will help.

12   MR. BESHORE: So this will be exhibit number --

13   JUDGE CLIFTON: This will be 183.

14   MR. BESHORE: And while it is identified as Testimony of

15 Mr. Elvin Hollon, I might note that it will be presented by

16 Dennis Schad.

17   JUDGE CLIFTON: I'll need a copy. They are distributed,

18 Mr. Beshore. I'm marking mine now as Exhibit 183.

19   (Thereafter, Exhibit 183, was

20   marked for identification.)

21   JUDGE CLIFTON: And, Mr. Schad, you remain sworn, but I

22 would like you again to state and spell your name.

23   MR. SCHAD: My name is Dennis, D-E-N-N-I-S, Schad,

24 S-C-H-A-D.

25   MR. BESHORE: Thank you.

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 1                    DIRECT EXAMINATION

 2   BY MR. BESHORE:

 3     Q.  Mr. Schad, would you, at this time, present the

 4   testimony in Exhibit 183?

 5     A.  Yes.  Starting on page 2.

 6    The Cooperatives' Proposal Relative to "Call" Provisions

 7         The Cooperatives' support "call" provisions in the

 8   proposal California Federal Federal Milk Marketing Order

 9   (FMMO).  We believe our initial position will work as we have

10   offered it, but in light of the comments we have heard at the

11   hearing, feel this modification will improve it.

12         It is our position that calls are generally necessary

13   for the market only when wide-scale market conditions that

14   impact all processing handlers in a region occur.  For example,

15   calls are not the solution to an individual plant's acquiring a

16   new customer, opening a new plant, or a complaint relative to

17   ongoing marketing premiums.  The Market Administrator should

18   take these factors into consideration when deciding to issue a

19   call.  We would define a call as requiring handlers with

20   predominantly Class III and IV utilizations --

21     Q.  Milk utilization?

22     A.  -- milk utilization to supply milk to Class I handlers

23   pooled by the Order if market conditions under the terms of the

24   call provision support the need.  Call provisions would be used

25   to meet short-term market conditions when normal milk supplies


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1 are less than the market demand.

2   We considered linking the requirements to quota, but

3 chose instead to relate it to Class III and IV utilization.

4 The distribution of quota pounds among handlers is unknown, and

5 a high percentage of quota pounds may be held by farms that

6 ship directly to distributing plants. Thus, insulating that

7 volume of milk from filling a call request. Handlers with

8 predominantly Class III and IV utilization, benefit the most

9 from added value of Class I pricing and should bear the burden

10 for filling a call request.

11   Call provisions have been included in Federal Orders in

12 previous years, but, except for language in the Pacific

13 Northwest Order, are not present in current orders. The

14 current California State Order (CSO) contains call provisions.

15 While their actual use has been limited, the industry is of the

16 opinion that the presence of these provisions can result in

17 shipments being made to a requesting call handler above the

18 volume tied to regular business transactions, if a supply need

19 is present. We think the language present in FMMO 124, the

20 language that was present in pre-Reform Order 68, and the

21 current language in all Orders granting the Market

22 Administrator discretion and flexibility, and adjusting

23 performance provisions, are a reasonable guideline for how

24 these call provisions should be structured. The Order 124 and

25 pre-Reform Order 68 language defining call provisions are

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1 attached to this statement.

 2   The lack of the provision's actual use in the CSO and

 3 the absence in FMMO's, make it somewhat difficult to evaluate

 4 the effectiveness of call, of the provisions, and to craft call

 5 provisions. We will offer guidelines on how a -- how "call"

 6 provisions should be structured.

 7 Suggested Guidelines

 8 1) Definitions of Handlers Which can Initiate a Request for a

 9 Call to the Market Administrator; and Handlers Which are

10 Required to Respond to a Call.

11   A handler initiating a call must be a Section 1051.7(a)

12 or (b) plant. A plant making a call must utilize in its plant,

13 all the milk for which the plant is the responsible handler,

14 and which was pooled on its report in the prior two months. A

15 handler making a call cannot direct milk to other uses and

16 cannot expect other pool handlers to satisfy a shortfall in

17 their supply needs via a call.

18   All pool handlers would be potentially responsible to

19 fill the demands of a call. Only the Market Administrator has

20 the visibility to all shipments and pool volumes of all

21 handlers, and is able to craft call requirements specific to

22 each situation.

23 2) Definition of Call Regions for the Call Provisions

24 Supported by the Cooperatives

25   We believe the Northern and Southern California

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1 procurement regions, as currently defined by the CDFA, with one

2 addition, should be used for point purposes of aligning the

3 responses to a call when available supplies -- I'm sorry, I'll

4 start in the middle of that sentence -- used for the purposes

5 of aligning the responses a call with the available supplies to

6 do so. Plants making a call in a procurement region, would be

7 supplied by handlers with milk production in the same

8 procurement region. These market regions have differing supply

9 and demand relationships and could require different provisions

10 for making a supply in a call. The regions (termed procurement

11 regions) are defined as:

12   Procurement Region 1 -- Southern California marketing

13 area and the counties of Fresno, Kern, Kings, Tulare, and

14 Arizona County of Yuma.

15   Procurement Region 2 -- Northern California marketing

16 area, except for the counties of Del Norte, Fresno, Humboldt,

17 Kern, Kings, and Tulare.

18   These are the correct boundaries based on current

19 marketing conditions. We support providing the Market

20 Administrator with the discretion to create subregions if

21 necessary, to provide the most efficient response to the market

22 situation.

23 3. Procedure for Initiating a Call

24   Handlers --

25   Q. Could you just read that subtitle, subheading again?

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A.   3)   Procedure for Initiating and Issuing a Call

Handlers would notify the Market Administrator of the,

of the request for a call to be issued for their procurement

region. The Market Administrator would investigate the

request, and if justified, would issue a call requiring all

handlers in the designated procurement region to deliver a

specific percentage of pooled milk to Section 1051.7(a) or (b)

plants in the region.

If a handler fails to deliver per the terms of the

call, a per hundredweight penalty equal to the greater of $5.00

per hundredweight or 25 percent of the non-quota blend price

for the applicable month that the call was initiated,

multiplied by the handler's short fall in deliveries would be

assessed. Any penalty would be deposited into the blend price

pool. The Market Administrator will set the call start from

the beginning. The Market Administrator will set the call

percentage requirements at levels to generate the milk

necessary to satisfy a call.

4) Factors to Consider in Defining the Terms of a Call. I'm

sorry, starting again:

4) Factors to Consider in Defining the Terms of Sale if a Call

is Issued.

The Market Administrator will determine that the

handler requesting the call is willing to pay the necessary

market terms for milk deliveries, when deciding whether to

1 initiate a call. The charges for milk subject to a call, will

2 be determined by negotiation between the supplying handler and

3 the plant.

4   Q. Now, Mr. Schad, could you tell us if you have

5 personally had experienced marketing milk in any Federal Orders

6 which had call provisions?

7   A. Yes. I guess in the 1980's and '90's I worked for

8 Atlantic Dairy Cooperative and Interstate Milk Producers

9 Cooperative, and we were pooled handlers in Federal Order 2

10 which had call provisions.

11   Q. And how did marketing in that Order work with respect

12 to those call provisions? Were they utilized? And if so,

13 under what conditions or just tell us about your experience in

14 that Order which had call provisions.

15   A. My experience is like, I guess, Mr. Zolin's testimony.

16 When the, basically when the Market Administrator rattled his

17 sword, milk came forth. And I do not remember, I don't

18 remember a call provision being invoked.

19   Q. And to be clear, in that Order were they handlers that

20 were potentially subject to the call? Did they have any

21 mandatory shipping requirements without a call?

22   A. The handlers, they were the grandfathered plants of

23 Federal Order 2, which had no shipping requirements.

24   Q. Okay. So that was analogous perhaps to the terms in

25 Proposal 1 in which there are no mandatory shipping

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1 requirements in the proposal, correct?

2   A. That's correct.

3   Q. But this modification makes, would, if adopted and

4 incorporated, reflects the Proponents of Proposal 1's desire to

5 have a call there if it is necessary?

6   A. That's correct.

7   Q. Okay. Why is the county of Yuma, Arizona included in

8 Procurement Region 1?

9   A. They are Proponents of Proposal 1, I believe there's a,

10 that there's a plant located in Yuma County, Arizona that would

11 be pooled and regulated by a California Federal Order.

12   Q. As a pool distributing plant?

13   A. As a pool distributing plant.

14   Q. So it would be presumably a 7(a) plant under the Order

15 we believe?

16   A. That's what we believe.

17   Q. Okay. So can you just quickly tell us what the

18 attachments are to Exhibit 183? You referenced them in the

19 testimony. If you can just -- you can just note them briefly?

20   A. Yes. The first two pages are from a Federal Order 124,

21 and they are the only Order that currently has a call

22 provision. I looked down to Section 1, under B, and it

23 provides language, a guide of language to the Secretary, and on

24 the third page of the attachment is language from the former

25 Federal Order 68, which I believe was Minneapolis. And my

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1 reading is it starts in D.4, the description of the procedures

2 in the call provision.

3   Q. Okay. And they are offered as examples of the type of

4 call language that we would support within the guidelines that

5 you have testified to?

6   A. That's correct.

7   Q. Okay. Very good. Do you have anything else you want

8 to add?

9   A. No, sir.

10   Q. I move for the admission of 183 and Mr. Schad would be

11 available for cross-examination.

12   JUDGE CLIFTON: Thank you, Mr. Beshore. Does anyone have

13 questions for Mr. Schad before you determine whether you

14 object? No one. Are there any objections to the admission

15 into evidence of Exhibit 183? There are none. Exhibit 183 is

16 admitted into evidence.

17   (Thereafter, Exhibit 183, was

18   received into evidence.)

19   JUDGE CLIFTON: Who will begin the questions for Mr. Schad?

20 Mr. English, thank you.

21   CROSS-EXAMINATION

22 BY MR. ENGLISH:

23   Q. Thank you, your Honor. Chip English.

24   Good morning, Mr. Schad.

25   A. Good morning, Mr. English.

1   Q. So let me just start where you ended with your counsel.

2 And you noted, for instance, the language from Order 124, which

3 is the only Order that presently has a call provision, correct?

4   A. Yes, I noted that as an example, the example, of an

5 Order that had a call provision.

6   Q. Now, you agree that it has a call provision, but

7 whatever Order 2 did back in the days before Federal Order

8 Reform put in performance standards everywhere, Order 124 does

9 have a required shipping percentage, correct?

10   A. Order 124, to my knowledge, does, yes.

11   Q. So the call provisions in addition to a shipping

12 percentage, correct?

13   A. That's my understanding.

14   Q. It's not in lieu of it, correct?

15   A. No. It's my understanding.

16   Q. And the language you have addressed for Order 68, we, I

17 think we, for our part, discussed as well, also was on top of

18 the shipping percentage back when they had the call provision?

19   A. Yes, I believe it was very, very low shipping

20 percentage.

21   Q. But nonetheless there was one.

22   A. But nonetheless there was one.

23   Q. Thank you. Now, I note that you have this financial

24 penalty for an entity that doesn't comply on the bottom of

25 Page 4. That's different from Order 68, which basically, if

1 you fail to perform, you were kicked out of the pool for a

2 year, right?

3   A. That is different than 68, yes.

4   Q. And Order 68 kicked you out of the pool for a year,

5 correct?

6   A. I'll take your word for it.

7   Q. Okay. And you are not choosing to go that route?

8   A. No. No. Our proposal is as you read it.

9   Q. Why not? Why not take the route of kicking them out

10 the pool for a year?

11   A. Because our proposal includes inclusive pooling.

12   Q. Now, are you advocating if the Department were to move

13 in its direction of call provision and look at Order 124

14 language, that languages was for a Cooperative reserve supply

15 unit, correct?

16   A. On the answer to your question, it was for a

17 Cooperative reserve.

18   Q. Are you telling the Secretary that if they move in this

19 direction and adopt a provision like 124, it should be a

20 Cooperative reserve supply unit?

21   A. It is not -- we did not put those examples in there for

22 the Secretary to completely lift them out. What we wanted to

23 do was to put some kind of guidelines in there so that the

24 Secretary would have guidelines in drafting a call provision

25 that would be specific to the California Order.

1   Q. Would you agree that the Secretary could also make it a

2   reserve supply unit that included proprietary operations?

3   A. It's far from me to say that the Secretary has, the

4   Secretary has discretion to do what he wants to do, given the

5   record and evidence.

6   Q. Do the Cooperatives have a recommendation as to

7   whether, if the Secretary moves to a reserve supply unit

8   concept, as to whether it should include proprietary operators

9   having the same opportunity to form or join a reserve supply

10 unit?

11   A. We have no recommendation because that's not our

12 proposal.

13   Q. Are you against it?

14   A. We have no recommendation.

15   Q. Okay. So turning to the last page of your testimony --

16   A. Testimony?

17   Q. Page 5, the actual testimony as opposed to the

18 attachments.

19   A. Yes.

20   Q. This is where you are referring to the factors to

21 consider?

22   A. Uh-huh.

23   Q. And one of them is the handler requesting a call "is

24 willing to pay the necessary market terms from the pool." What

25 is the definition of necessary market term for milk pools?

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1   A. It would be the, I guess, prevailing rates, premiums.

2 As well as if there is a transportation cost to be incurred

3 above the transportation costs that would be reimbursed with

4 the transportation credit proposals of a Proposal 1.

5   Q. What about a give-up charge?

6   A. I think that would be among the prevailing over order

7 premiums at the time. It may or may not be in there.

8   Q. What if the -- what if the handler that's requesting

9 the call deems those necessary market terms to be unreasonably

10 high?

11   A. I think that that would be a question that the Market

12 Administrator could address, but again, I think it should be in

13 lieu of -- it should be in, you know, we should be looking at

14 prevailing rates and premiums.

15   Q. That's all the questions I have. Thank you.

16   JUDGE CLIFTON: Who next has questions for Mr. Schad on

17 this topic? I'll ask for any redirect and then I will invite

18 USDA to question, if they have questions.

19   REDIRECT EXAMINATION

20 BY MR. BESHORE:

21   Q. I have just one question in follow up to Mr. English,

22 Mr. Schad.

23   On page 3, I would just call your attention to the

24 second paragraph on the one, the first sentence. You have

25 testified that if there was a call, all pool handlers would be

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1 potentially responsible to fill the demands of the call. Do

2 you see that?

3   A. Yes.

4   Q. Okay. So with respect to whether, and we haven't

5 proposed a reserve supply unit, a Cooperative reserve supply

6 unit, that was an example of language, with respect to who

7 would be responsible for a call, would it, in fact, be all

8 handlers, proprietary or Cooperative?

9   A. Yes.

10   Q. And that's the intention of the universal and

11 universally applicable --

12   A. Yes.

13   Q. -- in an equitable fashion?

14   A. Yes.

15   Q. Within the procurement region, of course.

16   A. Yes.

17   Q. Okay. That's all. Thank you.

18   JUDGE CLIFTON: What questions are there from our USDA

19 representatives? Mr. Hill?

20   CROSS-EXAMINATION

21 BY MR. HILL:

22   Q. Good morning, still. Brian Hill.

23   Can you look at Page 4, procurement regions. I noticed

24 that Del Norte and Humboldt County are not in Procurement

25 Region 2, they are obviously not in Procurement Region 1. Is

1 that because there's no production of milk in that area?

2   A. I don't know the answer to that question.

3   Q. Okay. That's really all I had.

4   I have one other administrative issue, your Honor. On

5 the first page of this, before the testimony, the actual cover

6 page, since Mr. Schad is giving this testimony should we modify

7 the first page as presented by Mr. Schad or is it fine the way

8 it is?

9   JUDGE CLIFTON: Mr. Schad, who wrote this document that we

10 have marked as Exhibit 183?

11   MR. SCHAD: The group Proponents of Proposal 1.

12   JUDGE CLIFTON: Do you have any objection to our marking it

13 as testimony of Dennis Schad?

14   MR. SCHAD: None.

15   JUDGE CLIFTON: All right. Let us do that. I think that

16 is a good idea. Exhibit 183, the top page, we'll strike

17 Elvin Hollon and it will instead say Dennis Schad, S-C-H-A-D.

18   MR. HILL: She is making comments to the term Seventh

19 Statement underneath.

20   JUDGE CLIFTON: Oh, because it's not the Seventh Statement

21 of Dennis Schad, let's just strike the Seventh and leave

22 Statement. Mr. Beshore?

23   REDIRECT EXAMINATION

24 BY MR. BESHORE:

25   Q. Just one question in follow up to Mr. Hill's question

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1 on the counties.

2   Are the definition of Procurement Region areas, for

3 Region 2, does the exception relate to the geography of

4 Del Norte and Humboldt there, to your location, to your

5 knowledge, Mr. Schad?

6   A. Yes.

7   Q. Okay. So they are -- they would be part of the

8 Northern California marketing area, but they are not being

9 included in a procurement region for call purposes, is that --

10   A. That's -- yes. And this is just guidelines for the

11 Secretary.

12   Q. Yes. Suggestions for how it might be crafted?

13   A. Yes.

14   Q. And, of course, you have also suggested that there

15 should be discretion to design subregions if that was

16 appropriate under the circumstances?

17   A. Yes.

18   Q. That's all I have.

19   JUDGE CLIFTON: Would you come back, Mr. Beshore? So as I

20 look at these two procurement regions on Page 4, I notice that

21 Fresno and Kern and Kings and Tulare are in both. They are --

22   MR. BESHORE: Yes.

23   JUDGE CLIFTON: They are not included in either. Does any

24 testimony need to come in about that?

25   MR. BESHORE: Well, actually they are included in 1, but

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1   they are excluded from 2.

2        JUDGE CLIFTON:  You are right.  That's important.  I get

3   it.

4        MR. BESHORE:  And if I might --

5        JUDGE CLIFTON:  Please.

6        MR. BESHORE:  -- just note there, they are heavy milk

7   production counties which are not within current Southern

8   California marketing area, but they are supply counties for

9   that area.  And they are actually within what's called the

10  Northern California marketing area, but we would suggest their

11  exclusion because, from that area for call purposes, because

12  there are sources of milk closer to the Bay Area population

13  center we believe, than those counties.

14       JUDGE CLIFTON:  Excellent.  Thank you.  That was very

15  thoughtfully crafted.  Thank you.  Whoever did that.

16       MR. BESHORE:  Yeah.

17       JUDGE CLIFTON:  Are there other questions for Mr. Schad on

18  this topic?  There are none.  Thank you, Mr. Schad.  You may

19  step down.  Let's see.  It is 11:57.  This might be a good time

20  for us to talk about preliminary matters and other

21  announcements, and we can include in that how you all think the

22  rest of our schedule should go today.

23       Let's start with Ms. May.  Your typical announcements.

24  Today we limited you just to the layout of the building we're

25  in, and you may want to give us your normal welcome.  You did
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 1   tell us where the copy machine is.

 2       MS. MAY:  Laurel May.  You know where the copier is and the

 3   bathroom, what else do you really need to know?  All right.

 4           So welcome to everybody.  Glad that you are all here

 5   and appreciate those of you who have accepted the challenge to

 6   come and testify before us today.  If anybody who would, if

 7   anybody would like to testify who hasn't notified us about that

 8   yet, you are welcome to do so, and simply let us know and we'll

 9   bring you on up.  If anybody would like to ask questions of any

10   of the witnesses, you are welcome also to do that.  And to do

11   that you would simply approach the podium and let the Judge

12   know that you would like to ask a question of one of the

13   witnesses.

14           We are broadcasting this section of the hearing via

15   live audio feed that's accessible at www.ams.usda.gov/live.

16           The court reporter is recording official transcripts of

17   the -- wearily -- of the hearing, and she is getting those back

18   to us, and we are posting them on our AMS Dairy website as

19   quickly as possible.  Generally, two to three weeks after the

20   end of each hearing you will see the exhibits and testimony

21   that pertain to that week.

22           We did not bring extra copies of all of our other

23   exhibits today, just because we knew you were going to be a

24   little cramped in here, so as I mentioned earlier, you can

25   access up to Exhibit Number 74 I believe online right now on
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the AMS Dairy website. And that, I believe, is everything.
Anything else?

JUDGE CLIFTON: I have got a couple of follow-ups, but I
think that's good. All right. So here are my couple of follow
ups.

In case you miss via the audio feed some segment that
you are interested in listening to, you may visit a website
that is supplied by Agribusiness Publications. And you will
find that at www.my-dairyman.com. I use a hyphen, some people
call it a dash, but it's my-dairyman.com. Also, there are
links to exhibits, but it's exactly the same exhibits that are
already posted on the AMS Dairy website, it is just a link to
those. It's not separate exhibits. At first I was concerned,
I really didn't want exhibits on a website unless they were
official. And although anyone can put anything on their
website, I am pleased that Agribusiness Publications has chosen
to do it that way. So that means you have to wait until our
formal process has put those exhibits on the website to get
them. So if you want to wait until you can see the exhibit and
then go to the testimony for that day to listen to it, you may.

You also may prefer to read the transcript. That's
often faster, reading a transcript, but it's way more
interesting to listen to the speaker. So that's a resource
that's available to you. That's a resource that may be of some
use to those of you proposing transcript corrections.

1   I have indicated that I would prefer that when it comes

 2 time to propose transcript corrections, that the attorneys for

 3 the Proponents of Proposals 1 and 2 go first and do that heavy

 4 lifting for us. And then we'll have everyone else respond to

 5 that.

 6   Now, I think the right way to respond to preserve not

 7 only your manpower, but also my reading, is to indicate what

 8 of, what would have been proposed is acceptable, and then just

 9 show what you disagree with or what you want to add to it.

10 That is a lot easier for me.

11   What I eventually will do then, is, for example, accept

12 the proposed corrections submitted by, and I'll say, unless I

13 disagree, and I'll say which ones I reject, and if I have any

14 additional of my own. So that's how we'll get the transcript

15 corrections in.

16   Which means AMS Dairy will need to post all the

17 proposed corrections and my Order about them for it to be clear

18 to anyone how the transcript was corrected.

19   The timing of the transcript corrections will depend on

20 when the transcripts have been posted. And they're being

21 delivered as we go, to the Hearing Clerk. They go to

22 Agricultural Marketing Service within USDA, then they are

23 posted on a website and delivered to the Hearing Clerk.

24   Everything that will be filed post-hearing needs to go

25 both to AMS Dairy and to the Hearing Clerk. And to deliver to

1 the Hearing Clerk, I want you to know the best delivery

 2 address. I'm going to read it into the record. Hearing

 3 Clerk's Office, I'm going to do this each day for the rest of

 4 our time here. Hearing Clerk's Office, United States, or U.S.

 5 Department of Agriculture, Stop 9203, South Building, Room

 6 1031, 1400 Independence Avenue Southwest, Washington, D.C.,

 7 20250-9203. Again, that 9203 is just the Stop number within

 8 the building by which people in the building sort the mail.

 9   If you want to hand-deliver your documents to the

10 Hearing Clerk, when you get to the security guard you will need

11 to telephone the Hearing Clerk. You don't want a specific

12 phone number for the Hearing Clerk, you want the general number

13 for the Hearing Clerk's office, which would be answered by

14 anyone in the office. And that number is (202) 720-4443.

15   Now, I'll need for AMS Dairy to announce how you want

16 everything delivered to you, whether you want it

17 electronically, whether you want it both electronically and in

18 hard copy, but what will be coming, of course, will be vast

19 volumes of paperwork, both proposed corrections, but more

20 importantly, the briefs. And I want you all to help me with

21 the timetable of each of these things. So be thinking about

22 it.

23   With regard to the transcripts being available for your

24 use, we are blessed that we have the very same person in the

25 room with us, hearing everything firsthand, also preparing the

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transcript. I can't tell you how much that helps. It's an

enormous advantage. The disadvantage is, she's only one

person, we keep her here more than eight hours a day, and

there's no way she can keep up with our proposed idea that we

would have all the transcripts posted within two weeks. It

just can't be done by one person.

So I don't know exactly when transcripts will finally

be available, but I don't think you should have to do either

corrections or briefs until you have every volume of the

transcript, because some things came up later on that affected

what happened earlier. So that means the timing that you

should propose to me should be a timing from when the last

volume of the transcript is posted online, something like that.

We don't know when that will be. But you will calculate a

number of days or weeks or something like that for me.

So what I'm thinking in my mind is, first, the

Attorneys for Proposals 1 and 2 post proposed transcript

corrections, then the next deadline would be everybody else

suggest these transcript corrections. Then I rule. Then,

briefs come in, the initial briefs from anyone who wants to

file them will need a deadline, and then reply briefs from

anyone who wants to file them. So reply briefs, as I mentioned

before, will not be required, but they may be extremely helpful

and instructive.

So be thinking of all that, because before we leave

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1   here I need to give you those deadlines. These will not be

2   dates certain, they will be numbers of days after the events.

3   I know the holidays are in there, and children are off school,

4   and people spend time with their families, and that should be

5   taken into account.

6   The other thing that I want to take into account is, we

7   need to know whether, before we leave here this week, we need

8   to know whether we are coming back in December for any further

9   evidence.

10   And, Ms. Hancock, in that regard, I want to go back to

11   what we talked about last week. The two weeks that we have

12   hearing space reserved here in Fresno in case we need to come

13   back, are the weeks of December 7 and December 14. And as I

14   recall what you said before we left on Friday, Ms. Hancock, is

15   that beginning December 9 you are not available. So I'm

16   thinking if you want to put on additional evidence, probably it

17   would be on December 7 or 8 or both. So be thinking about that

18   so that you can give us a report. I don't expect you to decide

19   until after the testimony of Dr. Schiek and the

20   cross-examination of it. And then you can determine whether

21   your clients want to put on evidence about the economic value

22   of exempt quota and the value of regular quota. So you can

23   decide, not today, but eventually before we leave here this

24   week.

25   All right. That's all my preliminary. Who else has

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1 preliminary issues, including today's schedule?

 2   MR. BESHORE: With respect to the schedule, I would like

 3 maybe a, just a short three-minute break. I'm not sure, well,

 4 Mr. Schad, our next testimony from Proponent witnesses is a

 5 14-page statement with 12 charts and tables, Mr. Schad has it.

 6 It's not going to get in before lunch if we start it now by any

 7 means.

 8   There may be dairy producers who could testify at this

 9 time, I'm not sure, but I would like to have two minutes, three

10 minutes to check that out and then suggest how we might

11 proceed.

12   JUDGE CLIFTON: Excellent. Three minutes is too short to

13 do anything. We'll take a five -- Mr. English, would you like

14 to be heard with regard to preliminary matters?

15   MR. ENGLISH: Yes. Other than saying maybe if we got

16 Mr. Schad's testimony and we can look at it over lunch it might

17 shorten or organize cross-exam, but I leave it up to

18 Mr. Beshore.

19   I heard last week that he had sort of multiple parts,

20 we seem to have gotten soon, the shorter ones done that

21 Mr. Beshore referenced. I understand Mr. Hollon's coming back

22 on Wednesday for maybe a couple of pieces, and there was some

23 suggestion that, by Mr. Beshore, that we might end up, or we

24 might not, we might end up with time tomorrow on our hands.

25 And obviously, if there's a gap in the schedule we hope to put

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1   Dr. Schiek on in that gap, if there is one tomorrow. But also,

2   I would say if there is a gap, even if you have already started

3   talking about some of the issues, we can use that time to talk

4   more about official notice, corrections, and briefing.

5   And I want to say something about corrections for a

6   moment. Yes, we're lucky enough to have the transcripts being

7   available, a lot of them fairly quickly. And yes, at times we

8   have looked at those transcripts to look at specific pages.

9   But if anybody in this room thinks that, at least I, and don't

10   know about Mr. Beshore, at least I have been spending one

11   moment of time looking to make corrections on transcripts, that

12   hasn't happened.

13   JUDGE CLIFTON: Why don't you just comment. I don't think,

14   I think a lot of people have no idea how much work goes on when

15   we're not in the hearing. Why don't you give us just an idea

16   of what all of you have been doing.

17   MR. ENGLISH: I can just say that, you know, we also have

18   other clients. So, for instance, yesterday, I managed to spend

19   less than two hours on this yesterday, but I ended up spending

20   ten hours on other things yesterday. And, you know, I think

21   I'm not speaking just for myself here, I think most people are

22   getting up very early in the morning, and we're getting to bed

23   very late at night, and I think unfortunately there's some

24   physical signs of that, like tight shirts. But so, I mean,

25   it's been really extraordinary. I think everybody -- I don't

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1 think I can say this is just us, I know it's not just us. I

 2 know it's true of everybody, and so it's just been very tough.

 3 So I just want to say that in advance.

 4   We are starting on the corrections, and I, at least,

 5 have a multi-week drive back to the East Coast when we are done

 6 anyway. That's all I wanted to say.

 7   But I do want to say that if there is a gap tomorrow,

 8 that it seems to me we have things we can do to fill the time,

 9 and that may turn out to be there isn't time. So --

10   JUDGE CLIFTON: Does anyone else want to be heard before I

11 take the five-minute break? No one. Please be back and ready

12 to go at 12:20. Gives you almost six minutes.

13   (Whereupon, a break was taken.)

14   JUDGE CLIFTON: We're back on record at 12:22.

15 Mr. Beshore?

16   MR. BESHORE: Thank you, your Honor. At this time there

17 are two dairy producers who are here prepared to testify, and

18 we would like to allow them to, at this time, starting with

19 Mr. Van Steyn, who did introduce himself earlier for the record

20 this morning.

21   JUDGE CLIFTON: Thank you. Please come forward and please

22 walk between these two tables.

23   Mr. Van Steyn, even though you have already introduced

24 yourself, I'll have you do that again after I have sworn you

25 in. We're distributing a document right now. Does that relate

to Mr. Van Steyn's testimony? It does. So we'll wait until

that is distributed and marked.

All right. We may need to hand out some of more of

these, but we'll let Mr. Beshore tell us what we should have

and then what we need. Mr. Beshore?

MR. BESHORE: We should have a four-page statement, which

is two pages front and back, begins, "Hello, my name is

Case Van Steyn" pages are numbered, and then we have two,

one-sided milk mailbox prices, documents, one ends in

June 2015 and the second in July of 2015.

JUDGE CLIFTON: Very good. All right. Raise your hand if

you still need any of those. It appears they have been

distributed. Let us start with the statement and give it the

next number. Do you have six separate things? So you have got

four pages of typed and talk, and then two mailings from CDFA.

MR. BESHORE: We can make them all one.

JUDGE CLIFTON: And call them all one exhibit. That is

very helpful. Good. Thank you. Ms. Elliott, I think that is

184. Do you agree?

MS. ELLIOTT: Yes.

JUDGE CLIFTON: All right. We'll call all of this 184, and

I'm starting with the four pages of testimony. And then for

the next page, Mr. Beshore, do you want the most current one or

the one -- which one do you want first?

MR. BESHORE: Let's make them chronological. So we have

the one ending in June and finally, the one with July. We'll

make the July Page 5, side 5 will be the July, the July mailbox

milk prices ending in July 2015 and the final page would be

milk mailbox prices ending June 2015.

              (Thereafter, Exhibit 184, was

               marked for identification.)

     JUDGE CLIFTON: Very good. Thank you. All right. So,

Mr. Van Steyn, I'm going to swear you in. If you would raise

your right hand, please.

          Do you solemnly swear or affirm under penalty of

perjury that the evidence you will present will be the truth?

     MR. VAN STEYN: Yes, I do.

     JUDGE CLIFTON: Thank you. Please state and spell your

name.

     MR. VAN STEYN: Case Van Steyn, C-A-S-E, the last name is

V-A-N, space, S-T-E-Y-N.

     JUDGE CLIFTON: Thank you. Mr. Beshore?

     MR. BESHORE: Yes.

                    DIRECT EXAMINATION

BY MR. BESHORE:

  Q. And, Mr. Van Steyn, have you prepared the document we

have identified as Exhibit 184, those materials, and would you

present them for us now?

  A. Yes, thank you.

          Before I start on the document, I'll just give a little

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1 bit of background about me so that if I mess this up, you will

2 have to forgive me. But I started out with getting accepted

3 into the California Leadership Program, which many of you

4 probably know what it is. And I, one of the things I remember

5 clearly about their focus was, get out of your comfort zone.

6 Well, here I am. So, anyway. And I did that.

7   And after that, I was involved in the Sacramento County

8 Farm Bureau for over 30 years. I was involved with the

9 California State Farm Bureau for six years on the Board of

10 Directors, and Chairman of the Finance Committee for, I think

11 it was two or three. I'm currently on the DFA Western Council

12 Board of Directors, and I also represent the Western Council at

13 the DFA Corporate Board of Directors.

14   I have been a -- I'm the -- I spent nine years on the

15 Western United Dairymen Board of Directors, and two years as

16 President. I'm a member of the, represent the dairy industry

17 through the co-ops on the Ag Council of California. I have

18 also spent time, a couple of years, I can't remember if it was

19 two, three or four, on the Milk Producers Security Trust Fund

20 run by CDFA. And currently, I'm also the Chairman of an

21 organization called Cal Emco, which is a co-op that supplies

22 fertilizer to members based on a stock purchase program. So I

23 think I would tell the Director of the Agricultural Leadership

24 Program that I did what he said, I got out of my comfort zone.

25 So thank you for that.

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1   And now I'll start on the prepared statement.

2   You have already got my name. I operate three dairies

3   in South Sacramento County with family and employees. My story

4   is similar to many people that have been here, including Joey,

5   that's -- I added that -- and others that I have heard that

6   have a similar story.

7   My parents came from Holland to chase the American

8   dream. After World War II there wasn't a lot going on, so

9   there was, the American dream of job, security, opportunity for

10 the future, I cannot imagine the emotions when my parents left

11 Holland with two small children, not knowing if they would ever

12 see their parents or if their grandparents would see their

13 grandchildren again. It was a big step that most of us can't

14 comprehend, including me.

15   My dad got a job milking cows in Tracy, California. He

16 worked for several years to save up a small sum of money to

17 start his own dairy. He accomplished this by scrimping and

18 saving every dollar he could, and putting everything into a

19 savings account, which came first. Living expenses were from

20 what's left over.

21   By using the savings and a loan from the bank, he

22 gathered up 20 cows and rented a place in Lockeford,

23 California. No days off, no outside activities. The goal was

24 committed to seven days a week. Slowly but surely he added

25 cows, moved to another location, still in Lockeford. And in

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1956, the family moved to a ranch in a partnership with another
dairy farmer in Elk Grove. The cows were merged together of
the two partners to a viable, to make a viable operation, which
continues to this day. In 1966, my dad bought out the partner
and proceeded to accomplish his dream of owning his own dairy
cows and land.

In the early '60's, we shipped to an independent
processor in Sacramento. The market prices were stressed. My
father met with local dairymen, whom he and his partner rounded
up to have a discussion on what could be done, possibly even
including approaching the processor, processor for more money,
additional money. The processor learned about this meeting and
my, that my dad had participated and organized, and sent a
fieldman for the company came by, and told us at the end of the
month our milk would not be picked up anymore. Our contract
was cancelled. I assume that the processor did this to make
sure that the other farmers that attended the meeting would not
proceed with any further discussions or meetings.

At the time of this area in approximately early '60's,
my dad's partner had a duck pond on the back of the ranch where
several of his friends would be invited to go hunting. This
included a cabin with sleeping quarters. It was far from any
other structures. The people would hunt there, eat there,
sleep there, and drink there, I'm sure, and swap stories as in
today's proverbial "man cave" of today.

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1   During these times, the topic of our contract being

 2   cancelled came up. I'm sure it was right away, because we

 3   couldn't have, get to the end of the month. Some of the duck

 4   hunting companions included the owners of Raley's Superstores,

 5   a construction contractor, and people associated with Borden's.

 6   By the time they ended their duck hunting event of the weekend,

 7   an agreement was reached that Borden's would supply products to

 8   Raley's, if Borden's would take us on and give us a contract.

 9   This would be similar to today's contract, including pooling

10   and quota.

11   Remember all this took place at a duck club. We

12   received our contract and sold to Borden's. Because of this

13   and maintaining our Class 1 usage, we were able to enter a new

14   California plan and receive quota holdings in '69.

15   JUDGE CLIFTON: Let me interrupt you.

16   MR. VAN STEYN: Sure.

17   JUDGE CLIFTON: Read that again, the new California.

18   MR. VAN STEYN: The new California, you might want to

19   insert the word "pooling plant" and "receive quota holdings".

20   JUDGE CLIFTON: Okay. I'm looking for the word "milk",

21   which you have written but you didn't read.

22   MR. VAN STEYN: I'm sorry.

23   JUDGE CLIFTON: Go ahead and read that sentence again, if

24   you would, however you want it to read.

25   MR. VAN STEYN: Remember that all this took place at a duck

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1 club. We received our contract, sold to Borden's, sold milk to

2 Borden's, add the word "milk" there.

3   JUDGE CLIFTON: Okay. We're going to do that on the record

4 copy.

5   MR. VAN STEYN: Because of this, and maintaining our

6 Class 1 usage, we were able to enter the new California Milk

7 Pooling plan, add the word "pooling", and receive quota

8 holdings in 1969.

9   JUDGE CLIFTON: All right. Let me make sure and coordinate

10 with Ms. Elliott. Good. Thank you. We have added those two

11 words. Thank you.

12   MR. VAN STEYN: As you can see, having a secure home for

13 milk was totally at the hands of the processors who controlled,

14 who shipped where and when. The farmers were totally at the

15 mercy of the processors, and it was clearly apparent that the

16 processors' interests were first. So thank goodness for

17 friends, duck hunting, commitments made over breakfast that we

18 were able to survive in the dairy business in the mid '60's.

19   I emphasize it is extremely critical that we maintain

20 the quota system in California as we have done since '69. That

21 change allowed many dairies to remain viable and participate in

22 the American dream. Since many other dairy families roots, not

23 routes, I'm sorry, that's supposed to be roots.

24   JUDGE CLIFTON: We'll spell it R-O-O-T-S.

25   MR. VAN STEYN: Thank you.

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1   JUDGE CLIFTON: I'll bet a spell check changed that.

2   MR. VAN STEYN: I think that was probably true, because I

3   the word I used was "roots".

4   Trace back to Holland, Portugal, and many other places,

5   they had many, they are and had many common goals.

6   The dairy industry in California has met with bumps in

7   the road, ups, downs, support, federal support price

8   volatility. Do we need to add the word federal in there?

9   JUDGE CLIFTON: Let's see, ups and downs, and federal

10   support price volatility?

11   MR. VAN STEYN: Yes.

12   JUDGE CLIFTON: Have you had any other support for prices?

13   MR. VAN STEYN: No, not that I know of.

14   JUDGE CLIFTON: Okay. So we'll add the word "federal"

15   before the word "support".

16   MR. VAN STEYN: But with all the bumps along the way, the

17   dairy farmers have been able to, and at semi-reasonable levels,

18   to allow for positive cash flow and some expansion.

19   In approximately 2007, decisions were made at CDFA in

20   pricing formulas that allowed the wheels to fall off the train,

21   and the California discount to begin, which continues to this

22   day. The biggest priority as we discuss Federal Marketing

23   Orders in these hearings, is that we find a solution to end the

24   volatility and cause California's prices to be in reasonable

25   alignment with prices in the rest of the country.

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1   A $3.00 discount of milk prices compared to other

2   cheese making areas is unacceptable if California is to

3   maintain leadership in the dairy industry in the future. It is

4   critical that we address these issues, including maintaining

5   quota to be able to move forward and stabilize the dairy

6   industry in California.

7   We also need to consider California's regulatory

8   climate, its consequences on dairies, including water, air --

9   excuse me, including air, water, labor, environmental, and

10   animal care that add up to significant costs to a dairy's

11   P & L.

12   California has lost approximately 600 dairies since

13   2008, and has -- there's -- that's not quite right. And has,

14   and continues to have sales of dairies going out of business on

15   a regular basis. Currently there are shortages of milk in

16   California with most processors, and it's likely to get worse.

17   So as not to repeat previous testimony by co-ops, trade

18   organizations, individual dairymen, including Rob Vandenheuvel,

19   Rien Doornenbal, Melvin Medeiros, Joey Airoso, just ad lib him

20   in there -- I will try not to testify on details which I'm not,

21   my calculator doesn't do scientific stuff anyway, which I do

22   not have personal knowledge. However, I can present the CDFA

23   Dairy Review, which I included two back pages which clearly

24   points out the California discount over the last six years, and

25   I might add that if we take the dairy view and go all the way

1 back to 2008 it becomes even more clear of how that, how

2 serious this problem is.

3   Thank you very much for your attention and accepting

4 this testimony to be considered in a Federal Milk Marketing

5 Hearing as it moves forward.

6   JUDGE CLIFTON: Thank you. I want to coordinate with

7 Ms. Elliott on changes we're going to make to your statement,

8 so listen carefully, Mr. Van Steyn, and correct me if I don't

9 have it quite right.

10   So on Page 1 I'm not changing anything.

11   On Page 2, the only change I made is in the very last

12 line I added the word "milk", so that it, so that phrase says,

13 "sold milk to Borden's."

14   Then on Page 3, the top line, I inserted the word

15 "pooling", so that the phrase says "the new California Milk

16 Pooling Plan," and then when I look at the second full

17 paragraph on that page, the next to the last line, I have

18 changed "routes" to "roots" R-O-O-T-S; and then the next line,

19 I have said, "there are" and "had many common goals."

20   MR. VAN STEYN: I guess I meant the dairymen, all the

21 dairymen have many common goals with what I have listed.

22   JUDGE CLIFTON: So we could say, instead of there are, we

23 could say, "the dairymen have had many common goals" would that

24 work?

25   MR. VAN STEYN: California dairymen have many -- no, that's

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 1   not right.  "All dairymen have many common goals."
 2       JUDGE CLIFTON:  Okay.  So let's read from the beginning.
 3   "Since many other dairy families roots trace back to Holland,
 4   Portugal, and other places -- "
 5       MR. VAN STEYN:  I think I would go with California, because
 6   I'm the most familiar, and the presence of Portuguese and Dutch
 7   dairymen in California is much higher than the rest of the
 8   country, I think.
 9       JUDGE CLIFTON:  So we could say, right after "places" we
10   could say "California dairymen have had many common goals."
11       MR. VAN STEYN:  Have.
12       JUDGE CLIFTON:  "Have many common goals."  Okay.  So I'm
13   reading the sentence this way, Ms. Elliott, see if this works.
14   "Since many other dairy families roots trace back to Holland,
15   Portugal, and other places, California dairymen have many
16   common goals."  Okay.
17           Then, the next paragraph, I only put in one word, and
18   it's on the second line.  I inserted the word "federal" that's
19   with a small f, federal, in between "and" and "support", so the
20   last clause of that sentence reads, "and federal support price
21   volatility."
22           All right.  So Ms. Elliott and I are on the same page
23   for the record copies.  And Mr. Beshore, you may proceed.
24   BY MR. BESHORE:
25     Q.  Okay.  Mr. Van Steyn, could you just tell us, the last
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1 two pages of Exhibit 184, are these the last two pages, are

2 these documents which you received in the mail from CDFA?

3   A. Yes, sir. But they are part of the California Dairy

4 Review, which comes monthly.

5   Q. Okay. And the information on them, which you want to

6 call to our attention, is the mailbox price listings, which

7 show a California mailbox price, and then mailbox prices for

8 many other regions in the country, correct?

9   A. Yes, sir.

10   Q. I think we can all compare those and see how they look

11 when you read them every month. I have no other -- well, I do

12 have another question for Mr. Van Steyn.

13   Can you tell us just a little bit more about your three

14 dairies, who is involved in them and how many cows are you

15 milking there?

16   A. We are milking a total of about 1200 cows on three

17 locations, two owned and one rented. And the people involved

18 are my brother, who is a partner; and my son, who is going to

19 be a partner.

20   Q. Very good. Thank you. Thank you, Mr. Van Steyn. I

21 move for the administration of 184, and he will be available

22 for questions from others.

23   JUDGE CLIFTON: You know, I forgot the changes on Page 4,

24 sorry, so I need to coordinate again with Ms. Elliott. So

25 Ms. Elliott, I added in the second paragraph on Page 4, I

struck the word "the" and added "a dairy's" before "P and L".

So the last phrase of that paragraph would read, "add

significant costs to a dairy's P and L."

         And then in the next paragraph I changed that first

line, would you again help, would you help me, Mr. Van Steyn

and just read me how that should read, beginning with

California?

    MR. VAN STEYN: California has lost approximately 600

dairies since 2008, and has had ongoing sales of dairies going

out of business on a regular basis.

    JUDGE CLIFTON: That's good. Okay. So all we do,

Ms. Elliott, is just insert the word "ongoing" before "sales".

And then in the next paragraph after the other gentlemen are

specifically named, I inserted "and Joey Airoso".

    MS. ELLIOTT: Would you spell that, please?

    JUDGE CLIFTON: Yes. Joey, J-O-E-Y, and A-I-R-O-S-A, let

me make sure I've got that right. Airoso, thank you,

A-I-R-O-S-O. All right. Thank you.

         So does anyone wish to question Mr. Van Steyn before

determining whether you have any objection to the admission

into evidence of Exhibit 184? No one. Is there any objection

to the admission into evidence of Exhibit 184? There is none.

Exhibit 184 is admitted into evidence.

         (Thereafter, Exhibit 184, was

          received into evidence.)

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1   MR. BESHORE: And now we'll put you well out of your

2 comfort zone and make you available for cross-examination.

3   JUDGE CLIFTON: Thank you, Mr. Beshore. Who would go next

4 to ask for additional information from Mr. Van Steyn?

5   CROSS-EXAMINATION

6 BY MR. FRANCIS:

7   Q. Will Francis, USDA. Thank you, Mr. Van Steyn. Just a

8 couple questions.

9   Are you appearing here today in support or opposition

10 to any particular proposals?

11   A. Supporting Proposal Number 1, the co-ops proposal.

12   Q. Okay. And you mentioned you own quota.

13   A. Yes, sir.

14   Q. Can you tell us a little more about your quota

15 ownership and the importance that it has on your operations?

16   A. The quota ownership in, that we participate in, helps

17 us to generate a higher premium on the part of our milk that

18 ends up in Class 1 usage. And that's the, how the quota system

19 works to be able to help generate extra income without -- to

20 dairy farms on a regular basis.

21   Q. Okay. And just about your operations. You mentioned

22 you have two separate locations?

23   A. Three.

24   Q. And you rent a third one?

25   A. Right.

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1   Q. Are they all considered part of the same operation or

2   are they separate entities?

3   A. They are -- boy, that's a tough question.

4   Q. The reason --

5   A. On the tax return they are all together, but with the

6   co-op there are three. How's that?

7   Q. I think that helps us. Yes. Okay. Just for

8   background.

9   A. Don't want to get a call from the IRS either.

10   Q. The reason why I ask is, we look at the impact on small

11   businesses. And the rough definition, while the actual

12   definition is based on total dollars, so it's $750,000 per year

13   annual gross income. And I -- you don't need to tell me

14   specifics, but I'm assuming your operation is above that.

15   A. If you add it all together, we would be over that.

16   Q. Thank you.

17   JUDGE CLIFTON: What are the names of the three dairies?

18   MR. VAN STEYN: This is really creative. It is Van Steyn

19   Dairy Number 1, Number 2, and Number 3.

20   JUDGE CLIFTON: I like it. What other questions are there

21   for Mr. Van Steyn? Mr. Van Steyn, is there anything you would

22   like to add?

23   MR. VAN STEYN: Yeah. About the quota. Dairy Number 3

24   does not have quota, so I can compare how that works for me,

25   and it does show clearly that the quota has value and that it's

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1 an important tool for California dairymen.

2   The other thing, I'm sorry about the mistakes, your

3 Honor, but this -- you can tell this is not my occupation.

4   JUDGE CLIFTON: I think you did great. I like very much

5 your statement. It's very clear. As you can tell, people

6 understood what you had to say, there aren't a lot of

7 questions.

8   MR. VAN STEYN: They might want to go to lunch.

9   JUDGE CLIFTON: I just love how you explained how the dairy

10 stayed in business because of the social contacts at the duck

11 pond.

12   MR. VAN STEYN: The old story about who you know -- it is

13 not what you know, it's who you know. Sometimes that's

14 absolutely true.

15   I was just, I did not go to the duck club, I wasn't

16 invited. I was in high school.

17   JUDGE CLIFTON: Do you have any personal knowledge of

18 dairymen leaving the business? And if so, in what geographic

19 area?

20   MR. VAN STEYN: I guess my answer to that would be, in

21 California, because the number of dairies is limited and the,

22 when there's dairies going out of business, most brokers would

23 send a postcard or some announcement of a pending sale, and

24 they would use the list of contacts from CDFA, which would

25 include all dairies. So we normally see those, and they are, I

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1 have seen them in my area, close to me, and all over the state.

2 And there are significant numbers of dairies, every week

3 there's another one, or two weeks, going out of business and

4 having a complete sale. People that have been in the business

5 for a long, long time, and they've just said enough. And we

6 don't have time to go into all the details, but that's, to me,

7 when, as I grew up, I wore dairy clothes, I carried this stuff

8 around. And I used to advertise and do school tours and do all

9 that stuff. And because of all the negative publicity, and the

10 negative everything, including insurance companies, they don't

11 like it. We end up stopping. Don't do that anymore. But

12 emotionally and personally it changes your view of the world.

13 So I'll stop there.

14   JUDGE CLIFTON: Don't stop there. It changes your view in

15 what way?

16   MR. VAN STEYN: In view of the value of dairy, especially

17 to California. It's not just the water, the air, and the

18 competition for land, but it is also the political view that,

19 this is my opinion, that dairies are a negative to the state's

20 economy. And I don't think we're valued like we used to be,

21 including California's CDFA and our state leadership.

22   JUDGE CLIFTON: Thank you.

23   MR. VAN STEYN: That's definitely opinion. But I could

24 support it.

25   JUDGE CLIFTON: And we appreciate it. Does anyone have any

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 1  additional questions for Mr. Van Steyn?  Is there anything
 2  would you like to add?
 3      MR. VAN STEYN:  No.  Just thanks for the opportunity to
 4  present and to tell a short story on how this, the whole system
 5  works.
 6      JUDGE CLIFTON:  Thank you.  We appreciate your being here,
 7  and your testimony, and your exhibits.  Thank you.
 8      MR. VAN STEYN:  Thank you.  I'm excused now?
 9      JUDGE CLIFTON:  Yes.  You may step down.
10      MR. BESHORE:   Your Honor, I would suggest at this time we
11  take our lunch break.  We do have a dairyman from Southern
12  California, Mr. Oosten, who is here, but he tells me he will be
13  able to testify after the lunch break.  And I would make
14  Mr. Schad's testimony available for distribution before lunch
15  so everybody gets a chance to have a preview and maybe that
16  will help things this afternoon.
17      JUDGE CLIFTON:  Is Mr. Barcellos also available after
18  lunch?
19      MR. BESHORE:  Mr. Barcellos is, and we hope to be joined by
20  Mr. Vlahos after lunch, also.
21      JUDGE CLIFTON:  We're distributing now two documents, one
22  is the testimony of Dennis Schad and the other is the exhibits
23  to go along with this testimony.  This particular testimony is
24  marked as second statement.
25          Ms. Elliott, I'll mark the testimony of Dennis Schad as
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1 Exhibit 185.

2   (Thereafter, Exhibit 185, was

3   marked for identification.)

4   JUDGE CLIFTON: I'll mark the exhibits in support, as

5 Exhibit 186.

6   (Thereafter, Exhibit 186, was

7   marked for identification.)

8   JUDGE CLIFTON: That suffices. All right. Good. Then I

9 think we'll take an hour and 15 minutes. It is just after

10 1:00, it is 1:01. Please be back and ready to go at 2:15.

11 That's 2:15.

12   (Whereupon, a break was taken.)

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1	MONDAY, NOVEMBER 16, 2015 - - AFTERNOON SESSION
2	JUDGE CLIFTON: We are back on record at 2:27. I would
3	invite the next witness to come forward, please.
4	MR. BESHORE: Your, Honor at this time Michael Oosten, who
5	has driven here five hours to testify. He's prepared.
6	JUDGE CLIFTON: Thank you, Mr. Beshore.
7	Welcome. And I think you got here in time to go to
8	lunch with some of the other dairy producers; is that true?
9	MR. OOSTEN: Yes, it is, yes.
10	JUDGE CLIFTON: Good. Very good. I'll swear you in in a
11	seated position. Would you raise your right hand, please?
12	Do you solemnly swear or affirm under penalty of
13	perjury that the evidence you will present will be the truth?
14	MR. OOSTEN: Yes, I do.
15	JUDGE CLIFTON: Thank you. Please state and spell your
16	name.
17	MR. OOSTEN: My name is Michael Oosten, M-I-C-H-A-E-L. My
18	last name is Oosten, O-O-S-T-E-N.
19	JUDGE CLIFTON: O-O-S-T-E-N?
20	MR. OOSTEN: S-T-E-N, yes.
21	JUDGE CLIFTON: Excellent. Thank you. Do you have any
22	document that you want to us distribute for people to look at
23	during your testimony?
24	MR. OOSTEN: No, I do not.
25	JUDGE CLIFTON: All right. You may proceed.

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1   MR. OOSTEN: Well, first and foremost, I would like to

2 thank everybody for the opportunity, and USDA, to tell my story

3 and state my position here. You know, I'm a first and

4 foremost, I'm here to support Proposition 1, the Cooperatives'

5 Proposal. I sit on the Board of a Milk Producers Council, and

6 been there since 2008. And I'm also a reserve delegate for

7 Land O'Lakes, so I'm a member-owner of Land O'Lakes.

8   And -- any ways. A little bit of my family history.

9 You know, me and my family, we operate Marvo Holstein Dairies,

10 with my wife Jackie. We have three kids, Mark, Jack, and Aly,

11 and we are partners in two dairies, both in San Jacinto. I'm

12 also partners with my Sister Jeanna and Kristen, who are --

13 Jeanna is 28 years old, Kristen is 22 years old, and I just

14 turned 30 this year. So I'm kind of young, I guess you could

15 say, but I have been in the industry for awhile, and I'll go

16 ahead and tell that story. So but -- we're milking --

17   JUDGE CLIFTON: Let me interrupt for just a second. I need

18 to get some spellings. How is your wife's name spelled?

19   MR. OOSTEN: Well, it is actually, Jacklyn, J-A-C-K-L-Y-N.

20   JUDGE CLIFTON: And is it with your wife that you operate

21 Marvo Holstein Dairy?

22   MR. OOSTEN: Yes. Yes.

23   JUDGE CLIFTON: How is that -- how is the first word

24 spelled?

25   MR. OOSTEN: Yeah, Marvo is M-A-R-V-O.

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JUDGE CLIFTON: All right. And your sisters, how are their

  names spelled?

        MR. OOSTEN: Jeanna, her name is J-E-A-N-N-A; and Kristen,

  her name is K-R-I-S-T-E-N.

        JUDGE CLIFTON: And is anyone involved in that dairy

  besides you and your two sisters?

        MR. OOSTEN: No.

        JUDGE CLIFTON: And what is the name of that dairy?

        MR. OOSTEN: They are both, well, one is called Marvo

  Holstein Dairy, and the second dairy is called Marvo Holstein

  Dairy Number 2.

        JUDGE CLIFTON: There's a pattern here. Thank you. You

  may continue.

        MR. OOSTEN: Yeah. And so between the two dairies, we have

  2400 Holstein milking cows in our milking herd, so milking and

  dry, and we also farm 1600 acres of row crops for forage for

  the cows and San Jacinto.

        JUDGE CLIFTON: And I need help with the spelling of that,

  please.

        MR. OOSTEN: San Jacinto, just like the famous battle in

  Texas, S-A-N, and then the second word is J-A-C-I-N-T-O.

        JUDGE CLIFTON: Okay. Now I feel foolish for having asked,

  but I didn't quite catch it.

        MR. OOSTEN: No problem, I say it kind of fast. Anyway,

  our family dairy was founded, well started by my grandfather in

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1 Paramount, California, which is by L.A. near Paramount Studios,

2 I imagine. I wasn't there when he started but -- any ways, and

3 that was back in 1945. So he started with 40 cows, milking

4 them by hand. And then, you know, later on they moved a number

5 of times. You know, when my dad was young, also. They moved

6 from Paramount to Artesia, it was just right down the way. And

7 later to Chino, and ultimately to San Jacinto, where my dad

8 built the dairy where I currently live and operate.

9   So and you know, the unique thing about my story is, my

10 journey in the dairy business started when I was really young.

11 My father unexpectedly passed away in 2003 at the age of 49, so

12 I was only -- I was only 17 at the time and still a Junior in

13 high school, so that kind of obviously made some pretty unique

14 challenges. And he was preceded in death by my grandpa in 2002

15 of natural causes. So I really got a baptism by fire. So, you

16 know, so I was in charge of the whole thing.

17   And then, I was able, you know, complete high school,

18 graduated with honors in 2004. And I did it while working in

19 the mornings, and everyday after school. And with the help of

20 some good employees and our accountant.

21   And then after high school I was accepted to

22 UC Riverside, University of California Riverside, where I

23 studied Business Administration, and -- but after doing that

24 for about a year had a half I was really burdened with the

25 responsibility of running the farm and going to college

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full-time. I decided to prioritize it and I decided to

transfer to Cal Poly San Luis Obispo, just to focus on the

things I felt were most important in my business, so -- our

business -- and so I went there to study Dairy Science, and I

took classes there for about a semester and a half, just took

the classes that I felt were most important to assist me in

following my passion of being a better dairyman and being

successful in the dairy industry.

        Then, you know, after doing that, and continuing to

work in the dairy, but in 2009 financial crisis hit, and the

resulting dairy market crash was exceptionally hard on us and

our family. We were just beginning to kind of get

reestablished, and get used to, you know, the in's and out's of

the businesses, and we were hit really hard in 2003 with a

State Tax Bill from estate taxes of nearly two and a half

million dollars, so that was a really, really, really big

burden that we had to take on a lot of debt to be in order to

pay that down.

        So in 2009, we were really hit again really hard with

the market crash, that dairy market crash that followed the

financial market meltdown. And that led to another million

dollar loss.

        So and now, since 2010, we have really continued to

struggle with a large disparity in the price paid for milk in

California versus what our counterparts get in the rest of the

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1 country.

2   So that's why I'm here today to offer support for

3 Proposal Number 1, you know, the proposal offered by California

4 Dairies, Land O'Lakes, and Dairy Farmers of America. And since

5 2010, the California 4b price has averaged a discount to the

6 Federal Order Class III of $1.84 per hundredweight. And that's

7 just really large. And assuming that that's 40 percent of the

8 milk production in California is Class 4b, that has an impact

9 cost of about 73, or .736 cents per hundredweight we calculated

10 on, just on our farm alone on our total sales.

11   So from 2010 to the first half of 2015, that impact has

12 impacted our dairy with the conservative estimate of about

13 nearly $1.8 million that we could have got potentially if we

14 were getting on a level playing field with the rest of the

15 country. And we definitely obviously desperately could have

16 used that money to pay down debt, improve facilities, and

17 continue to do that.

18   It's just -- it's just, I can't reiterate enough how

19 important it is to be on a level playing field with other

20 producers in the rest of the country. We just, you know, don't

21 enjoy the same advantages the State of California once did.

22 And I came in later, those, most of those advantages already

23 eroded by the time I came in. And, you know, it's just, I just

24 feel we deserve a fair price and equal price parity, you know,

25 that's kind of the foundation of what orderly marketing I think

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1 should be.

 2   And, you know, I mean, we just don't have a different

 3 minimum wages than the rest the country. I mean, you know,

 4 Nebraska has the same minimum wage as Florida and all that

 5 other stuff. Now, there are some states, California,

 6 Washington, New York, have higher minimum wages. But, you

 7 know, maybe those cost of living there mandates that, I would

 8 imagine.

 9   And I would say a similar thing warrants that in the

10 price of milk. There are some areas that get, you know, large

11 producer premiums, some areas that don't. But at the end of

12 the day, they should at least have the same minimum price, I

13 feel.

14   You know, I mean, we need to encourage more younger

15 producers into this industry, into this state. You know, many

16 of the, my neighbors that were the younger generation, many of

17 them have left. Many of my neighbors have literally picked up

18 and moved. You know, they didn't want me to put their names

19 out there, but, you know, they did. And I have also had family

20 members that have gone out of business within the last five

21 years. So this is just an unsustainable situation. I can't

22 reiterate that enough.

23   Even the McKinsey Report back in 2006 did a survey, you

24 know, it was commissioned by the California Milk Advisory

25 Board, and at that time, already two-thirds of producers in the

1 State of California were pessimistic about the future of the

2 state of the industry and the way things were going. And I

3 couldn't imagine what that survey would lead to, or what

4 divulge if it was done today. I would imagine it would be

5 quite a bit higher than that.

6   You know, we're kind of unique in our dairy situation

7 also. It's just always been a policy of my father's to provide

8 health insurance for all of our employees and all their

9 families. I just had a meeting with our insurance agent here

10 just two weeks ago, and our costs are going up 30 percent for

11 next year for all of our employees, including myself 30 percent

12 increase. And we have had this policy even prior to the

13 affordable care act and all those sorts of things, it is just

14 another cost of doing business. It keeps going up. And we

15 want to, you know, be able to continue to afford to provide

16 that for our employees and, you know, do a good job.

17   Another experience I also had. We did do, attempt to

18 do some, or we did some, we did some hedging, milk price

19 hedging, with Archer Daniels Midland Investor Services. But we

20 found that just the bases were too wide between the prices we

21 were receiving versus what our, versus what we were, the

22 contracts we were trading, and just, it just wasn't adequate

23 hedge against, you know, the volatility and against that stuff.

24 It was just buying and spending more money on another thing to

25 make another broker get their fee, and we just don't need more

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1 bills, we need income. And that's just the bottom line.

2   Another big reason why I'm here today is, you know, me

3 and my family, we are a quota holder. We have had pool quota

4 since it was incepted, and, you know, it's just very important

5 to our dairy. It is about 40 percent of our milk sales are

6 quota milk sales. And, you know, each year, that provides

7 about an initial, a little over $350,000 of added income to our

8 farm. And that's just imperative to continue to, you know, pay

9 for our employees' health insurance, and continue to be viable.

10 You know, we just, we don't have the, you know, we don't have

11 the new dairies by us, and there is a lot of urban growth, and

12 sprawl, and highland costs. And we also have higher feed cost

13 due to the fact that we don't have the unit train and

14 infrastructure to bring in the grains that come in from the

15 Midwest. And so that, that extra money is very helpful, very

16 essential to helping us make end's meet and continue to be

17 successful going forward.

18   I mean, and a loss of that asset on our balance sheet

19 would just be, would just be a catastrophic blow. You know,

20 based on today's value, I mean, our quota holdings are valued

21 around $2.6 million, and to get that just wiped off our balance

22 sheet would be another just tremendous hit that would be almost

23 impossible to afford.

24   You know, again, on the quota issue. I mean, I was

25 involved in -- in a group that flew back to Washington, D.C.,

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when the 2014 Farm Bill was in the works. This is back late

2013, and we flew in, met with Diane Feinstein's office and a

lot of her staff, and met with other members the House that are

local representatives. And we really urged them to get this

California quota provision put into the Farm Bill because we

knew it was just so imperative to get the support to move this

process forward, to get the opportunity to have this

opportunity to instill a Federal Milk Marketing Order here in

California and that that --

JUDGE CLIFTON: Let me stop you just a minute, have we lost

the audio feed?

MR. FRANCIS: There is an echo on the Internet feed, that's

what we're being told.

JUDGE CLIFTON: Thank you for the input. Let's see if we

can get that fixed before the witness continues.

SOUND MAN: I'm hearing no echo. Was that reported from

somewhere outside the building? Okay. Could you check and

make sure that they don't have two instances running at once or

refresh the page. That's usually the culprit. I'm hearing no

echo.

JUDGE CLIFTON: So refresh the page will usually help if

you are hearing an echo from somewhere outside this building?

SOUND MAN: And just make sure that you don't have two

instances of the stream running at once.

JUDGE CLIFTON: Make sure that you don't have two instances

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1 of the stream running at once. Thank you.

2   Now, that I've got you interrupted, I want to go back

3 to when you first started discussing quota. You described it

4 with a word before the word quota that I didn't quite catch.

5 How would you have referred to quota when you first started.

6   MR. OOSTEN: Pool quota.

7   JUDGE CLIFTON: Pool quota, that was it.

8   MR. OOSTEN: Pool quota.

9   JUDGE CLIFTON: All right. Now, when you are talking about

10 2013, Diane Feinstein's office, and pick it up from there if

11 you will.

12   MR. OOSTEN: Sure. So, I mean, you know, I'm involved in

13 Milk Producers Council being on the Board of Directors there,

14 and also in Land O'Lakes Leader Development, and that's what

15 ultimately flew out there with Land O'Lakes and National Milk

16 Producers Federation, which is the co-op kind of lobbying

17 organization there that's very involved in back in D.C. so I

18 have been pretty very engaged with them since 2012 or so, being

19 on the, on the Young Leaders Council, they called the YC

20 Council on the National Milk Producers Federation.

21   So anyway, we have a D.C. fly-in every June, and that

22 year just happened to be working on the Farm Bill. It was just

23 a great opportunity to be there when all this was going on.

24 They were very engaged. Every office we went to was very

25 engaged very yearning to learn, and know what we wanted, and

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1   what we needed. And the quota provision was just one of those

2   things that we just told them it is absolutely essential in

3   order to move this process forward in California. Without

4   that, we really cannot move this forward.

5   So fortunately, the Farm Bill was ultimately passed the

6   next year, and with the California quota provision intact, and

7   you know, I just, I would, that was just a monumental step in

8   moving this forward. Because once we did that, they were able

9   to draw up the language and get this thing proposed to USDA.

10   So, without that, I just don't think there would have

11   been the support in the Board of Directors of the major co-ops

12   absent that proposal, absent that provision, I mean. And

13   that's just my experience being involved in MPC and LOL.

14   That's what we have been told all along. That's just a very

15   contentious issue, and it is just not one that needs to be

16   dealt with in this proposal, that the -- we need to get our

17   industry healthy again. That is the time to talk about quota

18   and whether to continue it or leave it as it is. Right now we

19   just need to leave it as it is. It is just too big of an asset

20   to get wiped off people's balance sheets. And it's needed

21   income in the areas where a lot of it is held, you know, to

22   offset some of the disadvantages that those producers may have

23   that are closer to the Class I market.

24   I mean, the closer you get to the Class I market, the

25   higher land cost, there's just a lot of -- lot of additional

1   costs as you get closer to the urban centers. So, you know,

2   but that's, you know, we still have a lot of hope for the

3   future. I think, you know, it's been very encouraging for me

4   personally to see the three major cooperatives, the three major

5   trade associations in this state, and the vast majority of all

6   the producers that I have talked to, and have relationships

7   with are, it's just -- it's pretty unprecedented in my recent

8   memory to see dairymen that united behind one proposal, and I

9   mean, I hope that USDA can recognize that. How united, how

10 much thought has gone into this proposal.

11   There's just been a tremendous amount of thought and

12 input in order to get this one solid piece together, and I'm

13 sure there's maybe minor rooms for improvement, but it's been a

14 well-thought out and well-presented proposal, I feel.

15   And also, with regards to some of the detrimental

16 effects that some people feel like will affect the other parts

17 of the country. I mean, there's even producers that say Land

18 O'Lakes and both Dairy Farmers of America are national co-ops.

19 You know, we're, they are not just in California, they are not

20 just in Kansas, they are all over the place. All the way from

21 the East Coast to the West Coast. And I know that those boards

22 of directors would not vote for this proposal if they thought

23 it was going to put their East Coast producers at a significant

24 disadvantage or their West Coast procedures at a significant

25 advantage. I just don't believe that they would do that.

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1   And, you know, this is about fairness and quality, and

2   parity in milk pricing, that's what this proposal is about, and

3   it is becoming essential to, you know, for our future.

4   So any ways, I just want to thank the USDA and

5   everybody for the opportunity to be able to do this and state

6   my position. I really appreciate it.

7   JUDGE CLIFTON: You stated it very well. Thank you. Tell

8   me again how to say your name. Is it Oosten.

9   MR. OOSTEN: Oosten, yes. It means East in Dutch.

10   JUDGE CLIFTON: Who would like to be the first to ask for

11 additional information? Mr. Beshore?

12   CROSS-EXAMINATION

13 BY MR. BESHORE:

14   Q. Marvin Beshore.

15   Thank you so much, Mr. Oosten, for taking the time and

16 effort to come here today. It's a wonderful thing to have a

17 young dairyman.

18   A. Thank you.

19   Q. So how many employees do you have at your dairies?

20   A. We have 27, including the Secretary and some part-time

21 employees, between the dairy and the farm.

22   Q. And are some of those family members, I assume?

23   A. Actually, not. No, my sisters are not actively

24 involved in the dairy industry. When my dad passed, they were,

25 Kristen I believe, was about nine years old, and Jeanna would

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1   have been 15 and they -- they just weren't able to do that.

2   My parents were actually divorced at the time, so my

3   mom's not also not actively involved in the farm physically nor

4   financially, also.

5   Q. So who carried it through when your father died?

6   A. Well, we had an Executor of the Estate who was our

7   accountant, a long-time accountant and good friend of my

8   father's, and we had a very good herd manager at the time also,

9   who helped day-to-day operations and I learned a lot from him

10 as far as day-to-day management of the cattle.

11   Q. So among the 27 employees are many of those heads of

12 household?

13   A. Yes, absolutely.

14   Q. Have you ever been to see been to any of the CDFA

15 hearings in recent years?

16   A. I regrettably have not. Sacramento is a little further

17 than Fresno, even I guess they have planes there.

18   Q. You haven't experienced those frustrations firsthand

19 then?

20   A. No, not firsthand.

21   Q. Okay. That's all I have right now. Thank you very

22 much again.

23   A. Thank you.

24   JUDGE CLIFTON: I do think Clovis and Fresno were the

25 perfect location for these hearings. We have had people travel

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 1  from as far as Maine to testify, the Commissioner of

 2  Agriculture from Maine was here Friday.  So there's interest

 3  all over the country, but there's so much agriculture in this

 4  valley, it is just astonishing.  All right.  Who else has

 5  questions?  Mr. English?

 6                      CROSS-EXAMINATION

 7  BY MR. ENGLISH:

 8    Q.  Good afternoon -- Chip English -- and thank you for

 9  coming, sir.  I just have a clarifying question and maybe

10  there's just too many things going on, I wasn't listening.  You

11  mentioned ADM and hedging.  Correct?

12    A.  Yes, Archer Daniels Investment Services, yes.

13    Q.  Was that hedging for grain or for milk?

14    A.  No, it was milk futures, milk and cheese futures.

15    Q.  Okay.  Thank you.

16    JUDGE CLIFTON:  You mentioned that family members have gone

17  out of the business during the last five years.  I wanted to

18  clarify, what business did they go out of?

19    MR. OOSTEN:  The dairy industry in 2012.

20    JUDGE CLIFTON:  And from what county did they go out of

21  business?

22    MR. OOSTEN:  They were in Chino, in San Bernardino County.

23    JUDGE CLIFTON:  What other questions does anyone have for

24  Mr. Oosten?  Mr. Francis?

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 1                    CROSS-EXAMINATION

 2   BY MR. FRANCIS:

 3      Q.  Thank you.  Will Francis, USDA.

 4          Mr. Oosten, thank you very much for taking that long

 5   drive to come and appear before us today.  We certainly

 6   appreciate you taking that time.  Just wanted to clarify.  You

 7   mentioned, after you talked about some of the devastating

 8   losses you had and after 2009, you mentioned something about

 9   $1.8 million impact on your farm.

10      A.  Yes.

11      Q.  And then you gave a dollar per hundredweight

12   equivalent.  I wanted to make sure we had that number correct.

13      A.  Yeah, the formula I used was -- I have the exact dollar

14   amount.  I calculated them all out here.  Yeah, so it was -- it

15   would be 2,444,340.91 pounds times $0.736 cents, equals a gross

16   amount of $1,796,090.88.

17      Q.  So that's less than a penny per hundredweight or was it

18   73.6 cents?

19      A.  Yes, 73.6 cents, yes.

20      Q.  Okay.  That's what I wanted to clarify because I think

21   you said $0.736 cents, so the correct number is 73.6 cents --

22      A.  Correct.

23      Q.  -- per hundredweight?

24      A.  Yeah, that's 40 percent of the $1.84 per hundredweight.

25      Q.  Okay.  And that's how you got the 1.8?
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1   A.   Yeah.

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

 3   A.   Yeah.

 4   JUDGE CLIFTON: You know, that's been our biggest trouble

 5 with numbers throughout, where does the decimal point go? It's

 6 tripped up Agricultural Economists. Who else has questions for

 7 Mr. Oosten? Mr. Oosten, is there anything you would like to

 8 add?

 9   MR. OOSTEN: No, not at this time.

10   JUDGE CLIFTON: All right. Thank you. You are amazingly

11 laser-like in your focus on the issues, and it helped that we

12 had so much testimony before you got here.

13   MR. OOSTEN: Thank you, your Honor.

14   JUDGE CLIFTON: Thank you. You may step down.

15 Mr. Beshore?

16   MR. BESHORE: We do have Mr. Barcellos to testify later,

17 but Mr. -- or when Mr. Vlahos arrives to present him. But in

18 the meantime I would like to start with Mr. Schad, and if we

19 come to a convenient point, perhaps we can break his testimony

20 and take Mr. Barcellos.

21   JUDGE CLIFTON: Excellent. Now, we have already had

22 distributed two documents that relate to the testimony we're

23 about to hear. I want you to raise your hand if you need

24 copies. They are Exhibit 185, which is entitled Testimony of

25 Dennis Schad, Second Statement, Rebuttal. And Exhibit 186, the

1 exhibits in support of that statement. Does anyone still need

2 a copy? All right. It appears everyone's good.

3   Mr. Schad, you remain sworn. I would like you again to

4 state and spell your name.

5   MR. SCHAD: My name is Dennis, D-E-N-N-I-S, Schad,

6 S-C-H-A-D.

7   JUDGE CLIFTON: Thank you. Mr. Beshore, you may proceed.

8   DIRECT EXAMINATION

9 BY MR. BESHORE:

10   Q. Okay. So, Mr. Schad, I would like you to proceed with

11 your testimony that's been marked as 185. And as you go

12 through your testimony and you refer to, or it's appropriate to

13 refer to the graphs and tables and exhibits in Exhibit 186,

14 just deviate from the written prepared statement and move to

15 those documents when it is appropriate, if you would.

16   A. Okay.

17   Cooperatives' Rebuttal Testimony

18 I. Pooling of Milk in FMMO 1

19   The Dairy Institute entered Exhibit 23 into the record

20 on September 28th, 2015. (Noted in testimony page 1051) and

21 FMMO document

22   Q. FMMO 1?

23   A. FMMO 1 document, "Nonpool Handler Listing August 2015."

24 The witness representing Proposal 1 was questioned about the

25 products manufactured in the various plants listed on the

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report. The witness was asked, "And being a nonpool plant

means that they are not subject to minimum price regulations in

the Federal Order, correct?" The witness answered

affirmatively.

The question implies that dairy plants and handlers are

routinely depooling milk of dairy farmers associated with

FMMO 1. As an active participant in the marketing of milk in

the FMMO 1 marketing area, I can note that actually very little

milk is depooled in the marketing area of the Northeast FMMO.

That Order contains a provision, Dairy Farmers for Other

Markets (Section 1001.12(b)(5) and (6)), which excludes the

milk from the pool of any dairy farmer that has been depooled.

This onerous provision assures that virtually all milk

associated with the Order remains pooled at all times, even

when there is a negative PPD. Milk delivered to plants listed

on Exhibit 23 is routinely pooled on Federal Order 1.

II. Pay Prices and Class III Price in the Federal Orders

Dairy Institute Exhibit 102 purports to demonstrate

that dairy farmers in Texas, New Mexico, and Michigan, have

been, and are currently, being paid below the Class III price.

As evidenced, the witness subtracted the State's, the witness

subtracted from the State's All Milk price, the sum of the

State's Class III price at test, (witness used FMMO monthly

tests when State specific milk tests were unavailable) plus the

month's FMMO PPD, I'm sorry, Producer Price Differential (PPD)

1   adjusted for the state's location differential. Putting aside

2   our reservation as to whether a state's All Milk price less

3   that state's Class III at its component test (or FMMO as a

4   proxy for the state's component test) plus the FMMO PPD

5   adjusted for the state's location is a proper measure by which

6   to conclude the dairy farmers in that state are paid less than

7   the Class III price. The Proponents of Proposal 1 offer

8   Exhibit 12.A. Difference Between All Milk and Class III Test

9   Plus Adjusted PPD 2009-2015. Using the same --

10   JUDGE CLIFTON: You left out the word "price" so please

11 read that again.

12   MR. SCHAD: Exhibit 12.A. Difference Between the All Milk

13 Price and the Class III (at test) Plus --

14 BY MR. BESHORE:

15   Q. Should that say "at test"?

16   A. At test.

17   Q. For the title of the graph?

18   A. Yes.

19   (At test) Plus Adjusted PPD 2009-2015. Using the same

20 measure as the Dairy Institute's, six states: Wisconsin,

21 New York, Pennsylvania, Iowa, South Dakota, and Minnesota,

22 representing 51 percent of the nation's cheese production,

23 have, in every month during the last five and a half years,

24 paid dairy farmers in excess of the Class III price.

25   Q. How about we look at Exhibit 12.A at this point?

1   A. I was just about to.

2   Q. Thank you.

3   A. We turn to Exhibit 12.A. it is a very busy graph

4 because what you are doing is showing six different states over

5 five years, and the calculation which the Dairy Institute

6 provided for three other states. Notice that blue was

7 Wisconsin, and if you look at the bottom you will see on the

8 legend that it is minus 10 cents, and that's to represent the

9 Wisconsin's negative PPD to the Order. The adjusted PPD in

10 Wisconsin relative to the announced Order 30 PPD. And the same

11 for the other states; New York, Minnesota, Pennsylvania, Iowa

12 and South Dakota.

13   Again, the point here is that five and a half years,

14 six states representing 52 percent of the nation's cheese

15 production, the dairy farmers weren't paid above the Class III

16 price.

17   Q. So is the amount that the legend of the graph or the

18 scale of the graph on the left, is in dollars and cents per

19 hundredweight?

20   A. Yes, they are. And you will notice that the very

21 lowest axis there is zero. So it goes from zero to 50 cents

22 per hundredweight, to $1.00, to $1.50, and $2.00.

23   Q. And those are amounts above the Class III price that

24 result from the the equation indicated in the graph?

25   A. Yes.

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1   Q. Okay. Now, should we add the word "at" before "test"

2 in the parentheses in the title to the graph?

3   A. Yes.

4   Q. Okay. So that you -- you -- what does that mean?

5 Explain that.

6   A. It means that when I calculated the Class III price, I

7 did it based on the monthly test of the -- and in this case,

8 none of the states have a state-specific test, and so I used

9 the same procedure that Dairy Institute did when faced with a

10 state that did not have a state-specific test.

11   Q. Okay. So it's not a 35, it's not at test minus 3.5, it

12 is at test minus that test for the All Milk price at test,

13 which is an at test price?

14   A. Actually, I built up the Class III price based on the

15 protein test in butterfat and other solids on a monthly basis

16 for all six Federal Orders, for all six states.

17   Q. Okay. So at the bottom of the graph there's a number

18 behind each state.

19   A. That's correct.

20   Q. Could you just tell us what -- tell us --

21   A. As I indicated before, if you take Wisconsin and see a

22 minus 10 cents behind it, that indicates that Wisconsin's minus

23 the minimum of the average PPD for Wisconsin dairy farmers was

24 10 cents below the announced order 30 PPD.

25   Q. Is that another way of saying that you estimated the

average milk was in the minus 10 cent zone in the Order?

A. Yes. Well, no, in Wisconsin.

Q. In Wisconsin, the average milk in the Wisconsin was in the minus 10 zone.

A. Yes.

Q. Okay. And then is that the same, the same thing represented for the other states as you go across?

A. Yes. New York, I estimated the cheese production in the minus 75 zone; Minnesota, minus 15 zone; Pennsylvania, minus 45; Iowa, minus 22; and South Dakota minus 30.

JUDGE CLIFTON: Let me interject. I know we're all looking at it, Mr. Schad, but just for clarity, since all of these things are expressed in dollars and cents, would you read them again?

MR. SCHAD: Yes. Wisconsin, at minus cents per hundredweight; New York, at minus 75 cents per hundredweight; Minnesota, at minus 15 cents per hundredweight; Pennsylvania, at minus 45 cents per hundredweight; Iowa, at minus 22 cents per hundredweight; and South Dakota at minus 30 cents per hundredweight.

JUDGE CLIFTON: Thank you. And allow Ms. Elliott and I to catch up with the changes on the record copies. We're going on this graph, where it says in parentheses "test" we're going to insert "at" so that that will look "at test" just after the phrase "the Class III" with that being a Roman numeral III.

1   And on Page 3 where Mr. Beshore first mentioned it, we are also

2   changing test to "at test" in the first line that's bolded on

3   Page 3.

4   MS. ELLIOTT: Okay.

5   MR. BESHORE: Okay. And I wonder if just for clarity we

6   might add the word "price" before the paren "at test" in both,

7   on Page 3 and in the title to Graph 12.A so that it reads

8   "difference between All Milk price and the Class III price (at

9   test)."

10   JUDGE CLIFTON: Thank you. I would like that. So,

11 Ms. Elliott, same location, just prior to the parentheses we're

12 adding the word "price" both on the graph and on Page 3, just

13 after the words "the Class III" Roman numeral III.

14   MS. ELLIOTT: Okay.

15 BY MR. BESHORE:

16   Q. Okay. Are you -- are we ready to go back to the text

17 on Page 3 then, Mr. Schad?

18   A. Yes, about the middle of the first first paragraph.

19   These pay price levels are further confirmed by

20 Exhibit 12.B. The Market Administrator's Bulletin for FMMO 1

21 for June 2013. On pages 2 and 3, the Market Administrator

22 disaggregated the Order's mailbox prices for the first quarter

23 of 2013, parsing out the effects of transportation, producer

24 PPD payments, and producer premiums on the reported mailbox

25 price. Table 3 of Exhibit 12.B shows that the average premium

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1 paid to dairy farmers in the Northeast, including Pennsylvania

2 and New York, during the period, was $1.06 above Federal Order

3 minimums.

4   And if we turn to the next exhibit.

5 Q. So we turn to Exhibit 12.B?

6 A. Right.

7 Q. And --

8 A. And we turn to --

9 Q. The second page.

10 A. The second page. On the right hand column you will see

11 what Table 3, it is the second table in that column. And,

12 again, what's being done here is the Market Administrator in

13 Federal Order 1 took the mailbox price and parsed out certain

14 pieces of it in order for us to determine what was the average

15 PPD, what was the average transportation factor within, and

16 also the premium level. So as you see on Table 3 for the

17 average for that first quarter, New England's average premium

18 was $1.05; New York, $1.08; and Pennsylvania, $1.06, with $1.06

19 average for the Northeast.

20 Q. So again, this confirms -- this is just another data

21 set which confirms that producers in Federal Orders where

22 cheese is produced, are being paid well over the minimum price

23 per, for their Class III milk for cheese?

24 A. Yes.

25 Q. Okay. Anything more on, from Exhibit 12.B?

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1   A. No.

2   Q. Okay. Could you --

3   A. Go ahead.

4 III. Sales Below Federal Order Minimum Prices in FMMO Markets

5   Multiple Dairy Institute witnesses have asserted that

6 producer milk that has satisfied its class obligation to the

7 FMMO pool, nevertheless is routinely offered to manufacturing

8 plants at below class prices. DIC witnesses assert that this

9 "cheap milk" would unfairly compete with California cheese

10 plants under Proposal 1. Land O'Lakes is a major marketer of

11 milk in FMMO's 1, 30, and 32. I have asked the Cooperative's

12 accounting department to aggregate the volumes of milk in our

13 two marketing areas that were sold at "distressed" or

14 under-class prices during 2014. That year was a particularly

15 stressful with increasing milk production in the Cooperatives'

16 milk sheds and falling commodity prices. Minnesota and

17 Wisconsin, states that dominate Land O'Lakes Midwest supply,

18 increased production by 4.3 percent, and in LOL's major milk

19 shed in the Northeast, Pennsylvania, milk production grew by 2

20 percent. From a high of $2.35 in September, the NDPSR cheese

21 price fell to $1.74, while the NDPSR nonfat powder price

22 decreased by $0.83 cents (40 percent) from its high in March to

23 its lowest price in December. Last year's marketing

24 environment could hardly be characterized as a "sellers'

25 market".

1   As noted, the LOL accounting department reported to me

2   the volumes of milk sold under class during 2014. In the

3   Northeast 0.68 percent of the milk marketed (not including the

4   deliveries to Land O'Lakes plants) was sold at under class or

5   distressed prices, while 1.07 percent of LOL's Midwestern

6   marketed milk was sold at under class prices. The weighted

7   average of these two -- I'm sorry, the weighted average of

8   these below class sales for the two LOL regions is .0 -- I'm

9   sorry, 0.9 percent. If we used Hilmar's weighted average below

10   class price of the distressed milk of $2.24 --

11   Q. Distressed milk sales?

12   A. I'm sorry, distressed milk sales.

13   Q. Maybe start that sentence again. Go ahead.

14   A. If we used Hilmar's weighted average below class price

15   of distressed milk sales of $2.24 (Exhibit 98, Page 5) the

16   value is about 2 cents per hundredweight across the

17   Cooperatives' third party milk sales.

18   Q. Now, let me just interrupt you there, Mr. Schad. If

19   you were to include the Cooperative volumes to your own plants,

20   what effect would that have on those calculations?

21   A. Oh, it would -- it would dilute it in a major way.

22   That it would, the 2 cents would -- would, my guess would be

23   cut in half or would be just a tad over 1 cent. And also I

24   would like to point out while I'm stopped here, this includes

25   distressed milk sales which would be milk sold under class

1 because it didn't have the proper type of seals on it, or it

2 was high bacteria of the plant was sold to a salvaging plant.

3 So it includes everything that was below class from that dairy,

4 below class price.

5 Q. In other words, in reference to the sales you have just

6 indicated, in the routine course of marketing milk, there's a

7 certain -- there are certain events that happen or -- or things

8 occur which cause loads of milk to be sold at distress or low

9 prices, under class prices, correct?

10 A. That's correct.

11 Q. Regardless of the market conditions, it is just part of

12 the events of marketing milk?

13 A. Yes, that's very correct.

14 Q. Okay. So when you are talking about broken seals, can

15 you just explain that that is?

16 A. Tank trucks are required to be sealed at all of the

17 compartment top, all the lids, as well as the door in the back.

18 Sometimes the seals do not correspond with the -- with the

19 paperwork. And while the driver can testify that he's been

20 with the truck the entire time. There are dairy plants, many

21 dairy plants, who won't take that at full price.

22 Q. Okay. And that's --

23 A. Take that load of milk at full price.

24 Q. Because the paperwork and the seals is part of the,

25 just part of providing a quality product that meets all the

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1 required health and sanitation codes?

2   A. Yes.

3   Q. Okay. And there's a certain percentage of those sales

4 that are just in the routine everyday of marketing large

5 volumes of milk, correct?

6   A. Yes.

7   Q. Okay. And they are included in the under class sales

8 that you have testified to here in Land O'Lakes --

9   A. Yes, distressed and under classes.

10   Q. Okay. And 2014 was a, when you say, just to be clear,

11 when you say could hardly be characterized as a sellers'

12 market, you are understating the marketing conditions during

13 that year?

14   A. Yes. My feeble attempt at humor.

15   Q. In other words, it was a buyers' market?

16   A. Yes, sir.

17   Q. Okay. Do you have anything more on that point?

18   A. No.

19   Q. Okay. Would you continue then with the text on Page 4?

20   A. Elvin Hollon's testimony later in this hearing will

21 present DFA's nationwide experience which confirms the limited

22 impact of below class sales in Federal Order markets.

23   Dr. Schiek testified to the existence -- I'm sorry,

24 I'll start again. Dr. Schiek testified to the existence of

25 lack of willing capacity.

1   Q.   Or maybe just the lack of?

2   A.   The existence -- existence lack of willing capacity

3 during the period.

4   JUDGE CLIFTON: Let's get it right and Ms. Elliott and I

5 will make the changes. So do you want to us strike the word

6 "existence" or just add the word "of"?

7   MR. SCHAD: "Of the" between "existence" and "lack".

8   JUDGE CLIFTON: All right. Ms. Elliott, we'll just insert

9 two words "of the" in between "existence" and "lack".

10   MS. ELLIOTT: Okay.

11   JUDGE CLIFTON: Thank you.

12   MR. SCHAD: I'll start again.

13   Dr. Schiek testified to the existence of the lack of

14 "willing capacity" during the period in 2007 and 2015 when milk

15 was exported from California at considerable loss to handlers.

16 His testimony was confirmed by the Leprino witness. He

17 implied, had the State regulations allowed, cheese plants would

18 have taken volumes above their supplier contracted volumes,

19 thereby mitigating the out-of-market cost incurred by handlers.

20 The Proponents of Proposal 2 assert that the inclusive pooling

21 provisions of Proposal 1 would again leave its members without

22 "a market clearing" pricing alternative for incremental

23 volumes.

24   The provisions of Section 1051.73 "Payments to

25 Producers and Cooperative Associations" require that minimum

class prices are paid. The accounting for the enforcement of

this provision is made at month -- at month's end, and all

payments made by the pool plant are summed against the volumes

and components of milk received at the plant. All handlers

have testified that premiums above minimum prices are paid in

the California market. Hypothetically, if a plant is paying an

average premium above minimums of 25 cents per hundredweight,

and the price of the incremental market clearing milk is $2.50

under class (Hilmar testified that its weighted average cost

was $2.24 plus transportation, Exhibit 98, Page 5) the buyer

and seller could agree to deliver a volume equal to ten percent

of the monthly sales volume as additional milk to the plant at

the incremental "market clearing" price. If a plant bought

five million pounds of milk per day, the hypothetical example

would allow the plant to buy 500,000 pounds of milk (10 truck

loads) per day at the "market clearing price". Under Proposal

1, the FMMO audit would reveal that the aggregate monthly sale

was at or above minimum class prices.

BY MR. BESHORE:

    Q. So if I could just interrupt you there. So your

testimony is that it's possible to have market clearing

transactions within Federal Order markets while meeting the

terms of the orders.

    A. Yes.

    Q. Okay. Please continue.

1   A.   Heading 4.

2   IV. The Limited Financial Effect of Depooling in the Federal

3   Orders

4   The Hilmar witness, represented the Dairy Institute of

5   California, offered Exhibit 100 to show that there is massive

6   depooling of Class III milk in the Federal Order. As evidence,

7   the witness provided a copy of Table 5 from the Pacific

8   Northwest (FMMO 124) annual report showing large decreases in

9   producer receipts allocated to Class III. I suspect the

10 witness is incorrect. I'll read it from the beginning. I

11 suspect the witness is correct in assuming that the decreases

12 in Class III receipts in February, April, October, and

13 November, were due to handlers, pooled on that Order, choosing

14 not to report the milk of dairy farmers delivered to Class III

15 plants during the month. There are two things to note: First,

16 by depooling, the handler is avoiding payment into the pool of

17 monies from the Class III price. In effect, the handler is

18 avoiding the sharing of a portion of the Class III price to the

19 pool. If the sale is to a third -- if the sale is a third

20 party Cooperative sale to a cheese manufacturer, when the milk

21 is pooled, the Cooperative must pay the difference between the

22 sale price received from the cheese manufacturer and the

23 uniform price into the pool. The second point is that Order

24 124 contains among the most liberal repooling provisions of any

25 Order. Therefore, depooling of Class III milk on FMMO 124

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1 would be expected to be the most expensive in the Federal Order

2 system, and reflect the most impacts on the competitive value

3 of Class III milk. The DIC witness provided no study of the

4 financial impacts of depooling.

5   Q. Could you read that sentence again? I think --

6   A. The DIC witnesses --

7   Q. Thank you.

8   A. -- provided no study of these financial impacts of

9 depooling.

10   In order to measure the financial significance of

11 depooling in the Federal Orders, I estimated those impacts in

12 the next four Cooperatives' exhibits. For the calendar year

13 2014, Exhibit 12.C. Value of Depooling FMMO 124-2014 estimates

14 the volumes of Class III milk depooled by handlers in FMMO 124,

15 and quantifies the financial effect of depooling across milk

16 used to produce cheese in Order 124. In Exhibit 12.C the

17 volume of the months in which the PPD was positive was summed

18 and divided by the days in those months to estimate the base

19 daily average of Class III receipts in that Order. In months

20 where the PPD was negative, the Order's actual Class III volume

21 was subtracted from the Order's daily average, multiplied times

22 the days of the month, estimating the volume of milk depooled

23 during that month. At the bottom of the table, the month's

24 depooled volumes were multiplied times the month's FMMO

25 negative PPD. Those values were summed and divided by "the

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milk used to produce cheese" which was the sum of the annual

reported Class III, plus the estimated depooled volumes.

          Want to go through -- do you want to go straight to the

exhibit and go through the mechanics or do you want to finish

the paragraph?

     Q. Finish that sentence and then let's go to the exhibit.

     A. Okay. The estimated effect on the total volume of milk

used to produce cheese in Order 124 -- and I will -- I will

insert in 2014.

     JUDGE CLIFTON: And let Ms. Elliott and I do that. Do you

see where he is?

     MS. ELLIOTT: No.

     JUDGE CLIFTON: He's on Page 6, up six lines, and you will

find the term "Order 124" and we will insert "in 2014".

     MS. ELLIOTT: Okay.

     JUDGE CLIFTON: And would you read that sentence again,

Mr. Schad?

     MR. SCHAD: The estimated effect on the total volume of

milk to produce cheese --

     JUDGE CLIFTON: Start again.

     MR. SCHAD: The estimated effect on the total volume of

milk used to produce cheese in Order 124 in 2014 was 23.7 cents

per hundredweight.

BY MR. BESHORE:

     Q. Okay. Now, let's turn to Cooperatives' Exhibit 12.C,

1   which is -- which is in exhibit, on the cover of Exhibit 186.

2   A.   Yes.   Okay.

3   Q.   Okay. So you have got some highlighted -- some

4   highlighted rows. Why are those rows highlighted?

5   A.   Let me just give a little background first.

6   Q.   Yes, please.

7   A.   Going down, you see 2014 and you see the month in the

8   first column. Second column is reported Class III of those

9   Class III volumes in that Federal Order on a monthly basis.

10   Q.   Okay. So when you say reported Class III, those are

11 the pounds of Class III that were actually reported by the, on

12 the Market Administrator's statistics as pooled milk used to

13 produce cheese in those months?

14   A.   Yes.   The third column is the PPD at the base, the base

15 zone of Order 124. Okay. I adjusted it back 12 cents. It was

16 estimated that the cheese plants were in the minus 12 cent zone

17 relative to the announced PPD.

18   Q.   And therefore, their negative PPD would be 12 cents

19 greater than the announced negative PPD in the base zone?

20   A.   That's correct.

21   Q.   Okay. So that's the value you then used in pricing

22 that milk?

23   A.   That's correct. And the last column notes the days of

24 the month for each month.

25   Q.   Okay.

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1   A.   And going down, you will note that the reported

2   Class III volume was based almost 2.8 build pounds.

3   Q.   So the 2,799,975.76 pounds is a sum of the Class III

4   pooled volumes for the year above it?

5   A.   Yes, that's correct.

6   Q.   Okay.   Thank you.

7   A.   Okay.   The next -- the next line is daily average of

8   months with no depooling, and now we get to your question about

9   the yellow highlighted rows.   February, April, September,

10   October, and November, note that they all had negative PPD's in

11   the reported as well as the adjusted zones.   Okay?   So what I

12   did is I took the volumes of the months that were not, that are

13   not, that have positive PPD's.

14   Q.   So they are the unhighlighted months?

15   A.   The unhighlighted months.

16   Q.   Yes.

17   A.   Okay.   And I divided that by the number of days in

18   those months.   And to be specific, I took January, March, May,

19   June, July, August, December, totaled the volumes that would be

20   in the second, the second column for each of those months, the

21   divided by the number, the aggregate number of days in January,

22   and March, May, June, July, August and December.   And that gave

23   me a base, that would be the average daily volume of Class III

24   in Order 124 in months when depooling was not a factor.

25   Q.   So in months when the PPD was positive, $1.40, $1.55,

1   $1.44, $0.85, $1.05, etcetera, you were presuming that all the

2   milk that was delivered to cheese plants was pooled that month

3   in order to draw the positive PPD?

4   A.   Yes.

5   Q.   Okay.

6   A.   So then what I did was, I took the days for each of the

7   months that are highlighted in yellow, February, April,

8   September, October, November, multiplied it times the number

9   above, which was 10,074,915, which is the daily average. Came

10 to a number of 1,501,162,373, and that is the expected volume

11 in those months had there been a positive PPD.

12   Q.   So that's an estimate of the total volumes of milk that

13 were delivered to those cheese plants during those months?

14   A.   That would have been delivered to those cheese plants.

15   Q.   Well, it was delivered, but it wasn't all reported as

16 pooled.

17   A.   Yeah.

18   Q.   Okay.

19   A.   Yeah.

20   Q.   Okay.

21   A.   Yes.   Okay.   Then I took the actual from those five

22 months, February, April, September, October, and November,

23 subtracted it from the estimated actual deliveries, we'll call

24 it that, and we find that there's an estimated 877,368,992

25 pounds that were depooled as the estimate depooled. So -- so

1 then I take that number and add it to the total Class III of

2 the 2.799 billion. Okay? And I get what I'm calling the

3 estimated total milk used to produce cheese, which as I say in

4 my testimony, is the sum of the estimated depooled milk, plus

5 the actual reported pooled milk.

6   Q. Okay.

7   A. So then we parse out, you know, and we take the

8 estimated depooled milk each month, you know, going through the

9 same process. Note that it adds to the same at the bottom of

10 the 877,368 is the same as the estimated depooled. So then we

11 multiply each month during that month's adjusted negative PPD,

12 so --

13   Q. So just take February.

14   A. So February. What we do is, I take the 223,791,289

15 estimated depooled pounds for that month, multiply it times 25

16 cents a hundredweight, and --

17   Q. The 25 cents came from the adjusted PPD zone for the

18 cheese plants in the Order?

19   A. Right, which comes from the top. And multiplied those

20 out. Did that for every month. And I come out that there is,

21 there was a total of $8,727,605.

22   Q. And that's basically money that didn't have to be paid

23 into the pool, that was avoided being paid into the pool

24 because depooling was elected for those volumes for the year?

25   A. Yes. And then I took the value of depooling, total

1 volume. Again, total volume used to produce cheese, and it

2 came out to 23.7 cents per hundredweight.

3   Q. Okay. So let's see if we can just understand what that

4 number represents. So you have got, as you have testified, the

5 Order in the Federal Order system that basically has the most

6 liberal depooling provisions, depooling and no, essentially no

7 repooling restraints, those open depooling order in the system,

8 correct?

9   A. Yes.

10   Q. Okay. And you have attempted to estimate in this

11 careful manner, then, in one year when there was quite a bit of

12 depooling, what that might mean on the minimum value of milk

13 used to produce cheese in the Order --

14   A. Yes.

15   Q. -- during the year. And so that year annually was

16 23.7, came to 23.7 cents, correct?

17   A. Right. And we'll just turn the pages and look at the

18 other, this is the same on the --

19   Q. So just bring it into context in terms of Proposal 1.

20 So this is 23 cents that if there was mandatory pooling in this

21 Order, that would have been the cost, shall we say, to a

22 handler who couldn't depool if there was inclusive pooling?

23   A. Right. The aggregate cost to the Class III handlers.

24   Q. Okay.

25   A. There's more than one handler.

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1   Q.   The average cost?

     2   A.   Yeah.

     3   Q.   Okay.

     4   A.   Aggregate cost. Aggregate average cost.

     5   Q.   Average to all handlers?

     6   A.   Thank you.

     7   Q.   Is that correct?

     8   A.   Yeah.

     9   Q.   Okay. Okay. So if you go back to the text where we

    10   left off on Page 6 --

    11   JUDGE CLIFTON: I want to go back. So when you said

    12   average to all handlers, are you talking about just for

    13   Class III?

    14   MR. SCHAD: Yes.

    15   JUDGE CLIFTON: Okay.

    16   MR. SCHAD: Those handlers that are delivering milk to

    17   Class III plants in Federal Order 124 in 2014. I would, if you

    18   don't mind what I just read, I just page through the next

    19   couple to show that we have done the exact, the next couple

    20   exhibits to show that we have done the exact same thing to

    21   other orders.

    22   BY MR. BESHORE:

    23   Q.   Okay. So -- so Exhibits 12.D, 12.E, and 12.F, in

    24   Exhibit 186 are calculations of the same methodology that you

    25   did for other Federal Orders for 2014; is that correct?

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1   A.   That's correct.

2   Q.   Okay. So how did you pick the orders?

3   A.   I picked the orders that would, that had the largest

4   volume of cheese. Well, I picked 124 because it was the one

5   that was picked by the Dairy Institute, and then I chose orders

6   that have the largest volume of cheese where Class III would

7   have the greatest impact and, of course, we're talking about

8   Orders 30 and 32 rather quickly, and Order 33 as well.

9   Now, I stayed away from, you know, the Northeastern

10   Orders where there is rarely a negative PPD, it would have

11   skewed, to put their volume into the denominator when I

12   aggregate all these four would skew the results in a way that

13   would underestimate.

14   Q.   Okay. So just to understand that point clearly, and

15   you have made it just before this. With respect to Order 1, in

16   Order 1 there's a substantial amount of milk used to produce

17   cheese, correct?

18   A.   Correct.

19   Q.   Okay. But there's essentially no depooling allowed, or

20   almost no depooling allowed?

21   A.   Correct.

22   Q.   So if did you this kind of calculation, there's

23   basically no calculation to do in terms of depooling the milk?

24   A.   Exactly.

25   Q.   Okay. So you only wanted to look at and quantify the

1 impact in orders where there was very large cheese production

2 in depooling?

3   A. Yes.

4   Q. Okay. So continue.

5   JUDGE CLIFTON: Now, before he continues, since Mr. Vlahos

6 is here, I want you to take a three-minute break and find out

7 whether this would be a good time for our remaining dairy

8 producer to testify, or whether we should continue with

9 Mr. Schad's testimony. So do you remember where you are?

10 Okay. I do, too. So everybody else can -- go ahead,

11 Mr. Schad.

12   MR. SCHAD: I mean, there's only a couple lines to what I'm

13 going to do, and walking you through the next three I don't

14 need to do the same detail that I did in the first one. I

15 think that might be a better time to take the three-minute

16 break.

17   MR. BESHORE: I had the same thought. If we continue to

18 the bottom of Page 6 with Exhibit 12.E. and F, that would bring

19 us to a break point in the testimony.

20   JUDGE CLIFTON: Excellent. You may proceed.

21   MR. SCHAD: I'm going back to the testimony now. And I've

22 started out with the sentence that says, the next three

23 exhibits use the same method. Exhibit 12.D, Value of Depooling

24 FMMO 30-2014 shows an effect of one and on-half cent per

25 hundredweight in Order 30. Exhibit 12.E Value of Depooling

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1 FMMO 32-2014, demonstrates the effect of 4.5 cents per

2 hundredweight in Order 32; and in Exhibit 12.F Value of

3 Depooling FMMO 33-2014, the effect in Order 33 is 4 cents per

4 hundredweight. The weighted average impact of depooling of

5 these large cheese producing Federal Orders was 4.2 cents per

6 hundredweight.

7 BY MR. BESHORE:

8   Q. Now, in that last sentence I want to be absolutely

9 clear in which Orders you are weighting to derive that weighted

10 average impact.

11   A. It's -- I'm looking at Exhibit 12.C, which is

12 Federal Order 124; 12.D, which is Federal Order 30; 12.E,

13 Federal Order 32; and 12.F, Federal Order 33. What I did was,

14 in the next to the bottom line in each is a total dollar amount

15 which we talked about in the, in my first exhibit. I totaled

16 those total dollar amounts and divided it by the sum of the

17 each page also has a line, estimated total milk to produce

18 cheese. So what I did was divided the two sums to total --

19   Q. Total dollars by total weight, total hundredweight?

20   A. Yes.

21   Q. Okay. So could you just go through, briefly, or as

22 much as necessary, each of 12.D, E, and F, and just highlight

23 what they show for each of those respective orders. And of

24 course, first, Order 30, which is the largest order for cheese

25 production in the system, correct?

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1   A.   Correct.

2   Q.   Okay.

3   A.   And what it shows, I'm not going to go through the

4 calculations. What it shows is that on -- and note, it's a --

5 a good illustration here, February, the PPD base was actually 7

6 cents. But if you went back, and I overcompensated, there's

7 probably more cheese in the minus 10 cent than the minus 15

8 cent PPD in Order 30, but I over compensated and used 15 cents

9 to catch everything.

10   Q.   Right.

11   A.   February, April, October, November, are the months that

12 there would have been depooling because of the negative PPD.

13   Q.   Okay. Just hold on that PPD adjustment. I want to

14 make sure it's clear to everyone what you did here. In order

15 to be conservative in this estimate, you used a negative PPD, a

16 minus 15, which as we saw on the footer of one of your earlier

17 exhibits, is the Minnesota value, correct?

18   A.   That's correct.

19   Q.   And whereas minus 10 would be the Wisconsin value?

20   A.   That's correct.

21   Q.   And, in fact, more of the cheese is produced in

22 Wisconsin than in Minnesota, correct?

23   A.   Yes.

24   Q.   Okay. But nevertheless, in estimating that, you

25 included all those additional pounds at that additional minus

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1 to be conservative in what you are reflecting there as the

2 depooling value?

3   A. That's correct.

4   Q. Continue.

5   A. So you notice in 38 that there's four months that we

6 would have expected depooling. The next, Order 32 --

7   Q. So the total then for Order 30 was what? The value of

8 depooling to the total volume?

9   A. The total value at the bottom would be $4,548,027.

10   Q. How much per hundredweight?

11   A. One and a half cents per hundredweight.

12   Q. Okay. It's good for a penny and a half in Order 30?

13   A. That's correct.

14   Q. Okay. Exhibit 12.E then, Order 32?

15   A. Order 32, again, the PPD base, I, again, I think it was

16 a conservative minus 22 PPD to the cheese producing, and the

17 yellow highlighter didn't seem to go to the next column, but

18 everything that's the same. Total dollars in Order 32

19 estimated at $4,207,104 average at 5 and a half cents per

20 hundredweight.

21   Q. And that again, is pricing it all as if it were in the

22 lower minus 22 cents; is that correct?

23   A. That's correct.

24   Q. By the way, when you are being conservative in these

25 estimates, it basically makes the value look bigger than it

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1 probably actually is?

2   A.   That's correct.

3   Q.   Okay. Let's go to the 12.F then, FMMO 33.

4   A.   Right. In that Federal Order, the PPD would have been,

5 I, again, February shows that the base zone PPD was actually a

6 positive, but believe in the you zone back 12 cents to the

7 cheese, February becomes a negative. And if you look at the,

8 actually, if you look at the volume in February, it looks like

9 it wasn't that far off what would have been, what you would

10 expect to be average. So, there were three months, again, we

11 did the same calculation procedure and came up with $2,535,852

12 as the estimate value of depooling, and 4 cents a hundredweight

13 across the estimated volume of milk used to produce cheese.

14   Q.   In 2014?

15   A.   In 2014.

16   Q.   Thank you. That's -- we're at the break point, then,

17 your Honor.

18   JUDGE CLIFTON: All right. What I propose, Mr. Beshore, is

19 that at the very end of Page 6, that we add in parentheses

20 (Orders 124, 30, 32, and 33), just as the witness has

21 testified.

22   MR. BESHORE: I think that would be very useful and I

23 appreciate that suggestion, your Honor.

24   JUDGE CLIFTON: All right. Thank you. That way it's clear

25 that it's all four, not just the last three that he described.

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1   MR. BESHORE: Yes.

2   JUDGE CLIFTON: All right. Good. And, Ms. Elliott, any

3 questions on that? It's just saying in parentheses the last

4 words on Page 6, (Orders 124, 30, 32, and 33.)

5   MS. ELLIOTT: No, no questions.

6   JUDGE CLIFTON: Good. Thanks. All right.

7   So we'll either take a ten-minute break or a 15-minute

8 breat. 10, I got a vote for 10. Please be back and ready to

9 go at 4:00. That's a 13-minute break.

10   (Whereupon, a break was taken.)

11   JUDGE CLIFTON: We're back on record at 4:02. Mr. Vlahos?

12   MR. VLAHOS: Thank you, your Honor. John Vlahos,

13 V-L-A-H-O-S. I would like to present the testimony of

14 Mr. Tom Barcellos.

15   JUDGE CLIFTON: Thank you. And is this your first time to

16 testify in this proceeding?

17   MR. BARCELLOS: Yes, it is, your Honor.

18   JUDGE CLIFTON: I'll swear you in in a seated position.

19   Do you solemnly swear or affirm under penalty of

20 perjury that the evidence you will present will be the truth?

21   MR. BARCELLOS: So help me God.

22   JUDGE CLIFTON: Thank you. And please state and spell your

23 name.

24   MR. BARCELLOS: My name is Tom Barcellos. T-O-M,

25 B -- as in boy -- A-R-C-E-L-L-O-S.

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1   JUDGE CLIFTON: Thank you. Mr. Vlahos, you may proceed.

2   DIRECT EXAMINATION

3   BY MR. VLAHOS:

4   Q. Thank you, your Honor.

5   Mr. Barcellos, you are a dairy farmer, correct?

6   A. Yes, I am.

7   Q. And could you state what your dairy farm is located?

8   A. My dairy is T-Bar Dairy, it's located in Porterville,

9   California, which is in Tulare, County.

10   Q. Your business address?

11   A. 14851 Road 168, Porterville, California, 93257.

12   Q. Before we go into the history of yourself and your

13   family with the dairy business, could you tell us a little bit

14   about your educational background?

15   A. I graduated from Menache High School in 1973. And then

16   I graduated from Porterville College in 1975 with a degree in

17   Agriculture. I got married in 1976, and already rented some

18   farm ground, so I did not continue on beyond that.

19   Q. Could you tell us a bit about your history and your

20   family's history with dairy business?

21   A. Well, my grandfather emigrated from the Azure Islands,

22   from Terceira in 1928, when my father was three-years old. My

23   aunt and my uncle were a little bit older than my father. And

24   in the early '30's they had established a small dairy on a

25   rented facility. And in 1940, they purchased the facility, or

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1 the property where our current facility is at, and built a

2 parlor there. And my dad and my uncle and my grandfather were

3 partners in Frank P. Barcellos and Sons Dairy.

4 Q. Then proceed from there how you got involved in the

5 dairy business.

6 A. Well, my dad left due to health reasons from the dairy

7 operation in 1971. And so when I graduated school, I rented

8 some property, and when my grandparents passed away, in usual

9 turmoil of family estates, since I had a farming operation, I

10 was able to negotiate the purchase of the home dairy from the

11 family members. And in 1989, I started T-Bar Dairy.

12 Q. And was that your first dairy?

13 A. I had grown up working on the family dairy, but that

14 was the first time I had actually owned it, where I had the

15 financial responsibility.

16 Q. Do you have children, Mr. Barcellos?

17 A. Yes, I have three daughters; Bridget, B-R-I-D-G-E-T,

18 married Matthew Kidder, K-I-D-D-E-R, she is 34, and has five

19 children. Matthew and Bridget are partners with me in

20 White Gold Dairy, which is a little bit of an oxymoron at this

21 point; but then I also have Theresa, she's 32, married to

22 Jason Prather, and they have two children; and my youngest

23 daughter, Deolinda.

24 Q. Are any of your children or their spouse's in engaged

25 in the dairy business?

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1   A. Yes, Matthew and Bridget are, as I said, partners with

2   me in White Gold Dairy, an 800-cow dairy operation on a rented

3   facility. And my other son-in-law, Jason, actually works with

4   me on the farming side of the business.

5   Q. On your dairy how many cows are at the dairy?

6   A. We milk 800 through the barn.

7   Q. What breed?

8   A. They are all Holsteins.

9   Q. And do you have quota?

10   A. Yes, I do on T-Bar Dairy. I do not have quota on

11   White Gold.

12   Q. And of your total production, how much of it is covered

13   by quota?

14   A. Approximately 30 percent.

15   Q. Before we go further into that, have you been involved

16   in way in any dairy organizations in your career? If so,

17   please outline your involvement.

18   A. Yes. I have been a delegate with Land O'Lakes through

19   their delegate system representing Region 5, which is in

20   Tulare. I've also participated in Farm Bureau as a member of

21   the CAC Committees for Tulare County represented in the state,

22   and I've also served 18 years as Director of Western United

23   Dairymen the past three, I'm immediate past President, past

24   three years.

25   Q. I understand that you have been honored with some

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1 awards in your dairy farming; is that correct?

2   A. Yes.

3   Q. Can you tell me what they are?

4   A. I'm a little more modest than that, but yeah, I'll

5 answer your question. I'm under oath.

6   Q. Yes.

7   A. 2010 we were selected the Tulare County Dairy Family of

8 the Year. I have achieved some awards through my dairy

9 conservation operations. 2006, Farmer Innovator with our dairy

10 silage conservation programs. I don't know, 2013 Tulare

11 Kiwanis Farmer of the Year.

12   Q. Okay. I take it you are a member of Land O'Lakes?

13   A. Yes, I am.

14   Q. And you market your milk through Land O'Lakes?

15   A. Yes, originally started with DCCA and was part of the

16 merger when Land O'Lakes and DCCA merged.

17   Q. Now, you indicated that you had a good portion of your

18 dairy farming is covered by your quota. You've come here today

19 to testify about the significance of quota to you and your

20 support of Proposal Number 1; is that correct?

21   A. Yes, I am in full support of Proposal Number 1,

22 primarily because it restricts pooling to, all pooling. It

23 limits depooling because that adds to the security of the quota

24 that I own, because that's going to be valuable in my next

25 endeavor.

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1   Q. Well, tell me, can you tell us all what the

2   significance of quota is to you?

3   A. Well, I'm in the process of getting permits to build a

4   new facility so that we can bring the two dairies together to

5   one site, and they would have separate milk tanks and continue

6   to operate separately. But the fact that I have quota, as I

7   estimate what my future payments and things are going to be,

8   the quota is going to cover about 20 percent of the payment of

9   my new operation, which is going to be more environmentally

10 friendly throughout its water conservation, throughout

11 minimizing air impacts. And also, the operation is going to be

12 a robotic carousel. And the fact that labor is getting very

13 difficult in our area, it's going to make a huge stride

14 towards, you know, a better economy for our business and

15 security for our families.

16   Q. There has been some testimony here before about the

17 robotic carousel, but could you briefly describe that?

18   A. Yeah. What it is, is a, it's not necessarily new

19 technology, the technology is proven. But they have perfected

20 the operation of a robotic unit that would attach itself to the

21 cow, would sanitize, would prime, milk, and post-dip, all in

22 one, all in one unit. And it eliminates the labor factor,

23 labor mistake, and the fact that it's hard to get labor.

24   Q. Do you -- do you use your quota in any way as

25 collateral for financing?

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1   A. It's on my balance sheet and naturally the income that

2   it generates each month has an impact on, you know, our

3   borrowing power.

4   Q. Would you support a Federal Milk Marketing Order that

5   did not protect the value of your quota?

6   A. It would be extremely difficult.

7   Q. Would you support a Federal Milk Marketing Order that

8   had the effect of, inevitable effect of essentially getting rid

9   of quota?

10   A. Not at this point.

11   Q. You have been past President of Western United

12   Dairymen. Do you have any estimate of how many dairymen that

13   organization represents?

14   A. Close to 600.

15   Q. In your opinion, if a Federal Milk Marketing Order were

16   adopted that did not recognize the value of quota, of those

17   members who hold quota, do you feel that the membership would

18   vote in favor of such a Federal Milk Marketing Order?

19   A. Most of that membership would oppose anything that

20   would hamper their opportunity to continue with quota, which is

21   why they all fully support Proposal Number 1 by the

22   Cooperatives, because it feels, they feel it secures their

23   asset.

24   Q. Is there anything would you like to add to your

25   testimony now, Mr. Barcellos?

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 1      A.   No, not at this point.   Other than the fact that I'm

 2   honored to be able to share the testimony and I appreciate the

 3   fact that USDA is here to hear comments and receive all this

 4   information.

 5      Q.   Thank you.   Your Honor, Mr. Barcellos is now available

 6   for further examination.

 7      JUDGE CLIFTON:   Thank you, Mr. Vlahos.   And Mr. Barcellos,

 8   thank you for being here all day with us.   I appreciate that.

 9   I need to start with the few spellings.   Would you tell me how

10   your daughter Theresa spells her name?

11      MR. BARCELLOS:   T-H-E-R-E-S-A.

12      JUDGE CLIFTON:   And her husband is Jason?

13      MR. BARCELLOS:   Yes.   J-A-S-O-N.

14      JUDGE CLIFTON:   All right.   What is their last name?

15      MR. BARCELLOS:   Prather, P-R-A-T-H-E-R.

16      JUDGE CLIFTON:   All right.   And Jason Prather works in the

17   dairy operation?

18      MR. BARCELLOS:   He actually works in the farming operation.

19   We have T-Bar Dairy, White Gold Dairy.   I originally started

20   with Barcellos Farms in 1976 with my wife Felomena,

21   F-E-L-O-M-E-N-A.

22      JUDGE CLIFTON:   F-E-L-O --

23      MR. BARCELLOS:   M-E-N-A.   We'll be celebrating our 40 th

24   anniversary next February.

25      JUDGE CLIFTON:   All right.   Wonderful.   So you probably
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1 heard the testimony of the dairyman who said they had been

2 married 37 years and are still having a blast.

3   MR. BARCELLOS: Yeah, especially with, we have seven

4 grandchildren, and they are -- they are quite a treat. And

5 actually, the grandsons are already trying to manage the

6 operation. They keep telling us what we should be doing.

7   And one thing I would like to add, since we brought the

8 farm up. I'm a very diversified operation. Barcellos Farms is

9 a diversified farming operation that sells feed to our two

10 dairies. We also, in normal years, we haven't been able to in

11 the last couple years due to drought, we normally sell our

12 excess feed to the neighboring dairies. And for the last 25

13 years I have had a dairy pond excavation business, where we use

14 long-reach excavators to clean out dairy ponds. And in the

15 last three years we have lost eight of our clients, and the

16 last job I did for them was to clean their ponds down to the

17 clean dirt so that the Water Board could certify closure as

18 that dairy was being eliminated and torn down.

19   We're actually finishing one this week in Bakersfield,

20 that is only a twelve year-old facility that was milking 5,000

21 cows. And that facility was sold to a conglomerate out of

22 Singapore that is going to be planted into trees, and that

23 particular dairyman is taking some of his equipment and going

24 to build a facility in South Dakota.

25   JUDGE CLIFTON: It is helpful to get an idea of the trends

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1 that way. Do you want to add anything more about that, about

2 whether you think there will be greater milk production going

3 forward in California?

4   MR. BARCELLOS: I don't know that there's going to be

5 greater milk production, I am looking for stable milk

6 production, which is why we're actually looking at building the

7 new facility. It makes economic sense because what we're

8 paying on the rented facility and the labor savings will pay a

9 large portion of what the new facility would cost. I believe

10 that when we get everything finalized, it's going to be a

11 get-in-or-get-out situation. Because my daughter and

12 son-in-law are the ones that are going to actually have to make

13 the last few payments -- I hope to be retired by then. But

14 this -- this process is weighing heavily on our decision if

15 we're going to move forward.

16   The dairy parlors that we're milking in right now,

17 still our original family parlor that was built in 1940, and

18 the rented facility is another one that was built in the early

19 '50's. And you know, it's time to upgrade and either, as I

20 said, stay in or move on.

21   I'm not scared of moving on. We used to have a lot of

22 cotton, used to do a lot of custom harvesting in cotton. I

23 sold my seven cotton pickers and four model builders four years

24 ago, and we converted into chopping silage. We have that

25 operation that runs. I'm also partners in a tree-harvesting

1 business, where we harvest, we shape trees for prunes and

2 pistachios. I'm not afraid of making adjustments in our

3 operation.

4   I run a trucking firm where we haul feed commodities

5 and five low beds on the equipment. So, you know, I'm ready to

6 adapt. But, you know, I don't want to be the one that gives up

7 on the dairy operation as I look back and see what my

8 grandfather and my father started.

9   JUDGE CLIFTON: Is White Gold all one word as in White Gold

10 Dairy.

11   MR. BARCELLOS: That's two separate words, White, space,

12 Gold.

13   JUDGE CLIFTON: Are the 800 cows a combination of both the

14 White Gold Dairy and your T-Bar operation?

15   MR. BARCELLOS: No, each dairy is an 800-cow operation, so

16 there's 1600 total milk cows, plus we have full heifer

17 replacement programs that are residing on three other rented

18 facilities. And, you know, with the new construction that our

19 heifers can come home into the former, current milk cow

20 facility so we would be able to consolidate everything into one

21 place and really make some efficiencies.

22   JUDGE CLIFTON: Are all of your dairy operations and

23 farming operations located in Tulare, California -- Tulare

24 County, California?

25   MR. BARCELLOS: Yes, they are. And some of the work, some

1 of the custom work and other work we do is, basically resides

2 within the valley, but most everything is within Tulare County.

3   JUDGE CLIFTON: Your daughter, Deolinda, how is her name

4 spelled?

5   MR. BARCELLOS: D-E-O-L-I-N-D-A, and she's named after my

6 grandmother and my wife's great grandmother.

7   JUDGE CLIFTON: So the "DEO" comes from what name?

8   MR. BARCELLOS: In Portuguese, "Deo" means God, and "Linda"

9 is beautiful.

10   JUDGE CLIFTON: Wonderful.

11   MR. BARCELLOS: So Deolinda means God's beauty.

12   JUDGE CLIFTON: Is Barcellos a Portuguese name?

13   MR. BARCELLOS: Absolutely.

14   JUDGE CLIFTON: And you mentioned that you were formerly

15 with DCCA before Land O'Lakes. What does DCCA stand for?

16   MR. BARCELLOS: Dairymen's Cooperative Creamery

17 Association, which was our local creamery that merged with

18 Land O'Lakes.

19   JUDGE CLIFTON: Who next has questions for Mr. Barcellos?

20 You have been very clear, which is very helpful. Can you think

21 of anything else, Mr. Barcellos, that you would like to add?

22   MR. BARCELLOS: No, not at this time, other than the fact

23 that this industry is very important to the financial, or the

24 impact that it carries here in the Central Valley, you know,

25 from Bakersfield all the way up to Sacramento and even beyond,

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 1  but farther north are smaller producers who have a lot of quota

 2  that tremendous, tremendous impact on their bottom line and

 3  their ability to survive.  You know, I think these proceedings

 4  are very important.  And the fact that everybody has the

 5  opportunity to come and share the importance of the industry to

 6  be them and their families and the history of how we got here,

 7  I think that carries a lot of weight.  And I hope we have the

 8  ability to continue.

 9      JUDGE CLIFTON:  About how many hours a week do you work?

10      MR. BARCELLOS:  How many hours are there in a week?  My

11  wife says that I work way too much, my son-in-law says that I

12  work way too much away.  But, you know, a ten-hour day is

13  normal.  And even on Sundays I do some office work after

14  church, and then we all go to breakfast as a family, and then I

15  spend a little time doing things, quiet time to get caught up.

16  But ten, twelve hours a day.  It's not always physical,

17  sometimes it is mental.  But I'm always out there because my

18  wife can only take me for so long at home.

19      JUDGE CLIFTON:  Are there any other questions for

20  Mr. Barcellos?  There are none.  Thank you, so much

21  Mr. Barcellos.

22      MR. BARCELLOS:  Thank you, your Honor.  And I am impressed

23  that Dana Coale came out just to hear my testimony.

24      JUDGE CLIFTON:  Mr. Schad, you remain sworn.  Would you

25  again state and spell your name?
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1   MR. SCHAD: Dennis, D-E-N-N-I-S, Schad S-C-H-A-D.

2   JUDGE CLIFTON: Mr. Beshore, you may proceed.

3   CONTINUED DIRECT EXAMINATION

4 BY MR. BESHORE:

5   Q. Okay. When we left off, I believe you were at the top

6 of Page 7 of your statement Exhibit 185.

7   A. That's correct.

8   Q. Okay. Please continue.

9   A. V. Problems Using California Cheddar Cheese as a Proxy

10 for All California Cheese

11   At least two witnesses representing the Dairy Institute

12 have asserted that California is a cheese exporting state. The

13 witness representing Hilmar stated that "California produces

14 roughly twice as much cheese as it consumes based on a 2014

15 population value of 38.8 million, ERS estimates of cheese

16 consumption per capita (34.2 pounds per year, 2014) and NASS

17 California cheese production." (Exhibit 98, Page 24).

18 However, the same ERS source also reported the annual per

19 capita consumption of cheddar cheese was 9.68 pounds. Using

20 the same arithmetic as DIC, the estimate of California cheddar

21 cheese consumption is 375,000 -- I'm sorry -- 375,000,584

22 pounds per year.

23   Q. Read that number again, please.

24   A. Okay. 375,584,000 pounds per year.

25   Q. Thank you.

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1   A. The same NASS product -- I'm sorry -- the same NASS

2   dairy product annual reports report -- the same NASS Dairy

3   Product Annual Products Report (page 32) noted that California

4   cheddar cheese production in 2014 was 375,839,000 pounds.

5   Q. Okay. So we should insert "pounds" after that number

6   at that point, Mr. Schad?

7   A. I think that's a good idea.

8   Q. Thank you.

9   JUDGE CLIFTON: Ms. Elliott, are you there?

10   MS. ELLIOTT: Yes.

11   JUDGE CLIFTON: Thank you.

12   MR. SCHAD: Including the statements that the state's

13   largest cheddar cheese producer exported "nearly 10 percent of

14   its cheese" (Exhibit 98, Page 26), one could conclude that

15   California was actually cheddar cheese deficit in 2014.

16   The Proponents of Proposal 2 would have the Department

17   believe that the manufacture of all cheeses in the state incur

18   extraordinary manufacturing and transportation costs. If half

19   the total, State's total cheese is exported beyond state lines,

20   then half is remaining within the State then -- I'm sorry --

21   then half is remaining within the State accruing the home field

22   advantage of less expensive sales and transportation

23   adjustments. No evidence was provided regarding the

24   manufacturing or transportation costs, nor the yields of the

25   varieties of cheese other than cheddar, yet we have had days of

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1 testimony regarding the inadequacy of the FMMO other solids

2 formula to value the whey component of cheese making.

3 VI. Make Allowances

4   DIC asserts that the make allowances for butterfat,

5 nonfat milk solids, and cheese/protein in the product formulas

6 for a California Federal Order should be lifted directly from

7 the 2014 CDFA survey of manufacturing costs, plus a .15 cent

8 allowance for marketing expense. However, my prior testimony

9 quoted CDFA representatives testifying at the 2000 USDA

10 hearing, expressing another view of price setting at CDFA.

11 They stated that make allowances in the CDFA product formulas

12 took a count of other factors not included in the manufacturing

13 cost surveys, and that price setting formulas were an

14 expression of policy (Exhibit 70, Page 34). Dr. Schiek, during

15 cross-examination of his testimony, contained in Exhibit 122,

16 confirmed that characterization of CDFA price setting. Not

17 having a CDFA other solids/whey make allowance, CDFA -- I'll

18 start that from the beginning. Not having a CDFA other

19 solids/whey make allowance, DIC cobbles a proxy whey make

20 allowance by subtracting the FMMO nonfat dry milk allowance

21 from the FMMO whey make allowance (19.91 cents, less 16.78

22 cents) to approximate the difference in the cost of drying whey

23 and drying nonfat dry milk. DIC then adds this difference to

24 the 2014 CDFA manufacturing weighted average cost survey for

25 the nonfat dry milk (19.97 cents, plus a manufacturing cost of

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 1  .15 cents).

 2      Q.  Could you red that again starting with "plus",

 3  Mr. Schad?

 4      A.  Plus a marketing cost of .15 cents to approximate a

 5  cost to dry whey.

 6          As noted in my prior testimony, CDFA manufacturing

 7  costs are included in all FMMO make allowances (Exhibit 12.G

 8  Table 1. 2008 AMS Impact Analysis of Tentative Partial Final

 9  Decision).

10          And if we take a second and look at Exhibit 12.G.

11      Q.  Where did you obtain the Exhibit 12.G?

12      A.  From the Internet.  It's -- it is a report from 2008 of

13  the current Federal Order make allowances and the derivation of

14  the make allowances.

15      Q.  And was that published on the AMS, the Dairy Programs

16  web page, which contains information relating to Order

17  proceedings over the years?

18      A.  That's correct.

19      Q.  Okay.  Now, 12.G has three pages, correct?

20      A.  Yes.

21      Q.  Is that the entire study?

22      A.  Oh, no, it's just the two title pages and Page 3.

23          Page 3 is what I wanted to show in this testimony.

24      Q.  Okay.  So the third page of Exhibit 12.G is actually

25  numbered as Page 2 of the Economic Analysis, correct?
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1   A.   That's correct.

2   Q.   Okay. Now, can you -- can you then point out and

3 discuss what you're showing with this exhibit?

4   A.   Yes. This is -- what it's showing is the calculation

5 of make allowances as proposed in the tentative final decision,

6 and it shows butter, nonfat, dry milk, cheese, and whey. And

7 it notes, you know, that in order to determine the Federal

8 Order 17.15 cent make allowance for butter, it took into

9 account the CDFA study, which was from its manufacturing cost,

10 as well as Cornell, and it weighted those two together. The

11 California weighting in this case was 30 percent other than,

12 U.S. other than California butter production was greater than

13 that.

14   So it is telling you that the 17.15 cent butter make

15 allowances is based on a 30 percent of the California cost to

16 produce butter, as well as 70 percent of plants located in

17 Southern California.

18   Q.   Okay. Now, are the make allowances shown on Exhibit

19 12.G, the third page, Table 1, are they the make allowances

20 currently in effect of the Federal Orders?

21   A.   That's correct.

22   Q.   And they, then, are also the make allowances that are

23 proposed as part of Proposal 1?

24   A.   That's correct.

25   Q.   And in each case for each product, butter, nonfat dry

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milk, cheese, and whey, does this economic analysis publication

of AMS show the source from which the make allowance figures

were derived?

A.   That's correct.

Q.   Okay. Of the four -- of the four products, it appears

that three of them are based in whole or in part on CDFA

information; is that correct?

A.   That's correct.

Q.   Okay. Are there, now, you went through the butter,

would you like to just highlight any of the other information

on that?

A.   Yes. I would note that the California volume for

nonfat dry milk is 50 percent, roughly 50 percent between

California and out of, using the California make allowance and

the Cornell study for plants outside of the state. And cheese

was one hundred percent. The Federal Order cheese make

allowances is based entirely on the California make allowance.

Q.   Let me make sure I'm correct about that. It's your

testimony on the basis of this exhibit and other information

that the current applicable Federal Order make allowance for

cheese is based one hundred percent on the CDFA cost study.

A.   That's correct.

Q.   Other than the sales and administrative cost figure,

which you also mentioned.

A.   That's correct.

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1   Q.   Okay.   Continue.

2   A.   And finally, whey was based on a Cornell study, and

3   plus 15, .15 cents for marketing analysis.

4   Q.   Okay.   Now, would you go back to Exhibit 8, I'm sorry,

5   Page 8 of Exhibit 185, your testimony, and I want you to read

6   the sentence in which Exhibit 12.G is a parenthetical phrase,

7   but read the sentence without the parenthetical identification

8   of Exhibit 12.G. you stopped before it was over, I want to

9   just have that sentence read in full without the parenthetical

10 phrase.

11   A.   As in any prior testimony --

12   JUDGE CLIFTON: Start again.

13   MR. SCHAD: I'm sorry.

14   As noted in my prior testimony, CDFA manufacturing

15 costs are included in all FMMO make allowances, except for the

16 cost of drying whey.

17 BY MR. BESHORE:

18   Q.   Thank you.

19   A.   As California finds it inappropriate for a CSO Order

20 (California State Order) to adopt make allowances directly from

21 the CDFA manufacturing survey, so should the California Federal

22 FMMO.

23   CDFA notes that there are four plants that manufacture

24 cheddar cheese in the form that can be priced by the NDPSR.

25 Since 2011, the disparity in size between the four plants

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 1  precluded CDFA's announcement of the average selling price or

 2  the volume sold.  The current 2014 survey notes that -- and I

 3  want to make a correction here, and it should say, notes that 2

 4  of the 4.

 5      JUDGE CLIFTON:  All right.  Ms. Elliott, Page 4, fourth

 6  line up.

 7      MR. BESHORE:  Page 8, I believe, your Honor

 8      JUDGE CLIFTON:  I'm sorry, thank you.  Page 8, fourth line

 9  up, we're going to insert "two of" the number 2 or TWO, of,

10  after the words "notes that".

11      MS. ELLIOTT:  Okay.

12      JUDGE CLIFTON:  And would you read that sentence again for

13  us, Mr. Schad?

14      MR. SCHAD:  The current 2014 survey notes that two of the

15  four cheddar cheese plants surveyed, produced 40 pound blocks,

16  500 pound barrels, and 640 pound blocks, yet, the DIC proposal

17  would set cheese prices based only on the 40 pound blocks.  Due

18  to the few cheddar cheese plants in the survey, CDFA has been

19  unable to report ranges of costs among the plants as CDFA does

20  in butter, nonfat dry milk, butter and nonfat dry milk plants.

21      JUDGE CLIFTON:  Would you read that sentence again for us,

22  please?

23      MR. SCHAD:  Sure.

24          Due to the few cheddar cheese plants in the survey,

25  CDFA has been unable to report ranges of costs among the plants
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as CDFA does in butter and nonfat dry milk plants. In effect,

DIC is proposing that USDA set prices for milk used to produce

cheese based on the weighted average manufacturing cost of four

plants that are dominated by one very large cheese plant.

MR. BESHORE: Your Honor, you can stop there. You inserted

a word which I think is helpful in that paragraph, Mr. Schad,

and I would like that to be reflected in the exhibit. So you

said "used to produce cheese" on the top line, "for milk used

to produce cheese," and I think that's descriptive and helpful

and we would like to have the word "used" inserted at that

point.

JUDGE CLIFTON: Thank you. So it's just after the word

"milk".

MR. BESHORE: Yes.

JUDGE CLIFTON: Top line. Thank you.

MR. SCHAD: DIC further proposes that USDA recognize

"spatial value" of butter, powder, and cheese by subtracting a

western value (FOB adjuster) --

JUDGE CLIFTON: Read that again, please, from the

beginning.

MR. SCHAD: DIC further proposes that USDA recognize

"spatial value" of butter, powder, and cheese by subtracting a

western value adjuster (FOB adjuster) from the NDPSR monthly

announced price. The DIC witness explained that the fixed

adjuster for each commodity is based on the average of the

1 five-year historic difference between the price determined by

2 CDFA audits and the commodity and the NDPSR prices.

3   JUDGE CLIFTON: Read again from "between the price

4 determined by".

5   MR. SCHAD: -- between the price determined by CDFA audits

6 for the commodity and the NDPSR prices. There is an immediate

7 problem in this process. CDFA has not announced a cheese price

8 since at least 2011. To bypass the lack of CDFA reported

9 California specific cheese prices since 2011, DIC cobbled

10 together a complex process to approximate the FOB adjuster for

11 cheese based on two time series.

12   While there is -- while there are no published CDFA

13 data to verify it, DIC's premise is that cheddar cheese prices

14 are lower in California than other areas of the country,

15 notably the Midwest. However, recent prices from the Dairy

16 Market News --

17   Q. That should be news with an S?

18   A. Yes.

19   JUDGE CLIFTON: Ms. Elliott, do you see it? Good. We have

20 added the S. Thank you.

21   MR. SCHAD: (DMN) indicate the California price is actually

22 higher than the Midwest price for wholesale 40 pound blocks of

23 cheddar cheese delivered in less than carload blocks.

24 Table 12.H Average Wholesale Delivered Price of 40 pound Blocks

25 of Cheddar Cheese in LTL Lots showed that the prices reported

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in the DMN for the above commodity for Wisconsin --

JUDGE CLIFTON: You put a word "that" in the sentence and
you really don't want that word in there, so start again,
please, with Table 12.H.

MR. SCHAD: I think I have a bigger problem.

JUDGE CLIFTON: Okay.

MR. BESHORE: We lost a column off 12.H.

MR. SCHAD: Yeah. And where do you want me to start again?

JUDGE CLIFTON: With the bolded language.

MR. SCHAD: Table 12.H Average Wholesale Delivered Price of
40 pound Blocks of Cheddar Cheese in LTL Lots shows that the
prices reported --

JUDGE CLIFTON: No, don't say "that" because it interferes
with the rest your sentence. So what does it show? It shows
the prices.

MR. SCHAD: Shows the prices -- shows the prices reported
in DMN for the above commodity for Wisconsin -- and that should
read "and the West Coast".

MR. BESHORE: Well, do you want to leave it "and the West
Coast" or do you want to substitute the exhibit that has all
three columns on it?

MR. SCHAD: I have the one here.

MR. BESHORE: Okay. Just say "Wisconsin and the West
Coast."

MR. SCHAD: Right. And strike "and the Northeast" put a

1   period there.

      2   JUDGE CLIFTON: All right. So, Ms. Elliott, because the

      3   actual 12.H doesn't have the Northeast, we're striking "and the

      4   Northeast" and we're talking about the only two columns it has,

      5   Wisconsin and the West Coast. So would you again read it just

      6   to make sure both Ms. Elliott and I have this correct?

      7   MR. SCHAD: Okay. Table 12.H Average Wholesale Delivered

      8   Price of 40 pound blocks of Cheddar Cheese in LTL Lots shows

      9   the prices delivered in -- prices reported in DMN for the above

      10   commodity for Wisconsin and the West Coast. DMN reports for

      11   the 18-month period between January 2014 and June 2015, the

      12   West Coast price averaged 2.1 cents -- I'm sorry, 2.17 cents

      13   above the Wisconsin price. In the absence of any other

      14   published sales reports of cheddar cheese, the DMN reports of

      15   regional cheese prices must take precedence.

      16   BY MR. BESHORE:

      17   Q. Can I interrupt you there, Mr. Schad? And to make sure

      18   we're clear, you have in the title of Exhibit 12.H and in the

      19   text where you read the title, the phrase in all caps LTL. And

      20   what does that stand for?

      21   A. As I say earlier in that paragraph, "less than" it's

      22   less than full loads.

      23   Q. So you said less than car loads, less than truck loads

      24   sometimes it is referred to?

      25   A. Yes.

                                    7840

1   Q. Okay. Thank you. Continue.

2   A. DIC introduced an alternative proposal to price other

3   solids, noting that only 13 of the 57 --

4   JUDGE CLIFTON: Start again.

5   MR. SCHAD: Noting that only 13 of California's 57 cheese

6   plants also process whey, DIC called for a new process of

7   valuing other solids. Dr. Schiek testified, "The milk price

8   should reflect what the cheese maker can earn by selling his

9   wet separated whey FOB his cheese plant." (Exhibit 122,

10 Page 14). Proposal 2 describes a pricing formula based on the

11 value of WPC 34, less the cost of drying WPC, less the cost of

12 cooling and delivering liquid whey to a whey drying facility.

13 DIC estimated the total cost of these operations was 31.1

14 cents. While there may be an appropriate yield component --

15 BY MR. BESHORE:

16   Q. Start that sentence again, please.

17   A. While there may be an acceptable yield component to the

18 DIC alternative proposal, there presently is no transparent and

19 verifiable price series for WPC 34. Likewise, there is, there

20 were no cost studies by third parties to verify the cost of

21 drying WPC. And DIC --

22   JUDGE CLIFTON: Go ahead.

23   MR. SCHAD: WPC 34, and the DIC proposal make allowance

24 assumes that all whey is cooled and transported to a whey

25 aggregator.

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1   In essence, the DIC alternative is a solution in search

2   of a problem. Dr. Schiek utilized Exhibit 96 to illustrate the

3   number of cheese plants with whey processing facilities.

4   However, he failed to note the volume of monthly milk pounds

5   that are processed at plants with whey drying facilities.

6   Assuming that all plants in Groups 5 through 8 are of equal

7   size, then one could argue that 86 percent of the Class 4b, and

8   in this case Arabic 4b was processed at dairy plants --

9   JUDGE CLIFTON: 4b?

10   MR. SCHAD: 4b milk was processes at dairy plants that had

11   whey drying facilities.

12   MR. BESHORE: Whey drying?

13   MR. SCHAD: Capabilities. Further, the Cooperatives'

14   exempt plant proposal could exempt as many as 25 of the 57

15   cheese plants from minimum class pricing. Subsection VI.

16   JUDGE CLIFTON: VII.

17   MR. SCHAD: VII, all right.

18   VII. Dairy Price Hedging in California

19   Dairy farmers: Jared Fernandes, Dino Giacomazzi, and

20   James Netto testified -- and I'll parenthetically -- (and

21   others since then) have testified that the California pricing

22   system increased the uncertainty of hedging their milk price

23   and inhibited their use of commonly used forward pricing tools.

24   JUDGE CLIFTON: Forward what kind of pricing?

25   MR. SCHAD: Milk pricing tools. Mr. Fernandes stated, and

I quote, "The difference between the two price series is almost

always negative with the 4b --"

     MR. BESHORE: What's the word before 4?

     MR. SCHAD: -- with the Class 4b price less than the

Class III. More importantly, for hedging and risk management

purposes, the basis is -- and in the testimony, the written

testimony, these words were in italics, and I copy them as such

-- highly volatile and unpredictable (the author's emphasis)

month to month." (Exhibit 22). In response to the dairyman's

testimony, the witness representing Hilmar stated, "Proponents

of Proposal 1 have suggested risk management for California

producers is ineffective because of the difference between the

California 4b price and FMMO Class III price." (Exhibit 98,

Page 12). The witness then provided statistical evidence that

"...California is neither the best nor the worst." (Ibid.) The

witness purports show with Figure 5 in Exhibit 99 that

California is the fourth best in the group of ten states,

comparing the difference between the state's NASS All Milk

price and the Class III price. The chart's footnote explains

that for each year the maximum spread among the states' All

Milk and Class III was added to the minimum for that year.

Those values for the last five and a half years were averaged.

Figure 5's footnote also explains that the calculation used the

absolute value of the difference, such that a negative number

was treated the same as a positive number.

1   Figure 5 of Exhibit 99 shows that California scores

2 fourth best and Pennsylvania last in this measure.

3 Exhibit 12.I Difference Between California All Milk Price and

4 Class III Prices 2010-2015.

5 BY MR. BESHORE:

6   Q. Is that Exhibit 12.I of 186?

7   A. Excuse me?

8   Q. Exhibit 12.I is part of Exhibit 186 for today's

9 testimony, correct?

10   A. Yes. Yes.

11   Q. Okay. I interrupted you.

12   A. You did. And parenthetically, this was also provided

13 as Exhibit 103, and the only difference between this and

14 Exhibit 103 is there was a question when this was introduced

15 about the timing, and so that I put the date on the baseline.

16 Okay.

17   -- graphs each of the data points used for Figure 5's

18 conclusion and shows that in 33 of the 66 months surveyed by

19 the Dairy Institute witness, the difference between the

20 California All Milk price and the Class III price was negative.

21   Q. Okay. Let's stop there and make sure we have got this.

22 So Cooperatives' Exhibit 12.I, which is part of your exhibit

23 set today, correct?

24   A. Yes.

25   Q. Is basically a different graph of the same graph that

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1 was identified earlier but not admitted as Exhibit 103?

2   A. That's correct.

3   Q. Except that you have made this one clearer by adding

4 date points where they were not showing on the prior graph?

5   A. Exactly.

6   Q. Okay.

7   A. Yes.

8   Q. Thank you, Mr. Schad. Go ahead.

9   A. Exhibit 12.J Difference Between the PA All Milk and

10 Class III Prices 2010-2015, again parenthetically (Exhibit 104)

11 charts the data point for the "worst" state, Pennsylvania. In

12 all months the difference between the Pennsylvania All Milk

13 price and the Class III were positive.

14   Q. So again -- you want to, again, let's just make clear.

15 12.J is the same data and the essentially the same graph as

16 104, except that it's more clear in terms of dates.

17   A. Yes.

18   Q. Okay.

19   A. And the point I was doing, was I took the data points

20 that would have been in the Dairy Institute, and graphed those

21 dairy points. And the use of absolute values talks about

22 differences, but it, doesn't it doesn't show you that these

23 differences can be negative. And that's what I was trying to

24 show here. And that your graph, that formula, the difference

25 between the All Milk and the Class III, you will see that there

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1 are months, and actually, if you count them, half of the months

2 there's a negative difference, while there is, in the other

3 months there's a positive difference.

4   Q. That's on Exhibit 12.I, which is the California All

5 Milk less Class III exhibit, correct?

6   A. That's correct.

7   Q. Okay. So in California, half the time the All Milk was

8 less than the Class III price during this five and a half

9 years?

10   A. Yeah. And that explains the problem why dairymen have

11 a hard time trying to set a kind of basis in that, because of

12 California milk pricing system, a basis to use these risk

13 management tools. If you look at -- if you turn the page and

14 you look at Pennsylvania, Pennsylvania again, remember was the

15 worst in Exhibit 5. And in, you will see the baseline was

16 zero. So that in all cases, Pennsylvania, in this comparison,

17 the difference between the PA milk in the Class III is a

18 positive. So for Pennsylvania dairyman he is basically, and

19 I'll probably -- I'll wait -- I can read the conclusion.

20   Q. Okay. So you are going back to the text of Exhibit 185

21 on Page 11, correct?

22   A. Yes.

23   Q. Okay. Go ahead.

24   A. And I'll pick it up.

25   While a Pennsylvania dairyman, dairy farmer has great

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1   as a great level of certainty that his farm price will always

2   be above the Class III price, the California dairyman knows

3   that it is as likely as it is not that his farm price will be

4   above or below the Class III price. Smoothing out the positive

5   and the negative differences with the use of absolute numbers

6   does nothing to reduce the risk that an actual dairy,

7   California dairyman experiences with the California pricing

8   system. Dairy farmers with actual experience have testified

9   that they have used the standard risk management tools and have

10   reported that the California prices cannot be successfully

11   hedged.

12   Figure 6 of Exhibit 99 calculated in the same manner,

13   comparing the States' mailbox price and the Class III price.

14   Exhibit 12.K Difference Between California Mailbox and

15   Class III Prices 2010-2015 and Exhibit 12.L Difference Between

16   Pennsylvania Mailbox and Class III Prices 2010-2015 are graphs

17   for these variables and reveal similar results as Exhibits 103

18   and 104.

19   Q. And we can also identify there 103 and 104 are the same

20   as 12.I and J?

21   A. That's correct.

22   Q. Okay.

23   A. And again, you are seeing the same thing. You are

24   seeing that in 12.K you are seeing that relationship from the

25   Dairy Institute's testimony shows that the line that, the

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difference is negative, while if you look at the Pennsylvania,

you will see that the line is always above zero.

Q. So for Pennsylvania farms on Exhibit 12.L, the

difference between the Pennsylvania mailbox and Class III price

during this five and a half year period was, in all cases,

positive, correct?

A. Right, it gives you a level of certainty to determine

your basis risk.

Q. Whereas in Exhibit 12.K, which is the difference

between California mailbox and Class III prices, 2010-2015, it

was, appears to be below zero and negative for a majority of

that five and a half year period, correct?

A. That's correct.

MR. BESHORE: Your Honor, I suggest this may be a good

point to stop for the day. We're at the end of Roman Numeral

VII of Mr. Schad's testimony, and we can start with Roman

numeral VIII tomorrow.

JUDGE CLIFTON: All right. Let me ask Mr. Schad, please,

to remind me where you get All Milk prices and where you get

mailbox prices.

MR. SCHAD: Okay. All Milk prices are reported by NASS on

a monthly basis. And the mailbox prices, there was a farmer

that was just in, mailbox prices are reported by the Federal

Orders, AMS, and the difference is between the two there's a

difference in what they were measuring among other things. And

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1   the NASS is a survey price, but mailbox price is an audited

2   payroll price from the Federal Orders.

3   MR. BESHORE: As well as CDFA for California.

4   MR. SCHAD: And as well as CDFA.

5   JUDGE CLIFTON: Thank you.

6   MR. BESHORE: And just one follow up quick question on

7   that. The NASS publication which reports the All Milk price on

8   a monthly basis is ag prices?

9   MR. SCHAD: Yes.

10   JUDGE CLIFTON: Good. You have told me that six times, but

11   I need to be reminded.

12   MR. BESHORE: I'm sure we have actually.

13   JUDGE CLIFTON: This is a good stopping time, because it is

14   already 4:59. Ms. May, may we leave everything in this room

15   tonight?

16   MS. MAY: Yes, we may. They are going to use the room,

17   they are going to show the room to a prospective customer

18   tonight, but otherwise we can leave it in here and everything

19   will be fine.

20   JUDGE CLIFTON: And the sound equipment will be safe?

21   MS. MAY: That's up to the sound guy. They lock the room

22   up, but they are not liable for our stuff.

23   JUDGE CLIFTON: Thank you. All right. Very fine. I'll

24   see you all in the morning here. We go on record at 9:00.

25   Thank you.

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