

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In the Matter of:)	
)	Docket Numbers
)	AO-368-A30 and
MILK ORDER AMENDMENT HEARING)	AO-380-A18
FOR MILK IN THE PACIFIC)	[DA-01-08]
NORTHWEST AND WESTERN)	
MARKETING AREAS)	
)	

Hilton Airport Hotel
5151 Wiley Post Way
Salt Lake City, Utah

Wednesday,
April 17, 2002

The above-entitled matter came on for
hearing, pursuant to Adjournment, at 8:30 a.m.

BEFORE: HONORABLE JILL CLIFTON
Administrative Law Judge

APPEARANCES:

On behalf of the U.S. Department of
Agriculture:

GARRETT B. STEVENS, ESQ.
Office of General Counsel
Marketing Division
U.S. Department of Agriculture
Washington, D.C. 20250

On behalf of the Proponents:

CHARLES M. ENGLISH, JR., ESQ.
Thelen, Reid and Priest, LLP
Suite 800
701 Pennsylvania Avenue, NW
Washington, D.C. 20004

EXECUTIVE COURT REPORTERS, INC.
(301) 565-0064

APPEARANCES: (Continued)

On behalf of the Proponents:

MARVIN BESHORE, ESQ.
Milspaw and Beshore Law Offices
130 State Street
Post Office Box 946
Harrisburg, Pennsylvania 17108

JOHN VETNE, ESQ.
15 Powow
Amesbury, Massachusetts

Also Present:

GINO TOSI, Marketing Specialist
U.S. Department of Agriculture
Washington, D.C. 20250

I N D E X

<u>WITNESS:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VOIR DIRE</u>
Cary G. Peterson	311	317 319	--	--	--
Mark Gibbons	331	334 337 339	--	--	--
Roy S. Remund	344	346 348	--	--	--
Gregory J. Radmall	353	358 367	--	--	--
Ronald O. Stratford	381	383 386 389 391 392 393	--	--	--
Richard A. Eakle	396	398 405	--	--	--
Brian D. Hardy	410	412 428	--	--	--
Steve Friscknecht	410	420	--	--	--
Elvin Hollon	442 506	517 583 616 619 622 624 629 634 636	638	--	503

I N D E X

<u>WITNESS:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VOIR DIRE</u>
Mike Roth	642 645	647 653 653 658	--	--	--
John Reitsma	660	666 667 673 675	--	--	--
Jon Davis	681	690 704 729 731 734	--	--	--

E X H I B I T S

<u>EXHIBIT:</u>	<u>IDENTIFIED</u>	<u>IN EVIDENCE</u>
Exhibit Number 23	310	310
Exhibit Number 24	329	330
Exhibit Number 25	344	344
Exhibit Number 26	351	352
Exhibit Number 27	380	394
Exhibit Number 28	395	407
Exhibit Number 29	409	409
Exhibit Number 30	413	414
Exhibit Number 31	413	414
Exhibit Number 32	440	441
Exhibit Number 33	440	441
Exhibit Number 34	518	521
Exhibit Number 35	680	681
Exhibit Number 36	725	729

P R O C E E D I N G S

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

9:00 a.m.

JUDGE CLIFTON: This is Wednesday, April 17th, 2002. This is Day 2 in this rulemaking hearing being held in Salt Lake City, Utah.

Our first witness today will be Commissioner Peterson, but before I ask him to come forward and to have his statement marked as an exhibit, I understand that there is an announcement that Mr. Stevens will be presenting.

Mr. Stevens, would you just identify yourself for those who may not have been here yesterday, and then you may proceed?

MR. STEVENS: Certainly. My name is Garrett B. Stevens. I'm with the Office of General Counsel at the U.S. Department of Agriculture, Washington, D.C.

I have here a Notice of Certain Announcements concerning bulk orders which I'll give at this time. The first thing is that Interim Final Order for the Upper Midwest was issued on Tuesday, 16 April 2002, by A.J. Yates, the Administrator of AMS.

This rule prevents the ability to simultaneously pool the same milk on the Upper Midwest Order and on a state-operated milk order that has marketwide pooling. The rule also establishes a 90-

1 percent diversion limit for pooled distributing plants.
2 The rule will be effective May 1st, 2002.

3 Also, a letter inviting interested parties to
4 submit additional proposals for a possible hearing for
5 the Northeast Order is being sent today, April 17th,
6 2002, by the Market Administrator, Eric Rasmussen. The
7 letter asks that additional proposals be provided to
8 Doug -- excuse me -- to Dairy Programs by May 17th.

9 JUDGE CLIFTON: Thank you, Mr. Stevens.

10 Commissioner Peterson, if you would come
11 forward, I'd invite you to be seated at the table next
12 to me, and then I'll swear you in.

13 MR. BESHORE: Your Honor, I distributed a
14 number of copies of Mr. Peterson's statement, and I
15 have just a couple more, but the room is quite full
16 this morning, and we ran out, but there are quite a few
17 around the room.

18 JUDGE CLIFTON: Raise your hand if you'd like
19 a copy, knowing that they are limited.

20 (Show of hands)

21 JUDGE CLIFTON: The next exhibit number to be
22 utilized is 23. I'm going to ask the court reporter to
23 mark this as Exhibit 23.

24

25

1 (The document referred to was
2 marked for identification as
3 Exhibit Number 23.)

4 JUDGE CLIFTON: Before Commissioner Peterson
5 speaks, I would like the statement to be admitted into
6 evidence.

7 Is there anyone who would like to Voir Dire
8 the Commissioner on his statement?

9 (No response)

10 JUDGE CLIFTON: Is there anyone who has any
11 objection to the statement being part of the record as
12 part of the evidence in the case?

13 (No response)

14 JUDGE CLIFTON: There being no objection,
15 Exhibit 23 is hereby admitted into evidence.

16 (The document referred to,
17 having been previously marked
18 for identification as
19 Exhibit Number 23, was
20 received in evidence.)

21 JUDGE CLIFTON: Commissioner Peterson, would
22 you state your full name and spell your name for the
23 record, please?

24 MR. PETERSON: Cary G. Peterson, C-A-R-Y G.
25 P-E-T-E-R-S-O-N, Commissioner of Agriculture and Food

1 for the State of Utah.

2 JUDGE CLIFTON: Thank you.

3 If you'll raise your right hand?

4 Whereupon,

5 CARY G. PETERSON

6 having been first duly sworn, was called as a witness
7 herein and was examined and testified as follows:

8 JUDGE CLIFTON: Thank you.

9 Commissioner Peterson, you may proceed.

10 DIRECT TESTIMONY

11 MR. PETERSON: Thank you very much.

12 It's a privilege to be asked and allowed to
13 present this information and to all of you, welcome to
14 Utah. We're getting what we have long needed and
15 that's some rain and spring precipitation for which we
16 are most grateful.

17 The Utah Department of Agriculture and Food
18 supports the Proposed Rule Changes 6, 9 and 10 in
19 Federal Order 135. Our support is predicated not
20 simply on what is best for Utah but on what is right,
21 what is fair and equitable. Specifically, these
22 proposals will accomplish the following: help repair
23 the inequities and damages to Utah dairy producers from
24 the Western Order; second, improve the Order's
25 utilization and price for all dairy farmers pooled in

1 the Order; and third, more accurately recognize the
2 demand for fluid milk in Utah.

3 I hope in my short presentation, I can
4 persuade you of these this morning.

5 Dairy farmers are a significant part of
6 Utah's economy. Utah agriculture and its related
7 industries are catalysts for \$3 to \$4 billion in
8 economic activity in our state and over a 100,000 jobs
9 for our citizens.

10 Farm gate sales in 2000 exceeded a billion
11 dollars. Livestock, including dairy, is the foundation
12 of Utah's agricultural economy, making up over 76
13 percent of farm gate sales. Utah's 96,000 cow dairy
14 herds accounted for 186 million in milk sales in 2000
15 and contributed to the 349 million in market cattle
16 sales.

17 Our dairy farmers continue to be a valuable
18 economic contributor, especially to Utah's rural
19 economy. Economists estimate that dairy farmers
20 produce a five-time multiplier effect which is
21 significant in rural communities. The source is an
22 economist at Utah State University, Dr. Snyder.

23 When the Utah Department of Agriculture was
24 considering -- when the U.S. Department of Agriculture
25 was considering federal milk market order reform, Utah

1 economists, professionals, experts and dairy farmers
2 all expressed concern of the inevitable adverse
3 consequences.

4 A major concern was that the Western Order
5 replaced the Las Vegas Market from the previous Great
6 Basin Order with the Southwest, Eastern Oregon,
7 Southwestern Idaho, Eastern Oregon Market. The result
8 of this replacement for markets is to link together
9 producers who have not traditionally shared a common
10 fluid milk market, leading to the delusion of Class 1
11 utilization which in turn has reduced pay price for
12 Utah producers.

13 This reduced pay price to Utah producers is
14 dramatic. Prior to the implementation of the Federal
15 Milk Order reform in January of 2000, the Great Basin
16 Order had a Class 1 utilization of 45.79 percent in
17 1998 and 50.96 percent in 1999. Those are significant,
18 and I'll repeat them again. Our Class 1 utilization
19 prior to the Order in '98 was 45.79 percent, in 1999,
20 our Class 1 utilization was 50.96 percent. As a direct
21 result of the Western Order, Class 1 utilization has
22 plummeted to 22.1 percent in 2001 and 17.35 percent in
23 2002.

24 It is important to note that these severe
25 reductions are a direct result of the political

1 decision of USDA in 2000, not from reduced consumption
2 of fluid milk in Utah or increases in milk productions
3 by Utah dairy producers.

4 The imbalance created by the Order reform is
5 unfair and threatens the viability of the Utah dairy
6 industry. It is indisputable that the mailbox price
7 received by Utah dairy farmers today is the lowest in
8 the nation. While prices have led to a substantial
9 decline in the past three years of the number of
10 dairies in Utah, 488 in 1999 and 406 in January of
11 2002, the majority of these are farm families who have
12 had a long history of contributing to Utah's rural
13 communities. These consequences were forecasted to the
14 USDA during the previous hearing process. However, the
15 testimony of the experts unfortunately was discounted
16 or ignored.

17 In addition to these devastating economic
18 consequences, the Order reform does not reflect the
19 traditional market relationship, even though the amount
20 of milk being pooled in the Western Order are
21 reflected, Idaho's milk production has increased,
22 Idaho's production has increased 140 percent -- 44
23 percent since 1990. Only a small number of Utah --
24 Idaho producers have served the Utah fluid milk market.
25 Also, the majority of Class 1 sales of Order 135 are

1 located in Utah, not Southwestern Idaho or Eastern
2 Oregon.

3 The U.S. Department of Agriculture has the
4 opportunity and the obligation to remedy
5 disproportionate hardships that have been inflicted by
6 the Order reform. Notable events indicate a favorable
7 trend in support of this position and recommendation.

8 The Interim Rule under reform included an 80-
9 percent diversion from the Western Order. Under Order
10 124, the diversion limits may be reduced from 99
11 percent to 80 percent. Also changing the amount
12 eligible for diversion to non-pooled plants from 90 to
13 70 percent, in line with other federal orders where the
14 diversion limits dip to as low as 25 to 40 percent in
15 the Appalachia Order. Only the Upper Midwest has a 90-
16 percent diversion limit.

17 The specific benefits of adopting Proposals
18 6, 9 and 10 as outlined in the start of my testimony
19 are clear. Most important, changing the amount of
20 eligible diversion to non-pooled plants from 90 percent
21 to 70 percent will strengthen the price paid for fluid
22 milk to Utah dairies. This will increase the Class 1
23 utilization and allow Utah family dairy farmers to
24 compete fairly and be compensated equitably. Such
25 changes will keep the hard-working families on our

1 dairy farms in Utah. These same families have been and
2 will continue to be the economic catalyts to our rural
3 communities. Without these changes, dairy farmers in
4 Utah will continue to be endangered, causing real harm
5 to our rural communities as well.

6 In conclusion, we support Proposals 6, 9 and
7 10 in Order Number 135. The adoption of these
8 proposals make sense. We trust the political
9 expediency this time will give way to right and fair
10 and equitable policy.

11 JUDGE CLIFTON: Commissioner Peterson, thank
12 you, and thank you for making yourself available and
13 being here to testify.

14 I would invite those who might have questions
15 for Commissioner Peterson to come to the podium to ask
16 them.

17 MR. MARSHALL: Thank you, Your Honor.

18 JUDGE CLIFTON: Mr. Marshall. I'd ask each
19 of you to identify yourselves fully, even though you
20 did yesterday, so that Commissioner Peterson will know
21 who you are.

22 MR. MARSHALL: Mr. Peterson, we've never met.
23 My name is Doug Marshall. I'm the Senior Vice
24 President for Northwest Dairy Association, based in
25 Seattle.

1 MR. PETERSON: Good morning.

2 MR. MARSHALL: I'm privileged to work with
3 some of your counterparts in Washington, Oregon and
4 Idaho.

5 MR. PETERSON: Thank you.

6 MR. MARSHALL: I might add that I'm not aware
7 of any of them testifying at a federal order, and I
8 think they could all do well to follow your example to
9 be so interested in the matters affecting dairy
10 producers in your state. I congratulate you for taking
11 the time to testify.

12 CROSS EXAMINATION

13 BY MR. MARSHALL:

14 Q I assume you were briefed in advance of your
15 testimony by others, is that true?

16 A Yes.

17 Q In the course of that briefing, I'm curious
18 as to what all you were told. I noticed that your
19 testimony regarding pay price, a reduced pay price
20 relates to -- only to the Class 1 utilization issue.

21 Have you been briefed on the fact that there
22 are other aspects of the federal order changes that
23 were instituted in January 1 of 2000 that have had a
24 positive impact on Utah producers?

25 A Not in detail, but I am aware of that.

1 Q And are you aware that there's a pretty good
2 argument that pay prices for Utah producers, at least
3 as reflected in the blend price, have been higher since
4 January 1 of 2000 than they would have been under the
5 old order system?

6 A I think that's in my understanding true of
7 blend prices, not Class 1 utilization.

8 Q True. Okay. Well, I'll represent to you
9 that later in this hearing, there will be testimony
10 indicating that Utah producers have been better off as
11 a result of federal order changes made January 1 of
12 2000, and I would be happy to talk with you off line,
13 if you have questions about that and would like
14 additional information from our staff.

15 MR. MARSHALL: Thank you, Your Honor. Thank
16 you, Mr. Peterson.

17 JUDGE CLIFTON: Thank you, Mr. Marshall.
18 Mr. Vetne?

19 MR. VETNE: Good morning, Mr. Peterson.
20 Thank you for coming.

21 MR. PETERSON: Good morning.

22 MR. VETNE: My name is John Vetne. I'm an
23 attorney. I am appearing at this proceeding for
24 Glanbia Foods and Davisco Foods.

25

1 CROSS EXAMINATION

2 BY MR. VETNE:

3 Q Your statement refers to \$349 million in
4 market cattle sales.

5 A Yes.

6 Q I'm assuming that that is the dollar value of
7 sales of all kinds of cattle in the state of Utah, not
8 just dairy cows that are culled?

9 A That includes other classes of cattle.

10 Q And you referred to a -- in the same
11 paragraph, to a five-plus multiplier effect. Is that a
12 reference to the contribution of each dollar of sales
13 of raw milk resulting in a \$5 contribution to the local
14 economy?15 A The increased value of raw milk to its fluid
16 bottle, if you will, or to ice cream or to swiss
17 cheese, whatever it may be, plus the profitability of
18 that change, plus the employment derived from that
19 processing.20 Q Okay. Are you aware of -- of any reason why
21 the five-plus multiplier effect that you've referred to
22 and applied to Utah should apply differently in any
23 other state?24 A I think it would be similar. In talking to
25 the officials of -- of the dairy industry at large,

1 they use similar figures in other parts of the country.

2 Q Okay. You've referred to Don Snyder,
3 economist at Utah State University. Was that the
4 source of that information for you?

5 A Yes.

6 Q Okay. Do you know whether Don Snyder, in
7 coming up with this figure, limited the concept to
8 Utah?

9 A I'm not sure of the answer of that.

10 Q Your testimony hopes to achieve for the
11 Western Market higher Class 1 utilization and a higher
12 blend price or producer price differential for Utah
13 dairy farmers, correct?

14 A Yes.

15 Q And your support of Proposal Number 6 in
16 particular -- and Proposal Number 6 is the one that
17 would reduce diversions from 90 percent to 70 percent?

18 A Yes, that's correct.

19 Q Your support of Proposal Number 6 in
20 particular hopes to achieve this improved Class 1
21 utilization and higher blend price by reducing the
22 volume of Idaho milk that is pooled in the Western
23 market, am I correct?

24 A I think the intent, and there are experts in
25 this that understand better than I, the intent is to

1 compensate those who come to that fluid milk market
2 daily compared to those that come rarely or only
3 occasionally and realize that those that come daily can
4 share in that higher-value Class 1 milk.

5 Q Okay. Is it your understanding and your
6 objective in testifying here that producers of Grade A
7 milk in Idaho whose milk is of a quality for fluid use
8 and is available for fluid use but is not needed for
9 fluid use should not participate in the pool?

10 A The -- what -- those that produce it in the
11 pool are, of course, on an as-needed basis and that
12 fluctuates. The percentage of Class 1 utilization by
13 percentage, as I understand it, and I'm quick to say
14 there's a lot I don't understand about it, but that
15 fluctuates, and we welcome and invite and oftentimes need
16 additional milk in the fluid utilization, and we're
17 glad to get it when it is needed and glad to compensate
18 them and, if you will, give advantages as a retainer
19 for that milk when it is needed.

20 Q Would --

21 A But --

22 Q Sorry. Continue. What -- what did you mean
23 by "retainer for that milk"? Are you referring to a
24 premium outside of the regulated price?

25 A I'm referring to the fact that they can share

1 in the higher price because they occasionally deliver
2 fluid milk into this market.

3 Q Okay. And is it your testimony and objective
4 that that milk should share in the pool on those
5 occasions when it's used for Class 1 but not share on
6 those occasions when it's neither used nor needed in
7 Class 1?

8 A I don't know that I have the answer to a hard
9 and fast rule on that. We realize that being a
10 perishable commodity, it has to have a home, and we
11 can't turn it off today and start it up tomorrow
12 without some kind of consideration.

13 Q A lot of your testimony focuses on Southwest
14 Idaho and what you believe was a mistake of the
15 Secretary of Agriculture in federal order reform by
16 including Southern Idaho in the same pool as Utah,
17 correct?

18 A The -- there are two dramatic changes from
19 the other Inter Mountain previous Order. One was who
20 we were coupled with, the Las Vegas Area, little
21 production and tremendous consumption, to an area that
22 has little consumption and tremendous production. So,
23 there was a two-edged dramatic change in that. It had
24 -- it had double consequences because of that.

25 Q As to the first, as to Nevada, are you aware

1 that it would make no difference if you were coupled
2 with Clark County, Nevada, at the current time because
3 Congress has exempted Clark County, Nevada, from the
4 National Federal Order System?

5 A I just know how it used to be and the
6 advantage that that market by the pool was to our
7 producers.

8 Q Okay. As to the second part, do you see a
9 means of improving the Class 1 utilization of the
10 Western Market for the benefit of Utah producers that
11 would not involve some disassociation of milk
12 originating in Idaho from the pool?

13 A I think any increased fluid utilizations are
14 advantages to Utah producers as well as those that are
15 in the pool.

16 Q Consumers -- you -- you don't anticipate that
17 consumers will buy a lot more milk if these changes are
18 made, do you?

19 A I don't know that that will make a difference
20 --

21 Q Okay.

22 A -- in -- in the consumption.

23 Q Do you expect that the Class 1 consumption of
24 consumers will remain about the same, regardless of
25 what happens here?

1 A I -- it's my opinion that that is the case.

2 Q Okay. So, the improvement in utilization
3 would come as a result of some milk that is now in the
4 pool no longer being in the pool, correct?

5 A I think it's deeper than that. That may be
6 part of it, but who shares in the proceeds of the value
7 of the fluid milk pooled and how broadly we spread
8 that, I think, is more the issue.

9 Q Yes. And that issue, as you see it, should
10 be addressed by taking some of the milk that is now in
11 the pool and sharing and creating a result so that it
12 no longer shares?

13 A Well, I think the -- the percentage of the
14 sharing is the issue.

15 Q Hm-hmm.

16 A Not that they can capture or don't have
17 access to sharing, but the sharing is based on -- on
18 the actual delivery and more closely to the day-to-day
19 delivery, not the rare and occasional delivery.

20 Q Okay. So, let me ask again. You would
21 expect in order to achieve the desired result of higher
22 Class 1 utilization to have some milk not participate
23 in the pool that is currently in the pool?

24 A I don't know that the -- that the two are
25 directly tied, and I don't know how they are directly

1 tied.

2 Q Let's -- let me see if I can put it this way.
3 If the market is about 17 percent --

4 MR. BESHORE: Excuse me.

5 JUDGE CLIFTON: Excuse me. Mr. Beshore?

6 MR. BESHORE: Your Honor, if I might just
7 interpose an objection at this point perhaps. Mr.
8 Vetne's asked the same question essentially about three
9 or four times, and, you know, he got an answer from
10 Commissioner Peterson which was quite -- was quite
11 clear and quite precise, and we're coming back again.

12 I don't think that's fair, and we have --
13 we're delving into technical aspects of, you know,
14 proportionate sharing and things of that sort, which
15 there are many -- there are other witnesses who Mr.
16 Vetne will have the opportunity to explore that with in
17 great depth.

18 JUDGE CLIFTON: Thank you, Mr. Beshore. Your
19 objection is appreciated but overruled.

20 Mr. Vetne, you may proceed.

21 BY MR. VETNE:

22 Q Commissioner Peterson, you testified that the
23 current Class 1 utilization is about 17 percent.

24 A Yes.

25 Q And you testified that you don't expect

1 consumers to drink more milk.

2 A We do expect them to drink more milk --

3 Q Well, --

4 A -- because we need them to.

5 Q That is -- that is -- that is a result of
6 these proposals.

7 A We are promoting fluid milk. We are going to
8 promote more product of Utah specifically, and we have
9 a growing population. Class 1 utilization will
10 increase.

11 Q Okay. Will increase because of the growing
12 population?

13 A And because of choices.

14 Q Have you seen an increase in per capita
15 consumption?

16 A Yes, but I can't recite the details.

17 Q All right. Let's start with 17 percent. If
18 -- if the Class 1 utilization is going to improve,
19 let's say, back to 30 percent -- okay?

20 A Yes.

21 Q And dramatic increase in milk consumption,
22 fluid milk consumption is not the cause of that
23 increase of utilization to 30 percent. Thirty percent
24 would be the function of some milk no longer being in
25 the market, is that correct? Is that what you

1 understand?

2 A Yes, I think that reflects the reality that
3 milk presently is into other than fluid milk plants.

4 Q And does that fairly describe your objective
5 for coming and testifying to producer result as I just
6 described?

7 A That is -- that is part of it. I think there
8 are other issues in addition to that, but clearly those
9 that come daily to the fluid milk market should have
10 prices over those that again come only occasionally.

11 Q And --

12 A And they're invited and needed when they do.

13 Q And those that come daily should share in the
14 market because their milk is used for Class 1 purposes?

15 A That's -- I think that's the basis of -- of
16 the value difference.

17 Q Okay. And it's your belief that the way in
18 which a producer's milk is used or the product it's
19 used for should be a significant consideration in
20 whether or not a producer should be able to share in
21 the pool, correct?

22 A Would you please --

23 Q Yes.

24 A -- ask that again maybe in different terms so
25 I can get the picture better?

1 Q Okay. Am I correct that it's your testimony
2 that the way a producer's milk is used, i.e. for Class
3 1 versus Class 3 or 4, should be a significant
4 consideration in whether the producer gets to share in
5 the pool?

6 A That's the basis of this request.

7 Q Thank you.

8 A As I understand it.

9 Q But by -- by "this request", you're referring
10 to Proposals 6, 9 and 10?

11 A Yes.

12 Q Thank you.

13 JUDGE CLIFTON: Thank you, Mr. Vetne.

14 Any further questions for Commissioner
15 Peterson?

16 (No response)

17 JUDGE CLIFTON: Commissioner Peterson, your
18 knowledge is most impressive, and I really appreciate
19 your coming, testifying and fielding these questions.

20 MR. PETERSON: Thank you.

21 JUDGE CLIFTON: You're welcome.

22 (Whereupon, the witness was excused.)

23 JUDGE CLIFTON: Mr. Beshore?

24 MR. BESHORE: Yes. Your Honor, I think at
25 this time, it would be appropriate to provide the

1 opportunity for several of the dairy farmers who are
2 here to follow the Commissioner. Mr. Gibbons perhaps
3 could testify next.

4 JUDGE CLIFTON: Yes. Mr. Gibbons, would you
5 come forward, and you may be seated at the witness
6 stand?

7 Go off record for just a moment.

8 (Pause)

9 JUDGE CLIFTON: Back on record at 9:37.

10 I'd like to mark Mark Gibbons' statement as
11 Exhibit 24. If the court reporter will do that,
12 please?

13 (The document referred to was
14 marked for identification as
15 Exhibit Number 24.)

16 JUDGE CLIFTON: Would anyone like to Voir
17 Dire the witness on this statement?

18 (No response)

19 JUDGE CLIFTON: Are there any objections to
20 it being admitted into evidence?

21 (No response)

22 JUDGE CLIFTON: Are there any other copies?

23 COURT REPORTER: Yes.

24 JUDGE CLIFTON: The court reporter has extra
25 copies. We were collecting additional copies for the

1 court reporter. I believe we're just collecting the
2 original plus one, is that correct?

3 COURT REPORTER: Yes.

4 JUDGE CLIFTON: So, give -- if you will make
5 the distribution, that will be fine.

6 Is there any objection to Exhibit 24 being
7 admitted into evidence?

8 (No response)

9 JUDGE CLIFTON: There being none, Exhibit 24
10 is hereby admitted into evidence.

11 (The document referred to,
12 having been previously marked
13 for identification as
14
15 Exhibit Number 24, was
16 received in evidence.)

17 JUDGE CLIFTON: Mr. Beshore?

18 MR. BESHORE: Yes. I'd -- before you read
19 your statement as presented, Mr. Gibbons, could you
20 just give us your name, address and tell us a little
21 bit about your -- your own dairy operation?

22 MR. GIBBONS: Yes.

23 JUDGE CLIFTON: Let me administer the oath
24 first, and then --

25 MR. BESHORE: Thank you.

1 JUDGE CLIFTON: -- you may do that.
2 Would you raise your right hand, please?

3 Whereupon,

4 MARK GIBBONS
5 having been first duly sworn, was called as a witness
6 herein and was examined and testified as follows:

7 JUDGE CLIFTON: Thank you.

8 Mr. Beshore?

9 MR. BESHORE: Yes.

10 DIRECT TESTIMONY

11 MR. GIBBONS: My name is Mark Gibbons,
12 M-A-R-K G-I-B-B-O-N-S. My family has been involved in
13 the dairy industry for four generations, and we own a
14 herd of cows and some acreage in Lewiston, Utah, which
15 is close to the Idaho border in Cache County, and have
16 enjoyed dairy farming all of our lives.

17 My grandfathers, my father, myself and two of
18 my brothers are now involved in this family farm.
19 Before that, my uncle was involved in it and his son is
20 still involved in dairy, and so it's been a real, you
21 know, integral part of our family.

22 MR. BESHORE: How many cows are you milking
23 at the Gibbons Dairy these days?

24 MR. GIBBONS: At this time, we're milking
25 approximately 350-400.

1 MR. BESHORE: Okay. Thank you.

2 You may proceed.

3 MR. GIBBONS: And also before I start, for
4 many of you in this room, whatever comes out of this
5 hearing isn't going to impact you at all, but it is
6 going to directly affect me, and so I just wanted to
7 get that out of the way.

8 I'd like to express my appreciation for the
9 opportunity to testify at this hearing. I am a Utah
10 dairy producer and also President of the Utah Dairymens
11 Association. We have been dairymen in our family for
12 four generations. It is a good life, made much more
13 difficult by recent changes in dairy pricing policy in
14 our area.

15 As I watch with regret the steady exit of
16 dairymen from the industry, I ask the question: why?
17 The U.S. General Accounting Office, the research arm of
18 the Congress, looked in depth at milk pricing and
19 distribution in 15 cities, including Salt Lake City, to
20 seek an answer. What they found was retail mark-up
21 nearly doubled from '98 to 2000, mark-up by processors
22 increased 17 cents a gallon in that same period, while
23 the price farmers received was four cents less. This
24 inequality coupled with federal milk market order
25 changes that occurred in 2000 has been devastating to

1 dairy producers.

2 Our lobbying efforts seemed to be in vain
3 during the order reform process. We were saddled with
4 the burden of sharing a blend of Class 1 sales with an
5 incredible amount of Class 3 milk which has no
6 intention of performing on the Class 1 market.
7 Changing the diversion limit from 90/10 to 70/30 will
8 go a long way in correcting the unfair practice of
9 pooling Class 3 milk on the Class 1 market.

10 As a result of order reform, processors are
11 guaranteed a make allowance, thereby assuring a profit
12 for running their businesses. Dairy farmers are not
13 guaranteed a make allowance or anything else that
14 ensures us the ability to survive and contribute to our
15 towns' and cities' economy. The days of the dumb
16 farmer are gone. Most producers are good businessmen.
17 We have to be, but we need help.

18 These changes, I believe, will allow us as
19 dairymen in the state of Utah the ability to continue
20 to work at the occupation we love. Hopefully our
21 families can for many more generations to come.

22 Thank you.

23 JUDGE CLIFTON: Thank you, Mr. Gibbons.

24 I'd invite questions. Mr. Vetne?

25

1 CROSS EXAMINATION

2 BY MR. VETNE:

3 Q Good morning, Mr. Gibbons.

4 A Good morning.

5 Q I'm John Vetne. I represent Glanbia Foods
6 and Davigco Foods.

7 I wanted to ask you to whom you market your
8 milk?

9 A We market our milk through DFA.

10 Q Do you know to which plant or plants DFA
11 sends your milk?

12 A Usually, I think our milk goes into the Salt
13 Lake City plant, Draper Plant.

14 Q Which plant?

15 A The fluid milk plant, Salt Lake.

16 Q Okay.

17 A Occasionally, I suppose it goes into
18 Smithfield.

19 Q Do you know -- do you know where it goes or
20 are you making an assumption about where it goes?

21 A I would have to say that's an assumption. I
22 know from the truck drivers where they say they're
23 taking it.

24 Q Okay.

25 A I can't make an account of the day-to-day

1 deliveries.

2 Q All right. Do you know -- are -- are you a
3 director or official in DFA?

4 A No.

5 Q How long have you been a member?

6 A Since they combined with WDCI.

7 Q And you were a member of WDCI before?

8 A Yes.

9 Q Do you know if your Idaho milk is DFA milk?

10 A I do not.

11 Q Do you know anything about DFA's contracts
12 and commitments to supply the Salt Lake City fluid
13 plants?

14 A I know that the law would seem to handcuff
15 us.

16 Q What does that mean?

17 A That means that we're limited to the ability
18 to go in and renegotiate those contracts.

19 Q Does that refer to premium for service
20 charges and that kind of thing?

21 A I'm not, I guess, not prepared to make a
22 statement on that.

23 Q Do you know whether DFA has a commitment to
24 supply all the needs of those distributing plants?

25 A I think they have a hundred-percent supply

1 contract with many of those.

2 Q Okay. In your statement, when you attribute
3 an intention to other folks, Class 3 milk which has no
4 intention of performing on the Class 1 market, do you
5 have personal knowledge of any Class 3 handler-producer
6 delivering to a Class 3 plant that has expressed an
7 intention of never performing if Class 1 milk is
8 needed?

9 A I don't have that information.

10 Q Okay. Is your use of the word "intention" of
11 performing on the Class 1 market something you were
12 told or something you assumed?

13 A Something that I -- I don't ever see a lot of
14 Class 3 milk coming to, you know, service that Class 1
15 market daily.

16 Q Okay. Perhaps you can share the wisdom of
17 some logistics, if you have it. If your cooperative
18 has a full supply contract to the Salt Lake City
19 plants, how do you expect the Class 3 milk that's in
20 Southern Idaho to gain entry to those plants?

21 A I suppose they would gain entry through their
22 -- their infrastructure, through their co-op.

23 Q Their co-op being DFA?

24 A And/or Magic Valley or whoever they've got a
25 fluid contract with.

1 Q Okay. And that would come as a result of
2 asking DFA to market the milk through the plants to
3 which DFA is fully committed?

4 A Unless they have a contract to milk -- to
5 market fluid milk.

6 Q But not at those plants?

7 A Unless they can get in with those long-term
8 contracts when they expire.

9 Q I see. Do you know when they expire?

10 A I do not.

11 Q Thank you.

12 JUDGE CLIFTON: Thank you, Mr. Vetne.
13 Additional questions for Mr. Gibbons? Mr.
14 Beshore?

15 MR. BESHORE: Just one additional question,
16 Mr. Gibbons, or area of questions.

17 CROSS EXAMINATION

18 BY MR. BESHORE:

19 Q Cache County, where you're -- where you're
20 located, is in the northern -- northern tier of
21 counties in Utah, --

22 A Yes.

23 Q -- bordering Idaho, correct? Okay.

24 JUDGE CLIFTON: That answer was yes?

25 MR. GIBBONS: Yes.

1 JUDGE CLIFTON: Thank you.

2 BY MR. BESHORE:

3 Q Okay. You've been there, as you've
4 indicated, your family, for a number of years, a number
5 of generations.

6 Have you observed from your vantage point in
7 Cache County the promotion of the milk and cheese
8 production industry in Idaho over the last 10 or 15
9 years?

10 A I think probably through my association with
11 the dairy industry, I've -- I've noticed that it's not,
12 I guess, promoted proportionately the way it is in
13 Utah. Did that cover what you asked me?

14 Q By "proportionately", you mean it's -- what
15 do you mean?

16 A Well, I know that much of -- of Idaho's
17 promotion dollars comes to Utah to promote milk because
18 they do not have the population to consume milk.

19 Q Okay. What I was referring to was the
20 investment in new dairies and in cheese manufacturing
21 capacity in Utah over the last 10 or -- 10 years or so.
22 Have you -- you're aware of that?

23 A Yes.

24 Q Okay. Are you aware that dairymen have moved
25 to Utah and made investment in facilities, new dairies

1 in Utah to produce milk for those cheese plants over
2 recent years?

3 A I am not. I --

4 Q Okay.

5 A -- see a lot more growth in Utah. I have --
6 I have been aware of the exit of Utah dairymen because
7 of the price of milk they're getting paid.

8 Q Okay. But you're not involved in Idaho
9 enough to really have -- have knowledge of how that
10 industry has -- has evolved?

11 A No.

12 Q Okay. Thank you.

13 JUDGE CLIFTON: Thank you, Mr. Beshore.

14 Additional questions for Mr. Gibbons? Mr.
15 Vetne?

16 CROSS EXAMINATION

17 BY MR. VETNE:

18 Q You referred to promotion dollars, Mr.
19 Gibbons. Does this region have a local or state agency
20 that receives some of the mandatory promotion money?

21 A I couldn't hear the question.

22 Q Does -- does this region have a local or
23 state milk promotion agency that receives part of the
24 mandatory promotion payment?

25 A Yes.

1 Q Are you involved in that agency?

2 A No.

3 Q Okay. You simply receive reports of what
4 they're doing?

5 A I attend their meetings.

6 Q You attend their meetings? Where are the
7 meetings located?

8 A Salt Lake City.

9 Q And they publish or make available
10 information on total dollars received and how it's
11 spent?

12 A To their board, yes.

13 Q In those meetings, is that correct?

14 A Yes.

15 Q Okay. And the dollars received, would it be
16 correct to say that the majority of dollars received
17 for that promotion come from Idaho dairy farmers?

18 A Not any longer.

19 Q And why is that?

20 A Because it's a national promotion issue now,
21 and those dollars are sent nationally.

22 Q And there's no longer a state or regional
23 check-off?

24 A Yes, I think they are, but they're involved
25 in the national organization.

1 Q Oh, the local promotion people have joined
2 forces with the national organization --

3 A Yes.

4 Q -- to coordinate how they spend their money,
5 is that correct?

6 A Yes.

7 Q Okay. And is -- from your attending the
8 meetings and reviewing their material, is that -- is
9 that money spent predominantly on promoting fluid milk?

10 A Yes, on the Wasatch Front, I would -- from my
11 observation.

12 Q Okay. And does the Salt Lake City area or
13 the Western Market get a proportion, a fair
14 proportionate share of those promotion dollars for
15 fluid milk?

16 A I don't know. I don't know what they spend
17 nationally.

18 Q Okay. And you don't know what portion of
19 that national money comes back --

20 A No.

21 Q -- to this area?

22 MR. VETNE: Thank you.

23 JUDGE CLIFTON: Thank you, Mr. Vetne.

24 Other questions for Mr. Gibbons?

25 (No response)

1 JUDGE CLIFTON: There are none. Thank you,
2 Mr. Gibbons.

3 (Whereupon, the witness was excused.)

4 JUDGE CLIFTON: There are a number of dairy
5 farmers who would like to be heard this morning, and
6 this is a good time for that. Who would like to go
7 next?

8 MR. HOLLON: Mr. Roy Remund would like to be
9 the next witness, if that's okay.

10 JUDGE CLIFTON: All right. And do you have
11 copies of your statement, Mr. Hollon?

12 MR. HOLLON: I do, yes.

13 JUDGE CLIFTON: All right. Let's go off the
14 record while those are distributed and while Mr. Remund
15 approaches the witness stand.

16 (Pause)

17 JUDGE CLIFTON: Back on record. Back on
18 record at 9:53.

19 Mr. Remund, I mispronounced your name and to
20 make sure I have it right next time, would you state it
21 again for me?

22 MR. REMUND: Roy S. Remund.

23 JUDGE CLIFTON: Good. Thank you.

24 Mr. Remund, would you state and spell your
25 full name, and then I'll swear you in?

1 MR. REMUND: My name's Roy, R-O-Y, S. Remund.
2 That would be R-E-M-U-N-D.

3 JUDGE CLIFTON: Thank you.

4 Would you raise your right hand?

5 Whereupon,

6 ROY S. REMUND

7 having been first duly sworn, was called as a witness
8 herein and was examined and testified as follows:

9 JUDGE CLIFTON: Thank you.

10 Mr. Remund, would you tell us a little bit
11 about yourself, and then you may proceed with your
12 statement?

13 MR. REMUND: I'm a fourth generation dairy
14 farmer from Weber Valley, which is up by the Park City
15 area. I'm the only one owning the business, myself and
16 a couple-three banks. We have about -- we milk about a
17 170 dairy cows. We have about 220 dairy cows on the
18 farm.

19 Because I live in the area that I do, there
20 isn't much cropland available for us to produce our own
21 crops, so we have to bring most of our commodities in
22 for the dairy which makes it also very difficult.

23 JUDGE CLIFTON: Thank you, Mr. Remund.

24 You may proceed with your statement. Oh,
25 wait a minute. I want to -- I'm sorry. Thank you.

1 I'm glad you hesitated. I'd like to take
2 your statement into evidence first. Does anyone want
3 to Voir Dire Mr. Remund on what I am having marked as
4 Exhibit 25, which is his statement?

5 (No response)

6 (The document referred to was
7 marked for identification as
8 Exhibit Number 25.)

9 JUDGE CLIFTON: Is there any objection to
10 Exhibit 25 being admitted into evidence?

11 (No response)

12 JUDGE CLIFTON: There is none. Exhibit 25 is
13 hereby admitted into evidence.

14 (The document referred to,
15 having been previously marked
16 for identification as
17
18 Exhibit Number 25, was
19 received in evidence.)

20 JUDGE CLIFTON: And now you may proceed.

21 DIRECT TESTIMONY

22 MR. REMUND: I am a fourth generation dairy
23 farmer.

24 Thank you for holding this hearing on Federal
25 Milk Market Orders. It is an honor to testify

1 concerning the financially-devastating effect reform --
2 order reform has had upon dairy farmers in Utah, Order
3 135 having the lowest blend price in the country.

4 Class 1 utilization over the last four years
5 has dropped from the high 40s to the mid-teens.
6 Outside milk pooling on our Order has had a huge
7 negative pay price impact. The pooling provisions in
8 135 promotes financial gains to those who don't supply
9 the Class 1 milk market.

10 Low milk pay prices caused financial ruin for
11 about one-quarter of the dairy farmers in the last four
12 years. I support Order 135 changes as requested by
13 Dairy Farmers of America and Utah Dairy Association. I
14 urge you to act as quickly as possible.

15 Dairy farmers are tired of refinancing with
16 many banks, processing foreclosure proceedings. I'm
17 tired of going to bed at night with a sick stomach
18 wondering how to handle creditors. It is my hope that
19 these hearings with the Department of Agriculture will
20 allow Utah dairy farmers to compete fairly in the
21 marketplace.

22 I know the dairy farmers of Utah -- I know
23 the dairy farmers of Utah appreciate your deep
24 concerns. Thank you again for holding this hearing.

25 JUDGE CLIFTON: Thank you, Mr. Remund.

1 Are there questions for Mr. Remund? Yes, Mr.
2 Marshall. Again, if you'd identify yourself.

3 CROSS EXAMINATION

4 BY MR. MARSHALL:

5 Q Good morning, Roy.

6 A Good morning.

7 Q Doug Marshall with NDA.

8 A How you doing?

9 Q I'm doing great. I just have two short
10 questions.

11 First is that my understanding is that you
12 are a director of Dairy Farmers of America on the Board
13 of Directors, is that true?

14 A No, that's not true. I am not.

15 Q You are not? Okay.

16 A No.

17 Q Thank you for correcting that.

18 A I am on the Mountain Area Council, but I'm
19 not a director with DFA.

20 Q All right. Well, then, since that term has
21 come up, perhaps it would be good to explain on the
22 record what the Mountain Area Council is.

23 A Well, originally when DFA was organized, all
24 the original directors from the combined co-ops were
25 directors, and they have down-sized, so now I'm not a

1 director anymore. Evidently I didn't get the job done.

2 Q But the Mountain Area Council, which is a
3 division of DFA, does have its own board and you are on
4 that board, is that correct?

5 A Yes, I'm a representative.

6 Q You're a representative on that board?

7 A Yes.

8 Q Thank you.

9 I'm particularly concerned about the
10 statement that there was a financially-devastating
11 effect order reform had upon dairy farmers in Utah.

12 Does -- to the best of your knowledge, is
13 Dairy Farmers of America going to present testimony to
14 document that statement?

15 A I wouldn't think so.

16 Q You would think so?

17 A I would not think so. I don't speak for
18 management. I don't speak for DFA. All I speak is
19 from my viewpoint.

20 Q Okay. I -- the problem I have is there's no
21 evidence to that. I'm not trying to give you a hard
22 time. I just was hoping that maybe Elvin was going to
23 cover that in his testimony for you.

24 A We haven't visited about my testimony. I'm
25 sorry. I'm speaking here as a dairy farmer.

1 Q Okay. Well, I'm going to represent to you
2 that there will be testimony indicating that Utah
3 producers have benefitted more from the federal order
4 changes that you've called federal order reform, have
5 benefitted more than they've been harmed.

6 Do you have any comment as to why that might
7 not be the case?

8 A No, no comment.

9 Q Thank you very much.

10 A Thank you.

11 JUDGE CLIFTON: Yes, Mr. Stevens?

12 CROSS EXAMINATION

13 BY MR. STEVENS:

14 Q Good morning, Mr. Remund. I'd like to ask
15 you, in response to a previous question, you said --
16 you were asked what were the devastating effects. I
17 think in your statement, you gave a pretty good example
18 of what the devastating effects are. What are the
19 effects on you?

20 A How much time do I have? I've been counseled
21 to say yes and no. That's probably the best way to do
22 this. I'm going to take just a minute and explain what
23 happens and what has happened in the dairy district.
24 Okay?

25 I think that dairy farmers that are in the

1 older generation and that would be probably 60 and 70
2 have been -- have done quite well, but I think that the
3 people that have had severe problems have been people
4 like myself, where I've gone to Federal Land Bank, PCA,
5 and borrowed a lot of money and carried a heavy debt
6 load to pay off my brothers and sisters and my father
7 to purchase the dairy farm. That's where the
8 devastating effect has been.

9 In my mind, it's very clear that order reform
10 did that. I do not speak for DFA. I don't speak for
11 Utah Dairy Association. This is from my viewpoint as a
12 dairy farmer.

13 Q Okay. That's your situation. Are you aware
14 of your personal knowledge and experience of other
15 situations --

16 A Yes.

17 Q -- of dairy farmers in Utah?

18 A Yes, many.

19 Q Would you like to -- would you like to put
20 that in the record?

21 A Sure. I'm not going to name anybody.

22 Q No, I didn't ask you to name names.

23 A I know of many. I know of many.

24 Q How many would you say?

25 A Well, there was, what, 583 dairy farmers

1 three-four years ago and now there's 404.

2 Q And would you -- your -- it's your opinion
3 that that is as a direct result of the federal order
4 reform?

5 A I think it's had a lot to do with it.

6 Q And -- and those farmers, the numbers you
7 were describing, they were -- they were affected by --

8 A I know of many that were.

9 Q To the point where they went out of business?

10 A Yes.

11 Q Do you have any other opinions you'd like to
12 add on that?

13 A Heavens no.

14 Q I think you've done very well, sir.

15 A Thank you.

16 Q Thank you for your testimony.

17 JUDGE CLIFTON: Does anyone else have
18 questions of Mr. Remund?

19 (No response)

20 JUDGE CLIFTON: No more. Thank you, Mr.
21 Remund.

22 (Whereupon, the witness was excused.)

23 JUDGE CLIFTON: Mr. Hollon, who will testify
24 next?

25 MR. HOLLON: Greg Radmall, Executive Director

1 of the Utah Dairymens Association, has testimony.

2 JUDGE CLIFTON: All right. Good. Would you
3 come forward, sir, while your statements are being
4 distributed? We'll go off record.

5 (Pause)

6 JUDGE CLIFTON: Back on record. Back on
7 record at 10:03.

8 Would you give the pronunciation again for
9 me?

10 MR. RADMALL: My name is Gregory J. Radmall,
11 R-A-D-M-A-L-L.

12 JUDGE CLIFTON: All right. Thank you.

13 I'm going to ask that Mr. Radmall's testimony
14 be marked as Exhibit 26.

15 (The document referred to was
16 marked for identification as
17 Exhibit Number 26.)

18 JUDGE CLIFTON: It's an extensive statement
19 with many statistics. So, I would discourage but
20 invite Voir Dire.

21 MR. STEVENS: Your Honor, could you further
22 elaborate on that?

23 JUDGE CLIFTON: I think our best procedure is
24 to get it into evidence and let cross examination take
25 care of the -- the concerns or issues, and I think

1 there will be quite a discussion on cross examination.

2 MR. STEVENS: Thank you, Your Honor.

3 JUDGE CLIFTON: You're welcome, Mr. Stevens.

4 There being no request to Voir Dire the
5 witness, is there any objection to the admission into
6 evidence of Exhibit 26?

7 (No response)

8 JUDGE CLIFTON: There being none, Exhibit 26
9 is hereby admitted into evidence.

10 (The document referred to,
11 having been previously marked
12 for identification as
13 Exhibit Number 26, was
14 received in evidence.)

15 JUDGE CLIFTON: Mr. Radmall, again if you'd
16 state your full name, spell it into the record, and
17 then I'll swear you in?

18 MR. RADMALL: Gregory J. Radmall,
19 G-R-E-G-O-R-Y J. R-A-D-M-A-L-L.

20 JUDGE CLIFTON: All right. Thank you.
21 Whereupon,

22 GREGORY J. RADMALL
23 having been first duly sworn, was called as a witness
24 herein and was examined and testified as follows:

25 JUDGE CLIFTON: Thank you.

1 Mr. Radmall, you may give us a brief
2 introduction, if you will, before you begin with your
3 statement.

4 MR. RADMALL: I'm the Executive Director for
5 the Utah Dairymens Association and have held this
6 position for about four years. Prior to that, I was
7 the Operations Director at the Utah State Prison for
8 Agriculture and Off-Property Inmate Work Programs.
9 I've spent 25 years part-time as a DHI supervisor. I
10 sold dairy and veterinary supplies in the '70s, and
11 I've owned a small herd of jerseys of my own and not
12 been too far from cows for most of my life.

13 JUDGE CLIFTON: Thank you.

14 Can everyone in the back hear Mr. Radmall or
15 should he be closer to the microphone? You all can
16 hear him fine? Very fine.

17 You may proceed.

18 DIRECT TESTIMONY

19 MR. RADMALL: Thank you.

20 I attended the hearing on the Pacific
21 Northwest Order Pooling Standards held on December 4th,
22 2001, and in that hearing, I heard Mr. William VanDam
23 testify concerning the temporary decrease in diversion
24 limits from 99 percent to 80 percent and his request
25 that these diversion percentages be extended for

1 several months in Order 124.

2 I understood the harm that the Northwest Milk
3 Marketing Federation producers were experiencing. My
4 support for this reduction was stronger after hearing
5 heartfelt testimony from some producers concerning
6 their plight.

7 Today, the producers of Utah find themselves
8 in a similar plight. Prior to the Federal Milk Market
9 Order Reform implementation in January of 2000, the
10 Great Basin Order had a Class 1 utilization of 45.79
11 percent in '98 and 50.96 percent in 1999.

12 As a result of Order Reform 2000, the Class
13 utilization in Order 135 has gone down to 22.1 percent
14 in 2001, and in February 2002, it plunged to 17.35
15 percent.

16 In this table, I've listed with the intent to
17 show a trend. Going back to 1995, the Great Basin
18 Class 1 utilization was 34.95 percent, in '96, it was
19 34.63 percent, in '97, it was 37.41 percent, in '98, it
20 was 45.79 percent, in 1999, it was 50.96 percent. In
21 the Western Order in 2000, it dropped to 25.05 percent,
22 in 2001, it dropped to 22.1, and as I indicated a sharp
23 blip for one month in February, it dropped to 17.35
24 percent.

25 These figures are -- I went back to the

1 Annual Reports from the Federal Milk Marketing Order
2 and withdrew each of those figures from that report of
3 Classification of Producer Receipts.

4 In the process of creating Order Reform 2000,
5 the USDA made an administrative decision to yoke Utah
6 and the majority of Idaho producers together.
7 Traditionally, only a small number of Idaho producers
8 were in the Great Basin Order and supplied milk to the
9 fluid market in Utah. An incredible increase in the
10 amount of milk being pooled in Order 135 and the small
11 increase in Class 1 fluid milk utilization has caused
12 this reduction in the utilization percentage.

13 The majority of fluid milk utilization in
14 Order 135 is centered in Salt Lake City area, along the
15 Wasatch Front. The increased volume of Idaho milk does
16 not have the physical ability nor is it intended to
17 service the fluid market in the Western Order.

18 I've got a table that shows the total pounds
19 of milk -- of producer milk in 1999 being at
20 1,859,650,515, with the Class 1 utilization of
21 870,762,555. In the 2000 Western Order, the total
22 pounds of producer milk jumped to 4,048,483,425 while
23 the Class 1 utilization only went up to 1,014,180,965.
24 Also, the Utah production portion of that 2000 total
25 order pounds was 1,511,572,672, and I have tables that

1 attach. All of these figures came from the Federal
2 Milk Market Order Reports that I was able to access
3 through the Internet.

4 This imbalance created by Order Reform 2000
5 has inflicted significant financial harm upon Utah and
6 Idaho producers who have traditionally and regularly
7 supplied the needs of the local fluid market. USDA has
8 the opportunity to remedy this damage that has been
9 inflicted on the Utah and Idaho milk producers.

10 The reduction in the amount of producer milk
11 eligible for diversion to non-pooled plants from 90
12 percent to 70 percent is -- is a step -- if you'll
13 allow me to correct that -- is a step in the right
14 direction. This request for reduction to 70 percent is
15 warranted and in line with other federal orders.

16 In fact, in the April 1988 Order language of
17 the Great Basin Order 139, the diversion limits were 60
18 percent for the months of April through August and 50
19 percent in the other months. Presently, the diversion
20 limits in some of the other orders range from 50
21 percent in the Arizona, Las Vegas Orders, 60 percent in
22 the Mideast Order, 25 to 40 percent in the Appalachian
23 Order, 65 to 75 percent in the Central Order, 33 to 90
24 percent in the Southwest Order.

25 JUDGE CLIFTON: Excuse me. Is that to be 90

1 or 50?

2 MR. RADMALL: Which? In the Southeast?

3 JUDGE CLIFTON: Yes.

4 MR. RADMALL: I've got it as 50.

5 JUDGE CLIFTON: All right. Thank you.

6 MR. RADMALL: 33 to 50 percent in the
7 Southeast Order, 90 percent in the Upper Midwest Order,
8 and to my knowledge, that's the only other order with a
9 90-percent diversion, and these were taken from the
10 languages of each of those Orders under the producer
11 milk description.

12 Utah dairy farmers urge USDA to adopt the
13 proposed -- Proposal Number 6 and reduce the amount of
14 milk eligible for diversion to non-pooled plants from
15 90 percent to 70 percent. We are confident that an
16 investigation will reveal adequate supplies for fluid
17 consumption would be available and the potential for
18 financial harm to Federal Order 135 producers would be
19 reduced under the revised diversion percentages.

20 Utah Dairymens Association also gives its
21 support to Proposals 3, 4, 5 and 7, 8 and 9.

22 Thank you.

23 JUDGE CLIFTON: Thank you, Mr. Radmall.

24 I would invite cross examination. Mr.

25 Marshall?

1 CROSS EXAMINATION

2 BY MR. MARSHALL:

3 Q Good morning, Greg.

4 A Good morning.

5 Q Doug Marshall with NDA. Couple of questions
6 on your testimony, and then I want to make sure I
7 understand the relevance of some of the statistical
8 information you've provided.

9 First, I noticed that your association has
10 given its support to Proposals 3 through 9. Did you
11 discuss Proposal Number 10, which would eliminate the
12 substantial amount of pooling of California milk that's
13 occurred on this Western Order?

14 A Yes, in fact, we did, and it's an oversight
15 that I didn't include Number 10 in the document.

16 Q Would you agree -- so, the UDA -- UDA does
17 support Proposal Number 10. Thank you. We appreciate
18 that.

19 A We do, yes.

20 Q Would you agree that the conditions involving
21 the pooling of California milk on the Western Order
22 have inflicted harm on Utah producers and that
23 therefore the Department of Agriculture should deal
24 with that issue on an emergency basis?

25 A I'm not sure that I have knowledge of the

1 need for an emergency. It's beyond my scope of
2 understanding.

3 Q Fair enough. You attended the hearing in
4 Seattle on December 4th, and you described the increase
5 in the diversion limits from 99 percent to 80 percent.

6 Just to clarify on the record, that was only
7 for part of the year, was it not?

8 A I think the actual request was through August
9 of 2002.

10 Q Okay. I'm going to represent to you that the
11 diversion limits of the Pacific Northwest Order had had
12 different percentages in different months of the year
13 and that it was 80 percent in some of the months and 99
14 percent in some of the months and that the change was
15 to reduce for the 99-percent months the diversion limit
16 to the level of 80 percent that occurred in the rest of
17 the year.

18 Does that sound correct as to --

19 A My memory --

20 Q -- what you recall of --

21 A -- isn't serving me that well.

22 Q -- that meeting?

23 A So, I went back to the official Executive
24 Court Reporters minutes. On Page 60, it said that,
25 "Therefore, MF proposes that the reduction of diversion

1 percentages from 99 to 80 percent established in
2 January 4th, 2001, action of the P&L Market
3 Administrator be extended through at least August of
4 2002." So, that was all I was going off of.

5 Q Right. Would you agree with me that the
6 Order language will speak for itself as to what the
7 current provisions are and what was the subject of that
8 hearing?

9 A Yes. My intent to -- to bring this subject
10 up was merely to draw a parallel that diversion limits
11 are a concern in both 124 and 135 and that in my sense
12 of fair play, that it seems that there ought to be some
13 consistency through orders allowing those percentages
14 to be close.

15 Q That's fair. I just am hoping that you're
16 not testifying that the diversion limits in the Pacific
17 Northwest Order were 99 percent year-around.

18 A Again, I only took the statement from Page 60
19 and from what my memory was of the discussion and that
20 there was a need in that Order to -- to have them
21 reduce the 99 to 80.

22 MR. MARSHALL: I think that's adequate
23 clarification, and I think we can take administrative
24 notice of those hearing proceedings to which Mr.
25 Radmall refers.

1 Do I need to request that formally, Your
2 Honor? Administrative notice?

3 JUDGE CLIFTON: No. Thank you.

4 MR. MARSHALL: Thank you.

5 BY MR. MARSHALL:

6 Q Returning to that hearing, you recall there
7 was no opposition to those proposals, were there? Was
8 there?

9 A No, there was not.

10 Q And do you suppose that would have been the
11 case if there was going to be a significant quantity of
12 milk removed from the pool as a result of those
13 proposals?

14 A I don't know that I -- I -- I can say that.

15 Q Well, let me just ask.

16 A My -- my understanding --

17 Q Excuse me.

18 A -- of those that were pooling, it was their
19 intent to support the spirit of fairness and fair play
20 and to expect some changes in both 124 and 135
21 reciprocally.

22 Q Did you hear any testimony that any
23 significant members or producers would no longer be
24 able to pool if those changes were implemented?

25 A Not to my recollection.

1 Q Okay. So, the parallel fails at that point
2 then, does it not, to this hearing?

3 A Well, my understanding is there was a
4 significant number of producers that were taken off on
5 that Order during Order Reform. So, I --

6 Q Producers were taken off of Order 124 as a
7 result of Order Reform?

8 A Or out of that -- out of Oregon. Maybe I
9 should clarify that.

10 Q I'm going to represent to you that the
11 Pacific Northwest Order during the Order Reform process
12 was one of the few, maybe perhaps the only, federal
13 order that did not change its boundaries. Do you have
14 any knowledge to the contrary?

15 A No. I stand corrected.

16 Q All right. Thank you.

17 You've heard testimony today from -- and
18 yesterday from dairy producers in Utah indicating a
19 belief that the so-called Federal Order Reform process
20 that became effective in the year 2000 has been -- has
21 caused or led to somehow the decline in producer
22 numbers in Utah. I did not see that in your testimony.
23 But let me ask you this.

24 As we look at the uniform milk price column
25 of your statistical information on the first page of

1 your exhibit, there in the center, you can see, as I
2 think you put it, a trend of milk pricing, and I'm
3 asking you if you believe that the trend of pricing
4 from pre-'99 to after '99 has been a result of --
5 excuse me -- has resulted in -- do you think that that
6 trend has resulted in dairy farmers in Utah being
7 driven out of business?

8 A I think it's been a significant contributing
9 factor.

10 Q When you look at that low price of \$11.19 for
11 the year 2000, that would be an economically-stressful
12 period for dairy farmers, would it not?

13 A For the majority of dairy farmers, yes.

14 Q Do you believe that that low price was the
15 result of Federal Order changes that have been made in
16 2000 as compared to the general lower level of prices
17 throughout the country as a result of depressed cheese
18 and butter markets?

19 A I think they're both accurate statements.

20 Q Returning to the second page of your prepared
21 testimony, -- I've no questions on that.

22 Let me just turn to your exhibits and just
23 ask you to tell me the significance of the tables and
24 why you put them into evidence.

25 A Why I used this example?

1 Q Yes. Precisely.

2 A It's my understanding that the -- the whole
3 Federal Milk Market Order system, the part of the
4 original intent, going clear back to 1937, was to allow
5 a system that provided fresh wholesome milk to the
6 consumer on a consistent basis and -- and providing a
7 way for production to be balanced somewhat so that
8 there isn't an oversupply and thus thereby because of
9 the milk's unique handling properties and in terms of
10 need to be to the market in a reasonable time, that the
11 fluid market plays a significant amount in any Order,
12 and so my point was trying to show that while a lot of
13 the items that affected this Order, Order Reform being
14 one of them, low federal prices across the country
15 being another, there still is a trend to show that
16 there was -- in terms of the present Order, the
17 significant amount of the -- the Class 1 usage was --
18 was based here in Utah, of which Utah dairymen through
19 the Great Basin Order had an access to that -- that
20 Class 1 utilization.

21 Also, I'll give you an example of where I
22 live. I lived in West Lehigh. In the last six years,
23 an area that I've known personally had 440 people
24 living in it, now has 6,000 people living in it. Now,
25 if you don't think Class 1 utilization has gone up

1 amongst those 6,000 young people with young children, I
2 didn't -- I would choose to differ with you, and so I
3 wanted to point that out, that through the growth that
4 we're experiencing and some would say phenomenal growth
5 we're experiencing, there's growth throughout the Inter
6 Mountain West, including in Idaho, I grant you that.
7 I've been up there several times and can appreciate the
8 growth everybody's going through.

9 But we do have a significant interest here,
10 and a lot of milk's consumed by Utah families.

11 Q Okay. With respect to West Lehigh, has that
12 been a dairy area?

13 A Going back, I used to -- when I started
14 testing cows in 1971, there were about eight dairies in
15 Lehigh. Presently, there are zero.

16 Q And would that be a reflection of population
17 growth into that area and the difficulty --

18 A Yes.

19 Q -- of being a good neighbor to --

20 A Yes, yes.

21 Q To --

22 A A lot of good bottom land's been used.

23 Q So, you -- that's a shame. I'm sure we all
24 share that wistful view that -- that good agricultural
25 land should not be used that way.

1 A I guess you could count my dairy as being one
2 of those.

3 Q That may be good news, then.

4 A Well, you know, I have another thought on
5 that.

6 Q But you'd agree with me that that would be an
7 example of factors other than Federal Order factors
8 that would cause a decline of producer numbers --

9 A Sure.

10 Q -- in this region?

11 A Sure. There are several.

12 Q Turning to Page -- well, it says on the
13 bottom Page 2. I guess it's the next-to-last page of
14 your exhibit. I see some data from Oregon and from
15 Utah, and I'm puzzled by this, the use to which that
16 data might be made.

17 Why did you think that that might be
18 relevant, and what significance do you draw from that?

19 A Well, I guess the point there that I was
20 trying to show is that of the 870,000 -- and bear in
21 mind, there's a loose association, but 1999, the Class
22 1 utilization was 870,762,000 in the Great Basin Order.
23 The next year, the total Utah production -- that was
24 the only information I could find. I wanted to show
25 what the Utah -- total Utah production was.

1 So, you know, that roughly equates to 50
2 percent, if you were to --

3 Q Okay. So, if your reason for introducing
4 this had nothing to do with Oregon and had everything
5 to do with the Utah numbers, it happened to be on that
6 page?

7 A Yes.

8 Q Now, I'm -- now, I'm tracking with you.

9 A I included the page just because I wanted to
10 show -- you know, I wanted to make sure that everybody
11 knew that I could justify these numbers. I just didn't
12 take them out of here.

13 Q Sure. I follow that, and I appreciate that.
14 I was just puzzled by the inclusion of the Oregon
15 numbers.

16 A No, they were not meant to be included there.

17 MR. MARSHALL: Okay. I think I have no
18 further questions. I thank you very much for your
19 help.

20 JUDGE CLIFTON: Thank you, Mr. Marshall.

21 Other questions for Mr. Radmall? Mr. Vetne?

22 CROSS EXAMINATION

23 BY MR. VETNE:

24 Q Good morning, Mr. Radmall.

25 A Good morning.

1 Q Thank you for coming.

2 A Pleasure to be here so far.

3 Q The Utah Dairymens Association. Is -- is
4 that a trade association that, among other things, has
5 lobbying functions?

6 A Small lobbying here in the state, yes.

7 Q Is it made up of individual farmer members?

8 A It is, yes.

9 Q Does it have association membership?

10 A It does. Although the association in the by-
11 laws represent all Utah dairymen, some are voting
12 members that pay dues and others that do not pay their
13 dues and are non-voting members.

14 Q Okay. What portion of Idaho -- I'm sorry --
15 of Utah dairy farmers does UDA represent?

16 A Well, again, including non-voting members, a
17 hundred percent of the dairymen.

18 Q Okay. Of the voting and non-voting members
19 of Utah Dairymens Association, what portion are
20 cooperative members and what portion are independent?

21 A Hmm. In my mind, it's about 80 percent are
22 cooperative members, but I could be off just a few
23 percent.

24 Q Okay. Eighty percent, more or less. And
25 what portion of that 80 percent, more or less, is DFA?

1 A Eighty percent. I should take that back.
2 There's probably a handful, maybe two percent, that are
3 -- that are involved, that are Magic Valley --

4 Q So -- okay.

5 A -- members.

6 Q So, of the 80 percent that are co-op members,
7 all but two percent of that 80 percent are DFA?

8 A Yes, that'd be accurate.

9 Q With respect to the columns on Page 1 of your
10 testimony, is it your intention to show your belief
11 that prices have generally -- uniform prices have
12 generally gone down as a result of Federal Order
13 Reform?

14 A No. My intention was only to -- to show the
15 trend in Class 1 utilization.

16 Q Why is the uniform price, milk price column
17 there at all?

18 A Just general information.

19 Q I see. You didn't intend anything by it?

20 A No. I -- when I -- when I put something
21 down, I like to give them a broader picture of things,
22 other than just one specific snapshot, and I think, you
23 know, in terms of what I'm trying is that there's --
24 this is just one factor. There are a lot of factors
25 that -- that -- and changes that have affected

1 dairymen, some of them good, some of them not so good.

2 Q Okay. Do you have any knowledge whatsoever
3 on what the uniform milk price would have been in 2000
4 through 2002 currently had the Class 3 price continued
5 to be the mover of the Class 1 price?

6 A I do not. I am not able to compute that.

7 Q Okay. At the bottom of Page 1, you refer to
8 "Idaho milk", and you -- with respect to that milk, you
9 make two conclusions or assertions. One is that that
10 milk does not have or is not intended to service the
11 fluid market of the Western Order.

12 Do you have any personal knowledge of
13 statements of any Class 3 handler or dairy farmer
14 delivering to a Class 3 handler that they would not
15 serve the fluid market if their milk is needed and
16 asked for?

17 A No, I do not.

18 Q The source of your use of the word
19 "intention" then is what, out of the -- out of the
20 clear blue sky? It -- it's simply an impression that
21 you reached because none of that milk or little of that
22 milk actually goes into Class 1?

23 A It's my impression of the -- I guess, the
24 common sense approach of things. As I look at the
25 development of the -- the dairy industry in this Order,

1 and as I look at dairymen expanding from 1,000 to 5,000
2 cows, 5,000-10,000 cows in Idaho, maybe the Treasury
3 Valley area, with a contract with a cheese plant,
4 common sense would tell me that that expanded milk
5 really wasn't intended to serve the Salt Lake fluid
6 market.

7 Q Okay. And with respect to a producer
8 expanding from a few hundred to a few thousand cows in
9 the Cache Valley and Cache County, can you draw any
10 other conclusions?

11 A I guess if they were a DFA member and which
12 most of which we've already established that 78 percent
13 are, and DFA has a fluid contract, I would then
14 conclude through common sense that they would have a
15 market in -- an access to the fluid market.

16 Q An access, but if the fluid sales of DFA on
17 the day before the expansion were no greater than the
18 fluid sales on the day after the expansion, an
19 expansion of herds would still be used for something
20 other than Class 1, correct?

21 A Well, servicing the Class 1, as I heard you
22 ask Commissioner Peterson, includes also enough surplus
23 to be able to service the highs and lows of the market.

24 Q Okay. Is it your hope that as a result of
25 this hearing, the amount of milk that can be pooled on

1 the Western Order is limited to Class 1 and the
2 reasonable reserve to Class 1?

3 A I think reasonable is the key word there, and
4 whether or not I have the ability to determine what
5 that reasonableness is, I don't have access to that
6 information, but yes, I think that would be something
7 that we would hope would happen.

8 Q So, given that there may be different
9 opinions as to what reasonable reserve is, your answer
10 nevertheless to the question is yes?

11 A Yes.

12 Q You also say on the bottom of Page 1 that
13 "milk in Idaho does not have the physical ability to
14 service the fluid market in the Western Order." What
15 do you mean by the use of the term "physical ability"?

16 A Well, again, I think that it -- from my
17 understanding of it, they don't have access to the
18 market.

19 Q Meaning that once the silos in the
20 distributing plants are already full of -- of milk, you
21 can't put more in because it would overflow
22 essentially?

23 A No. Well, meaning that certain entities have
24 contracts for fluid milk and once those contracts are
25 filled, there's a finite amount of fluid milk that's

1 going to be consumed, and so do they really have access
2 to the market even though they have the -- the milk and
3 maybe they might have an intent, but you would also
4 have to have access or the ability to -- to do that,
5 and so I would consider access being that they may have
6 all the intention in the world of selling milk in the
7 fluid market but are the fluid processors in the
8 position to be able to utilize that milk?

9 Q Okay. So, it's your opinion and your counsel
10 to the Secretary that if milk does not have access to
11 the fluid market as you've described that term, it
12 shouldn't participate in the pool?

13 A Well, I guess my -- I would -- let me see if
14 I understand that, that if -- if I was affirmative in
15 that, then I would -- or if I was negative in that,
16 then I would believe that anybody that expanded milk in
17 any area of Order 135 would have a -- a right, I guess,
18 to be able to supply milk to the fluid market, and I
19 personally believe that the market ought to be
20 performance-based, the ability to perform, and I guess
21 the question I would have is, why was the Great Basin
22 at one time 60 percent and now we're 90 percent? What
23 took place to -- to -- to effect that change?

24 Q Is -- is -- are you saying that if milk is
25 available for Class 1 but not needed in Class 1, it

1 shouldn't pool?

2 A Well, I think it comes back to what I'm
3 saying, is that reasonable diversion limits is what
4 controls that.

5 Q Are you able to answer my question yes or no?
6 If milk is available but not needed by Class 1, it
7 should not pool?

8 A Define "available".

9 Q If milk is Grade A sitting up in Southern
10 Idaho and nobody wants it in the fluid plant, it's
11 available. That's my definition of available. If it's
12 available but not needed, it should not participate in
13 the pool, is that your opinion? Yes or no?

14 A Well, do I have to say yes or no? Can I
15 expand just a little bit?

16 Q You can say yes and expand or no and expand
17 or if my question doesn't make any sense to you.

18 JUDGE CLIFTON: Or you may say I cannot
19 answer that question yes or no.

20 MR. MARSHALL: Yeah. Okay. Whatever.

21 MR. RADMALL: I'm not able to answer that
22 with a yes or no.

23 BY MR. VETNE:

24 Q You referred to and you said you wanted to
25 refer to -- on Page 1 as well as in the table, tables

1 attached, there was a 50-percent utilization or so of
2 -- Class 1 utilization of Great Basin milk.

3 A The final year of the Great Basin Milk Market
4 Order, yes, it was 50.96.

5 Q All right. And you bemoan the fact that
6 after it was 50 percent, it went down to 20 percent?

7 A I merely show a trend that it has dropped by
8 over half.

9 Q Okay. Are you aware that the 50-percent
10 Class 1 utilization in 1999 was a product of voluntary
11 disassociation from the pool of Class 3 milk by
12 somebody because the Class 3 milk price was higher than
13 the blend price?

14 A I would say that I'm probably aware that
15 there's an aberration in that 50 percent.

16 Q Yeah. And if you would turn to your Table 4,
17 Order 39, Classification of Receipts in 1999, under the
18 Class 3 column, you'll see that there are three months
19 in which Class 3 was below 10 percent and one month in
20 which it was below four percent. Do you see that?

21 A Hm-hmm.

22 Q Would you agree with me that 50 percent Class
23 1 utilization is not representative of the Class 1 use
24 of milk produced in Utah?

25 A I don't know that it breaks it out into Utah.

1 Q It doesn't.

2 A So, I would say that according to the Federal
3 Milk Marketing Order statistics, that 50 percent is an
4 aberration.

5 Q Yes, sir. Do you agree with the testimony of
6 Commissioner Peterson that whether or not a dairy
7 farmer shares in federal order pool, should be a
8 function, at least in significant part, of whether that
9 producer's milk is used for Class 1 products?

10 A In terms of the intent of the Order and that
11 Class 1 includes milk setting ready and able and
12 willing to serve that market, I would agree with that,
13 yes.

14 Q If it's ready and willing but there is no
15 Class 1 market for it, is my understanding correct from
16 what you just said that it should not participate in
17 the pool if it's used every day of the month, every
18 month of the year for Class 3 purposes?

19 A Well, I -- I think that there's examples in
20 other Orders where there -- there's a -- been decided
21 to read what this surplus or what this service of the
22 pool and what percent of the diversion is reasonable.
23 We come back clear to the whole issue of the diversion.
24 Is 90 percent reasonable or is 70 percent or 80 percent
25 or 65 or 50? That needs to be looked at, and all I'm

1 trying to do is get the Administration to take a hard
2 look at -- at what those diversion needs are.

3 Q Okay. My question related to not the
4 percentage of diversion but how a producer's milk was
5 actually used, in what class, and I'll paraphrase the
6 question to make it more similar to what I asked
7 Commissioner Peterson.

8 Is the use to which a producer's milk is put
9 a factor that you believe and you would counsel the
10 Secretary to consider in setting diversion limits which
11 allowed milk to qualify or not qualify?

12 A Yes, I would agree with that.

13 MR. VETNE: Thank you.

14 JUDGE CLIFTON: Thank you, Mr. Vetne.

15 I think it's time for us to take a 15-minute
16 break, and then we'll resume with this witness to see
17 if there are any further questions. So, please be back
18 and ready to go at 11:00.

19 (Whereupon, a recess was taken.)

20 JUDGE CLIFTON: Back on the record. Back on
21 record at 11:02.

22 Does anyone else have questions for Mr.
23 Radmall?

24 (No response)

25 JUDGE CLIFTON: There being none, Mr.

1 Radmall, thank you. You may step down.

2 (Whereupon, the witness was excused.)

3 JUDGE CLIFTON: Who would like next to
4 testify?

5 MR. BESHORE: Mr. Ronald Stratford will
6 testify next, I believe, Your Honor.

7 JUDGE CLIFTON: Thank you, Mr. Beshore.

8 Mr. Stratford, will you come forward? Good
9 morning, Mr. Stratford.

10 MR. STRATFORD: Good morning.

11 JUDGE CLIFTON: Are there written copies of
12 Mr. Stratford's testimony?

13 MR. BESHORE: I don't believe so.

14 JUDGE CLIFTON: All right. So, Mr.
15 Stratford, you will be reading a statement?

16 MR. STRATFORD: I will.

17 JUDGE CLIFTON: All right. But you don't
18 have copies for us to make exhibits as well?

19 MR. STRATFORD: I could give you mine.

20 JUDGE CLIFTON: Well, no, I don't want to
21 take just one.

22 MR. STRATFORD: I don't.

23 JUDGE CLIFTON: All right. Very fine. Then
24 read carefully and take your time so that the
25 transcript will be accurate as to your statement.

1 All right. First, I'd like to swear you in.

2 MR. STRATFORD: Mr. Beshore, do you -- do you
3 want to give up that copy I gave you or --

4 MR. BESHORE: I --

5 MR. STRATFORD: We could enter it into the
6 record.

7 MR. BESHORE: I could do that. If -- if --
8 we do have another copy. I mean, I have one which we
9 can -- we can mark and make copies and have it made
10 part of the record, if that would --

11 JUDGE CLIFTON: That would keep everything
12 the same, which I would appreciate it.

13 MR. BESHORE: That'd be great.

14 JUDGE CLIFTON: Oh, all right. Now, the copy
15 that Mr. Beshore has is identical to the one --

16 MR. STRATFORD: It is.

17 JUDGE CLIFTON: -- you have?

18 MR. STRATFORD: It is.

19 JUDGE CLIFTON: All right. Then, Mr.
20 Beshore, if you'll hand yours to the court reporter?
21 Is either one more original than the other?

22 MR. STRATFORD: No.

23 JUDGE CLIFTON: All right. Then I'd ask the
24 court reporter to mark that as Exhibit 27.

25

1 (The document referred to was
2 marked for identification as
3 Exhibit Number 27.)

4 JUDGE CLIFTON: And then, when we're --

5 MR. BESHORE: We will see that sufficient
6 copies are available for the -- for the record.

7 JUDGE CLIFTON: Excellent. Thank you.

8 Because we don't have sufficient to pass
9 around, I'm going to wait until after the witness has
10 testified to admit it into evidence, but I would like
11 now for the witness to state his full name, spell his
12 name, and then I'll swear him in.

13 MR. STRATFORD: My name is Ronald O.
14 Stratford. R-O-N-A-L-D O. S-T-R-A-T-F-O-R-D.

15 JUDGE CLIFTON: Thank you, Mr. Stratford.
16 Whereupon,

17 RONALD O. STRATFORD
18 having been first duly sworn, was called as a witness
19 herein and was examined and testified as follows:

20 JUDGE CLIFTON: Thank you.

21 Please tell us about yourself before you
22 begin with your statement.

23 MR. STRATFORD: I'm a dairy farmer from Weber
24 County in Northern Utah, fourth generation on the farm,
25 second generation dairy. I've been in the dairy

1 business all my life. We have up to 300 head of
2 Holstein cattle, farm about 600 acres, in business with
3 my brother, and that's about it, I guess.

4 JUDGE CLIFTON: Thank you, Mr. Stratford.

5 You may proceed with your written testimony.

6 DIRECT TESTIMONY

7 MR. STRATFORD: Dear Sirs: My name is Ronald
8 Stratford. I am a dairy farmer from Weber County,
9 Northern Utah. I've been involved in the dairy
10 business all my life. We milk about 314 cows and farm
11 about 600 acres in alfalfa, hay and corn.

12 I am currently serving on the Board of
13 Directors of the Utah Farmers Union, representing dairy
14 and the Utah Dairymens Association.

15 Weber County dairy farmers mirroring what is
16 happening in the state are becoming an endangered
17 species. Just last year, calendar year 2001, five
18 dairy farm families, neighbors of mine, in my county
19 left the business. This represents 14 percent of the
20 dairymen in my county and a similar number of the cow
21 herd. I have personally know or known all of these men
22 all of my life. They, too, have been associated with
23 the dairy their entire lives.

24 Most have maintained up-to-date farms with
25 modern farming practices. All have been successful for

1 the majority of their lives. Liquidation of their
2 dairy herds and thus their way of life was not in all
3 of their long-range plans. One of them left to retire,
4 the other four, however, left because economics
5 dictated that they must. I have struggled personally
6 in my operation as I watch our debt load increase
7 almost annually.

8 Farming has always been filled with
9 uncertainties. It does seem highly unjust to me,
10 however, that someone totally disassociated with my
11 operation with the stroke of a pen can hinder my
12 ability to earn a profit. This is precisely what
13 happened when Federal Order Reform took effect in 2000.
14 The old Great Basin Order had traditionally been a
15 Class 1 market. There are pros and cons to living and
16 farming in such an Order.

17 Those who serve the Order should therefore
18 benefit by that service. With Order Reform, however,
19 the profits from servicing a Class 1 market are now
20 shared with those who have not and never intended to
21 serve that market. This seems totally inequitable to
22 me and has created further hardships for my area and
23 those that support us.

24 In publications that report milk prices from
25 around the country, it is with no small disdain that I

1 noticed that our Order as with our old Order is
2 consistently half or near the bottom of the list. I
3 have considered on many occasions why that is so. It
4 is difficult -- it was difficult enough to remain
5 profitable under the old Order and that difficulty has
6 increased.

7 I urge the Department of Agriculture and
8 those who administer it to carefully consider the
9 proposals that have been offered to close these
10 loopholes and return some equity to our market.

11 Thank you.

12 JUDGE CLIFTON: Thank you, Mr. Stratford.

13 Cross examination? Mr. Marshall?

14 MR. MARSHALL: Thank you, Your Honor.

15 CROSS EXAMINATION

16 BY MR. MARSHALL:

17 Q Good morning, Ron.

18 A Thank you.

19 Q Just a quick question regarding Weber County
20 itself. Is that around Ogden?

21 A It is.

22 Q Is that one of those counties that's rapidly
23 adding a lot of people?

24 A I don't know that I would call it rapidly.
25 We are growing steadily.

1 Q Is there pressure on dairy farmers in Weber
2 County because of encroaching population growth?

3 A There is.

4 Q Is that one of the factors maybe in some of
5 these four -- excuse me -- five farms that went out of
6 business this last year? Were all those not such a
7 situation?

8 A Of those five I -- I mentioned, I would say
9 the one that chose to retire, that was a factor. The
10 other four were not.

11 Q But for the one who chose to retire, it might
12 have been a good thing.

13 A Yeah.

14 Q Yeah. With respect to the profitability
15 issue -- by the way, are you -- how -- where do you
16 ship your milk?

17 A My milk goes to DFA.

18 Q And would it typically go to a plant there in
19 Ogden?

20 A It goes to the Kroger plant in Layton.

21 Q Layton. Do you receive the full blend price
22 from DFA every month?

23 A Most months.

24 Q But not always?

25 A I don't think so.

1 Q Okay. So, --

2 A Well, it would be a rare occasion that I did
3 not receive blend.

4 Q Was that true a year ago?

5 A Yes.

6 Q May I ask you a question I've asked others?
7 I'm going to represent to you that there's some
8 testimony that's going to come into the record showing
9 that the same stroke of the pen you referred to
10 accomplished things that were positive for Utah
11 dairymen and that on net balance, you have benefitted
12 more from the changes in the Federal Orders in the year
13 -- it became effective in January of 2000 -- than were
14 -- than the -- benefitted more than you were hurt and
15 that as a result, you're receiving more benefit from
16 the Federal Order today than you were prior to January
17 1 of 2000.

18 Do you have any information such that you
19 would like to challenge that statement?

20 A No. I -- I -- for the life of me, I can't
21 understand how -- how Class 1 utilization can drop and
22 that still be the case. I -- I couldn't --

23 Q Have you considered the impact of higher
24 Class 1 prices?

25 A No.

1 Q Have you considered the impact of higher
2 Class 2 prices?

3 A No.

4 MR. MARSHALL: Thank you.

5 JUDGE CLIFTON: Thank you, Mr. Marshall.

6 Other questions? Mr. Vetne?

7 CROSS EXAMINATION

8 BY MR. VETNE:

9 Q Good morning, Mr. Stratford.

10 A Good morning.

11 Q You referred to some unit of milk or units of
12 milk that you described as not having and not intending
13 to serve the fluid market.

14 A Yes, sir.

15 Q Okay. Do you have personal firsthand
16 knowledge of any statement by a manufacturing plant
17 handler or by a dairy farmer delivering to a
18 manufacturing plant that their milk would not be
19 available and is not intended to be available for fluid
20 use if it's needed?

21 A No, sir, no firsthand knowledge.

22 Q Okay. Is your use of the word "not intended"
23 something that you came up with or is it something that
24 was suggested to you by others?

25 A That was of my own volition.

1 Q Okay. And when you refer to what you believe
2 the intent of other people concerning whose intent you
3 have no firsthand knowledge, are you simply making
4 assumptions on the basis of which milk is used?

5 A That was -- that was based on the growth that
6 I have witnessed in Magic Valley area along with the
7 growth in the processing plants that are there to take
8 care of that growth.

9 Q Okay. Isn't it true that there has been
10 similar growth over the last decade in the Cache
11 Valley?

12 A I would -- I would think that is not true.

13 Q In terms of absolute degree, but there has
14 been growth in the Cache Valley, correct?

15 A Not in the number of producers. I don't know
16 on the volume of milk, but producers certainly are
17 down.

18 Q Okay. Producers are down. Producer numbers
19 being down doesn't mean that milk production is down,
20 does it?

21 A No, it does not.

22 Q Okay. And in fact, milk production has grown
23 in the state of Utah consistently over the past 12
24 years?

25 A To a small degree, yes. It's not a large

1 growth, but it has maintained kind of steady or small
2 growth, to my understanding.

3 Q Are you not aware that the production for
4 2001 was approximately 25 percent -- represented a 25-
5 percent increase from 1990?

6 A In the state of Utah?

7 Q Yeah.

8 A I was not.

9 Q Okay. Would that surprise you?

10 A It would.

11 Q Okay. And when you refer to mailbox prices,
12 isn't it true that mailbox prices reflect a lot of
13 things other than Federal Order blend prices?

14 A I know what it refers to on my farm.

15 Q And what does it refer to on your farm?

16 A It refers to the price that I receive for my
17 milk.

18 Q The check. Are you aware that mailbox prices
19 as reported by USDA include and make no judgment about
20 the way in which your cooperative, for example, shifts
21 its national proceeds between producers in various
22 places within regions and between regions?

23 A I have no knowledge of that, no.

24 MR. VETNE: Thank you.

25 JUDGE CLIFTON: Thank you, Mr. Vetne.

1 Mr. Beshore?

2 CROSS EXAMINATION

3 BY MR. BESHORE:

4 Q Mr. Stratford, you've noted in responding to
5 one of Mr. Vetne's questions that you've observed from
6 your location in Weber County, Utah, the expansion of
7 manufacturing capacity in milk production in the Magic
8 Valley of Idaho.

9 A I have.

10 Q Okay. And what you referred to there is the
11 expansion of cheese plant manufacturing capacity
12 primarily?

13 A It is.

14 Q Okay. And have you observed and noted that
15 those -- the cheese plants have solicited and attracted
16 producers to come and produce milk to make cheese up in
17 the Magic Valley?

18 A Say that again, please.

19 Q Well, have you observed that the companies
20 building cheese plants and expanding the cheese plants
21 have attempted to attract dairy farmers to come up and
22 produce milk to put through those cheese plants?

23 A Well, they haven't come to Utah, at least in
24 my area, but I'm assuming they certainly have in their
25 own area.

1 Q Okay. When you talk about milk -- when you
2 made observations in your testimony about which you
3 were interrogated about the intention of, you know,
4 your observed intention, is it -- would it be fair for
5 me to conclude that when you see people building
6 dairies, building cheese plants and building dairies
7 and expanding dairies in the proximity of those cheese
8 plants to supply those cheese plants, that they're
9 intending to supply the cheese plants and make --

10 A That would be fair, yes.

11 Q Okay.

12 MR. BESHORE: Thank you.

13 JUDGE CLIFTON: Thank you, Mr. Beshore.

14 Does anyone have additional questions for Mr.
15 Stratford? Yes, sir.

16 MR. REITSMA: Hi. My name is John Reitsma,
17 and I am a producer in the Magic Valley.

18 JUDGE CLIFTON: Thank you. Would you spell
19 your last name?

20 MR. REITSMA: The last name is R-E-I-T-S-M-A.

21 JUDGE CLIFTON: Thank you, Mr. Reitsma.

22 MR. REITSMA: I want to ask Mr. Stratford a
23 few questions about the four people who went out of
24 business here because of economics.

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CROSS EXAMINATION

BY MR. REITSMA:

Q How many cows were these cows milking?

A The one gentleman had been -- he was only milking a small number of cows. He had been in the dairy business and had gotten out, had to re-enter it on a small basis. He was milking about 40 head.

The dairyman that retired was milking around a 150 head. Another of the ones that sold his herd was milking about 70 or 80 head, had always been about that level. There was one up in the Ogden Valley that they were milking about a 180 head that went out -- that sold their dairy farm, and the one closest to me was milking about 240 head.

Q Okay. According to my calculations, we are the bad guys in Magic Valley in trying to get the money there from you guys, but the difference is right now, there's a usage of 17 percent in the Order. If we would up that to, let's say, 30 percent, on a hundred-cow herd, that's going to make a difference of about \$300 a month.

Do you think them there people would have sustained in this business, would have stayed in business because of \$300 a month?

A Well, sir, it certainly couldn't have hurt.

1 Q It couldn't have hurt, but do you think --

2 A And over a period of --

3 Q Could there maybe be other reasons why some
4 of these people didn't make it?

5 A Certainly.

6 Q Okay. This is -- we're talking Orders here,
7 and everything gets blamed because we in the Magic
8 Valley take money away from you guys supposedly. I
9 thought this -- when I came to this country, it was one
10 country, and we were one Order. \$10 a day, I cannot
11 see that anybody would stay in this business. Maybe
12 they got -- you guys here, you got to look within.

13 A No, I couldn't see how anyone could stay in
14 business.

15 MR. REITSMA: Well, that's all I wanted to
16 ask. Thank you.

17 JUDGE CLIFTON: Thank you, Mr. Reitsma.

18 Are there any other questions for Mr.
19 Stratford? Mr. Tosi?

20 CROSS EXAMINATION

21 BY MR. TOSI:

22 Q Thank you for appearing here today, Mr.
23 Stratford.

24 A You're welcome.

25 Q For your testimony and your participation.

1 Your statement didn't relate and your testimony did not
2 relate any specific support for any of the proposals
3 that were considered today at this hearing.

4 Are there any specific proposals that you
5 would like to say that you as a dairy farmer support?

6 A I would certainly support the -- the Number 6
7 that would tighten up the diversion limits. Likewise,
8 I would support Number 2 that would -- that would stop
9 the double dipping, and I guess those two are the ones
10 I'm most familiar with.

11 MR. TOSI: Thank you, sir.

12 JUDGE CLIFTON: Thank you, Mr. Tosi.

13 Mr. Marshall?

14 MR. MARSHALL: One quick follow-up.

15 CROSS EXAMINATION

16 BY MR. MARSHALL:

17 Q Ron, do you mean Proposal Number 10 that
18 would stop the double dipping?

19 A Yeah. If that's the number. Yeah.

20 MR. MARSHALL: Thank you.

21 JUDGE CLIFTON: Are there any other questions
22 for Mr. Stratford?

23 (No response)

24 MR. STRATFORD: Thank you.

25 JUDGE CLIFTON: All right. There are no

1 more. Thank you, Mr. Stratford.

2 Oh, Mr. Stratford, let me take that one, and
3 then you can get another copy. All right. Thanks so
4 much.

5 (Whereupon, the witness was excused.)

6 JUDGE CLIFTON: Does anyone have any
7 objections to Exhibit 27 being admitted into evidence?

8 (No response)

9 JUDGE CLIFTON: There being none, Exhibit 27
10 is hereby admitted into evidence.

11 (The document referred to,
12 having been previously marked
13 for identification as
14 Exhibit Number 27, was
15 received in evidence.)

16 JUDGE CLIFTON: Mr. Beshore?

17 MR. BESHORE: Yes. Mr. Richard Eakle,
18 another dairy farmer, would now like to testify.

19 JUDGE CLIFTON: Thank you.

20 Please come forward, Mr. Eakle. Mr. Eakle,
21 if you'll state your full name and spell your name for
22 us, please?

23 MR. EAKLE: It's Richard Eakle, R-I-C-H-A-R-D
24 Eakle E-A-K-L-E.

25 JUDGE CLIFTON: All right. You've handed me

1 and the court reporter copies of your statement. Were
2 there sufficient copies to distribute --

3 MR. EAKLE: No.

4 JUDGE CLIFTON: -- to the participants?

5 MR. EAKLE: No, there wasn't.

6 JUDGE CLIFTON: No? All right. Then here
7 again, I'm going to ask you to, when we get to that
8 part, read it into the record very carefully because
9 people won't have copies and take your time, go slowly,
10 if you will, and then I would like to make it an
11 exhibit, and Mr. Beshore, will you also lend your
12 service in making additional copies afterwards?

13 MR. BESHORE: Yes, we will.

14 JUDGE CLIFTON: Thank you.

15 We will mark Mr. Eakle's testimony as Exhibit
16 28.

17 (The document referred to was
18 marked for identification as
19 Exhibit Number 28.)

20 JUDGE CLIFTON: Mr. Eakle, would you raise
21 your right hand, please?

22 Whereupon,

23 RICHARD A. EAKLE

24 having been first duly sworn, was called as a witness
25 herein and was examined and testified as follows:

EXECUTIVE COURT REPORTERS, INC.
(301) 565-0064

1 JUDGE CLIFTON: Thank you.

2 Mr. Eakle, you may tell us about yourself.
3 If you want to just read your statement about that, you
4 may, but if there's some additional information you'd
5 like us to have before you begin to read your
6 testimony, please proceed.

7 DIRECT TESTIMONY

8 MR. EAKLE: My name's Richard Eakle. I'm a
9 dairy farmer in Box Elder County. Originally, I was a
10 dairy farmer in Woods Cross, which is five miles just
11 north of Salt Lake City. It's a fourth generation
12 farm. We've been shipping milk to the Salt Lake City
13 fluid milk market for -- since the Depression it says
14 in my thing.

15 My name is Richard Eakle. I own and operate
16 with my father, brother and cousin a 600-acre 250-cow
17 dairy farm 60 miles north of Salt Lake City. When I
18 came to these hearings, I had no intention of
19 testifying, but after listening to what had been said,
20 I felt a need to share my feelings, how I felt.

21 My grandfather started this dairy during the
22 Depression, delivering his bottled milk door-to-door in
23 Salt Lake City. His full intent was to please the
24 customers with a regular quality supply of milk. This
25 is still our intent today. The milk that leaves our

1 dairy goes to a fluid milk plant in Layton, Utah.

2 I was raised on the values of hard work,
3 honesty and integrity. What I have seen in the
4 looseness of these policies has allowed others to do
5 just the opposite. These practices have caused a
6 reduction in the milk price to me and others in our
7 area causing many to go out of business.

8 Because of the 90/10 program, it allows Grade
9 A milk never intended to the fluid market to be priced
10 in the blend price. I think that it is important to
11 have these percentages changed to the 70/30 to stop
12 this Grade A milk from being priced in the fluid milk
13 market.

14 We live close to the consumer market which
15 carries with it greater costs. Our land values range
16 from 5,000 to 35,000 per acre. Tighter regulation in
17 city limits to the proximity of urban development also
18 increases costs. This also makes it impossible for the
19 expansion of a dairy in this location. So, if it is
20 important to keep these dairies close to the market,
21 they need to be compensated by a lower haul charge than
22 milk brought in to this market.

23 I'm appalled that milk from California can
24 double dip and share in our pool price. There needs to
25 be an immediate stop to this practice. This is a very

1 dishonest practice that doesn't -- that goes against
2 all the values I was taught.

3 JUDGE CLIFTON: Thank you, Mr. Eakle.

4 I'd invite questions of Mr. Eakle. Mr.
5 Vetne?

6 CROSS EXAMINATION

7 BY MR. VETNE:

8 Q Good morning, Mr. Eakle.

9 A Good morning.

10 Q Are you a member of Dairy Farmers of America?

11 A I am.

12 Q You used the characterization of milk never
13 intended for the fluid market. You've heard me ask
14 this question.

15 A Okay.

16 Q Do you have any personal firsthand knowledge
17 of any manufacturing plant handler or any producer
18 supplying milk to a manufacturing plant who have
19 declined or expressed their refusal to provide milk for
20 Class 1 use if it's needed and called for?

21 A No, I don't. In their defense, I would say
22 if I was up there, I would want to have my milk come
23 down into the market. But I'd like to point out and
24 the reason I mentioned this, my grandfather delivered
25 milk to the Salt Lake City market in the Depression,

1 and we have been delivering milk to the Salt Lake
2 market through every merger that ever took place in
3 this company since its onset, and my point is, is --
4 and I -- I would venture to say that probably 90
5 percent of all of the dairies that we're talking about
6 in Utah, because they aren't going -- there is very few
7 number of dairies in Utah that have been started up and
8 are one generation farms, and so they have been
9 delivering milk to that same market for three and four
10 generations.

11 I know every dairyman that's in here that I
12 do know, that that's -- their milk has been going to
13 the same market for four generation dairies, and so
14 that's my -- I guess that would be my say of intent.

15 Q Okay.

16 A Our intent is we've been doing this for four
17 generations. Their intent is they would like to come
18 into the market which I can understand that.

19 Q When you referred to mergers -- merger of the
20 company --

21 A Companies.

22 Q Companies?

23 A I can go clear back to --

24 Q What companies --

25 A -- Weber Highland, IMPA, WDCI, DFA.

1 Q The most recent incarnation of the mergers
2 that you were speaking of, is that DFA that you were
3 referring to?

4 A The last one was DFA, but it goes clear back
5 to when we delivered milk to Salt Lake the same way
6 that it's been since my grandpa started when he was in
7 the Depression and that's my point of the Utah Dairymen
8 situation is, we have been delivering that milk.
9 That's our intent.

10 If you want to know intent, our intent is to
11 deliver milk to the public for generation after
12 generation after generation, through hard times,
13 through good times, through it all, and -- and I -- I
14 understand that the feeling of the big dairies that are
15 going into Idaho. I go to their auctions every --
16 every other week the last few months, and I see them,
17 and I know that their intent is, and their intent's a
18 lot different than a 200-cow dairy paying \$5,000 an
19 acre to continue to farm in this area.

20 I was raised in Woods Cross. It's a little
21 tiny town just outside Salt Lake City, and I'll tell
22 you intent. I was the last dairy to leave that town.
23 We farmed every two-acre piece of ground in Davis
24 County that we could find to stay in the dairy business
25 in Davis County. I looked in Idaho. We looked all up

1 and down the state of Utah for a place to relocate our
2 dairy so we could farm and continue to sell the milk to
3 Salt Lake City area. That's my intent.

4 Q You left that location because of urban
5 expansion, is that correct?

6 A I did, because I didn't have the money to pay
7 the land prices to stay there. If I did, I would. I
8 loved where I lived. I love Box Elder County. Box
9 Elder County is going to be the same way, I'm afraid,
10 in a few years because of urban development, and I
11 would love to stay in Box Elder County.

12 It has the best water. It has probably the
13 best water in all of America to water ground and to
14 keep it productive, and I can't afford to go up to
15 Idaho and pay \$70 an acre where I can in Box Elder
16 County where it's only \$6 an acre. But I can't have a
17 -- I can't have -- in Box Elder County, it's very
18 difficult to have a thousand-cow dairy or a 2,000-cow
19 dairy to compete with the same flow of milk.

20 Q Is it your opinion and your belief that the
21 Secretary in considering this record should place great
22 weight on the way in which milk is used, i.e. whether
23 it's used for Class 1 or Class 3 or 4?

24 A Explain maybe a little more about how you're
25 wording the question.

1 Q Okay. Is it your opinion that the Secretary
2 should place great will -- great weight on the way in
3 which a dairy farmer's milk is used in deciding whether
4 that dairy farmer should be eligible to participate --

5 A Okay.

6 Q -- in the pool?

7 A I understand the question. What made me come
8 up here, and I'll tell you, I -- I came yesterday with
9 no intent to sit on the witness stand. But I don't
10 understand when a truck can pull into a plant and
11 supposedly dump the milk in there and then reload it up
12 and drive to the cheese plant so that their producers
13 can be in that 90/10.

14 Now, you tell me. I'm an honest man, and
15 I'll be honest with anybody I can, but when somebody is
16 doing that kind of a thing, and you want them to have a
17 piece of my market, is that what you're telling me?

18 I sat back there in the back of the room the
19 first day, and I wasn't going to say a word, and then I
20 heard about the double dipping from California, and you
21 want me to sit and think that that's right. Let's be
22 honest. You know, if we're going to put all this
23 together, let's stand up for something that's right and
24 be honest.

25 If you guys can't be honest about what's

1 right and true, then what the heck are we even in this
2 room for? That's my point.

3 Q Let me -- let me see. I think we forgot the
4 question. Is it your belief that the Secretary should
5 consider how milk is used in structuring whether milk
6 can be pooled?

7 A In an honest way.

8 Q Does that mean --

9 A If -- if -- if they're rolling trucks in and
10 out to get the 90/10, then something is wrong with the
11 system.

12 Q Is it your belief that milk that goes into
13 Class 3 every day of the week, whether directly from
14 the farm or transferred from a distributing plant, milk
15 that goes to Class 3 all the time should not
16 participate in the pool if it doesn't --

17 A If it has no intent to go to the Class 1 milk
18 -- you know, we go back to the intent.

19 Q Yes.

20 A I've explained my feelings on intent. If it
21 has no intent to come into Idaho and build a 2,000-cow
22 dairy to produce milk for fluid milk, and you're
23 telling me it needs to have a part of the fluid milk
24 market, that's what you're telling me.

25 Q No, that's not my question. If you don't

1 understand it, I'll try to ask it again.

2 A I think I understand your question.

3 Q I'll try to ask it again.

4 A You're not listening to me. But go ahead.

5 Q Okay. My question is, if -- is it your
6 opinion that if milk is used -- of a producer is used
7 in Class 3 all the time and doesn't go to Class 1
8 because the silo was already --

9 A Okay.

10 Q -- full in Class 1 plant, --

11 A Well, --

12 Q -- it should not participate in the pool?

13 A Well, let's talk about what used to be.

14 JUDGE CLIFTON: Mr. Eakle, first -- first
15 wrestle with his question.

16 MR. EAKLE: I'm trying to, but I -- I --
17 again, I don't understand, I guess.

18 JUDGE CLIFTON: You understand he's making
19 the distinction between the producer's milk that ends
20 up as Class 1 milk versus the producer's milk that ends
21 up as Class 3.

22 MR. EAKLE: So, I guess I would say no, he
23 shouldn't be able to participate in Class 1 milk if his
24 Class 3 milk is Class 3 milk.

25 MR. VETNE: That was my question.

1 MR. EAKLE: Okay.

2 MR. VETNE: Thank you.

3 BY MR. VETNE:

4 Q Now, concerning this -- this -- what you
5 referred to as unfair, dishonest and -- and some other
6 words milk from California that's double dipping.

7 A Well, that's what they told us yesterday.

8 Q Yes.

9 A That's all I know. I don't know anything
10 than what I heard yesterday. So, you heard it all,
11 too. I don't know any more.

12 Q All right. Okay. You characterized it. Are
13 you aware that the only handler that is engaging in
14 that practice and drawing from the Western pool is your
15 cooperative Dairy Farmers of America?

16 A And I would like to ask them a few questions
17 about that later, but that's not part of this hearing.

18 MR. VETNE: Thank you.

19 JUDGE CLIFTON: Further questions for Mr.
20 Eakle? Mr. Beshore?

21 CROSS EXAMINATION

22 BY MR. BESHORE:

23 Q Mr. Eakle, one of the -- two of the proposals
24 in this hearing, technicalities of which have not been
25 discussed yet, but the substance of which you touched

1 on quite eloquently in your statement there I'd like to
2 ask you about.

3 We have Proposals 6 and 7 which DFA has
4 placed in this hearing provide for what are -- what are
5 called -- would place what's called a net shipments
6 provision in the order, and it would say that in
7 effect, if you take milk to a fluid plant and pump it
8 in and pump it back out into that truck, it doesn't
9 count.

10 A That's what it should be.

11 Q Okay. Would you support that --

12 A That's what it should be.

13 Q -- proposal?

14 A Because that's dishonest.

15 MR. BESHORE: Okay. Thank you.

16 JUDGE CLIFTON: Thank you, Mr. Beshore.

17 Additional questions for Mr. Eakle?

18 (No response)

19 JUDGE CLIFTON: Mr. Eakle, I applaud you for
20 deciding to testify. That's what these public hearings
21 are about.

22 MR. EAKLE: Thank you. Thank you.

23 (Whereupon, the witness was excused.)

24 JUDGE CLIFTON: Is there any objection to the
25 admission into evidence of Exhibit 28?

1 (No response)

2 JUDGE CLIFTON: There is none. Exhibit 28 is
3 hereby admitted into evidence.

4 (The document referred to,
5 having been previously marked
6 for identification as
7 Exhibit Number 28, was
8 received in evidence.)

9 JUDGE CLIFTON: Mr. Beshore?

10 MR. BESHORE: Yes. There are, I believe, two
11 representatives of the Utah Farm Bureau who are here,
12 and I believe this would be -- they're prepared to
13 testify at this time. I'm not sure who's first, but
14 they can --

15 JUDGE CLIFTON: Yes, let's have them both
16 come up. They can share the -- we'll need to have one
17 more chair. There's a chair at this table. They can
18 sit together and they can identify themselves as they
19 speak.

20 (Pause)

21 JUDGE CLIFTON: Let's go off record while the
22 documents are distributed.

23 (Pause)

24 JUDGE CLIFTON: All right. Let's go back on
25 record. We're back on record at 11:41.

1 Two gentlemen are seated at the witness table
2 at my request. I'd like, first of all, for each of
3 them to identify with their names, spell all their
4 names, and then I'll swear them both in, and then I'll
5 deal with the exhibits.

6 So, I'd like to start, please, with Mr.
7 Hardy.

8 MR. HARDY: My name is Brian D. Hardy,
9 B-R-I-A-N D. H-A-R-D-Y.

10 JUDGE CLIFTON: Thank you, Mr. Hardy.

11 And Mr. Friscknecht?

12 MR. FRISCKNECHT: Thank you, Your Honor.

13 I'm used to spelling my name for people. My
14 name is Steve Friscknecht, Steve S-T-E-V-E,
15 F-R-I-S-C-K-N-E-C-H-T.

16 JUDGE CLIFTON: All right. I'd like you
17 both, please, to raise your right hands.

18 Whereupon,

19 BRIAN D. HARDY

20 having been first duly sworn, was called as a witness
21 herein and was examined and testified as follows:

22 Whereupon,

23 STEVE FRISCKNECHT

24 having been first duly sworn, was called as a witness
25 herein and was examined and testified as follows:

1 JUDGE CLIFTON: Mr. Hardy, I'm going to have
2 your statement marked as Exhibit 29.

3 (The document referred to was
4 marked for identification as
5 Exhibit Number 29.)

6 JUDGE CLIFTON: And I'd like to ask, first,
7 if anyone has the desire to Voir Dire Mr. Hardy with
8 regard to his statement before I ask if there are any
9 objections to it being admitted into evidence.

10 (No response)

11 JUDGE CLIFTON: No one does. Are there any
12 objections to Exhibit 29 being admitted into evidence?

13 (No response)

14 JUDGE CLIFTON: There being none, Exhibit 29
15 is hereby admitted into evidence.

16 (The document referred to,
17 having been previously marked
18 for identification as
19 Exhibit Number 29, was
20 received in evidence.)

21 JUDGE CLIFTON: Mr. Hardy, I'm going to ask
22 you now to make your statement, and before you begin to
23 read the written statement, you're welcome to make any
24 preliminary comments you wish.

25

1 DIRECT TESTIMONY OF BRIAN HARDY

2 MR. HARDY: As I mentioned, my name is Brian
3 Hardy. I'm a dairyman from Brigham City. I currently
4 am dairying on my family farm with my father, three
5 brothers, a brother-in-law and two of my -- my two
6 oldest sons are also working full time with me. We
7 milk 1,500 head of Holsteins and raise another 1,200
8 replacement heifers.

9 As you can see by those of us that are
10 together, we are a family farm. My sons are the fourth
11 generation of our family that has dairied in Box Elder
12 County. I also have two uncles three miles north of us
13 that milk 200 head and two more uncles another three
14 miles up the road that milk another couple hundred
15 head, and my mother comes from a dairy family, also.
16 So, a lot of milk in my blood, I guess.

17 I've prepared -- myself and a couple of my
18 brothers this morning prepared this brief statement.
19 Our understanding is the Federal Milk Marketing Orders
20 were set up to assure supply of fresh milk to the
21 consuming public.

22 We felt that prior to the reform in 1999, we
23 were adequately filling that need. As a result of the
24 changes, the viability and profitability of dairies in
25 our area have been adversely affected to the point that

1 a high percentage of the dairies in our area are
2 closing down each year. Prior to 1999, our Order
3 utilization was nearly 50 percent. Since Order Reform,
4 that figure has been reduced to between 17 and 19
5 percent. This results in nearly \$500 per day reduced
6 revenue for our operation.

7 The increased milk that has reduced this
8 percentage is non-performing milk that has no intention
9 of being used in the fluid market nor sharing in the
10 costs involved in the fluid market. We would encourage
11 any action that would tighten pooling requirements in
12 our Order, thus helping the Class 1 utilization of milk
13 in our Order.

14 We love dairy and plan to continue here in
15 Utah. We feel that we are an efficient and competitive
16 operation. We make a significant contribution to the
17 economy of our area. Service companies, equipment
18 dealers and many other related companies rely on our
19 profitability for their continued success.

20 We appreciate your consideration in these
21 things that could affect our dairies and other dairies
22 like ours future success.

23 JUDGE CLIFTON: Thank you, Mr. Hardy.

24 Does anyone have questions for Mr. Hardy?
25 Mr. Vetne?

1 CROSS EXAMINATION OF MR. HARDY

2 BY MR. VETNE:

3 Q Mr. Hardy, do you have any firsthand
4 knowledge of any manufacturing facility or producer
5 delivering to a manufacturing facility who has
6 expressed an intention not to supply the Class 1 market
7 if there's a need for their milk?

8 A I don't have any knowledge of anyone that
9 would turn down that opportunity.

10 Q Is the use of the word "intention" here
11 something that you came up with?

12 A Yes. I had no other discussion outside of my
13 family related to these things.

14 Q So, it's just coincidence that the last five
15 or six witnesses --

16 A Must be.

17 Q -- used the same word?

18 MR. VETNE: Thank you.

19 MR. HARDY: It may be more than coincidence.
20 Maybe it's the truth.

21 JUDGE CLIFTON: Other questions for Mr.
22 Hardy?

23 (No response)

24 JUDGE CLIFTON: Thank you very much.

25 Now, I'd like to turn to the other two

1 exhibits, and Mr. Friscknecht, you have prepared the
2 statement that is addressed to Mr. Tosi and begins
3 with, "My name is Steve Friscknecht".

4 MR. FRISCKNECHT: Right.

5 JUDGE CLIFTON: Is that correct?

6 MR. FRISCKNECHT: That's correct.

7 JUDGE CLIFTON: I'd like to have that
8 statement marked as Exhibit 30.

9 (The document referred to was
10 marked for identification as
11 Exhibit Number 30.)

12 JUDGE CLIFTON: Mr. Friscknecht, you've also
13 brought to us a letter that is dated April 16th, 2002,
14 on Utah Farm Bureau Federation letterhead that is
15 signed by Emory Ball, Vice President, is that correct?

16 MR. FRISCKNECHT: That's correct.

17 JUDGE CLIFTON: That's not his entire title.
18 I just read part of it.

19 I'd like to have that document marked as
20 Exhibit 31.

21 (The document referred to was
22 marked for identification as
23 Exhibit Number 31.)

24 JUDGE CLIFTON: Now, with regard to 31, how
25 did you obtain that document, and for what purpose are

1 you bringing it into the evidence here today?

2 MR. FRISCKNECHT: That document was prepared
3 by Farm Bureau staff in -- with me helping him. We
4 intend -- that is the Farm Bureau's official statement,
5 and as the chairman of the Farm Bureau Dairy Committee,
6 I am part of that group.

7 JUDGE CLIFTON: All right. Thank you.

8 Is there any objection -- first of all, does
9 anyone wish to Voir Dire Mr. Friscknecht with regard to
10 either Exhibit 30, his statement, or with regard to
11 Exhibit 31, the Utah Farm Bureau Federation statement?

12 (No response)

13 JUDGE CLIFTON: Is there any objection to the
14 admission into evidence of either Exhibit 30 or Exhibit
15 31?

16 (No response)

17 JUDGE CLIFTON: There are no objections.
18 Exhibits 30 and 31 are hereby admitted into evidence.

19 (The documents referred to,
20 having been previously marked
21 for identification as
22 Exhibit Numbers 30 and 31,
23 were received in evidence.)

24 JUDGE CLIFTON: Mr. Friscknecht, you may
25 begin with any preliminary comments you wish, and then

1 you may proceed in any order you wish with regard to
2 these two documents.

3 DIRECT TESTIMONY

4 MR. FRISCKNECHT: Thank you, Your Honor.

5 As I said, my name is Steve Friscknecht. I'm
6 a dairy farmer from down in Sanpete County in Central
7 Utah. I milk about a 150 to 160 Holstein cows. I've
8 been in the dairy business for 20 some years. Prior to
9 that, I was in the sheep business, and when I
10 discovered that coyotes didn't eat dairy cows, I
11 switched and took over my father-in-law's operation.

12 I dearly love the dairy industry. My dairy
13 operation's average in size, and I think it's very
14 typical of most dairy farms in Utah.

15 As chairman of the Utah Dairy Federation,
16 Utah Farm Bureau Federation Dairy Committee, I'm
17 speaking in behalf of dairy farmers throughout the
18 state. My purpose today is to address some of the
19 inequities that have occurred since Federal Order
20 Reform beginning in the year 2000 and the impact that
21 it has had on Utah dairy farmers and their families.

22 Utah has a young and growing population with
23 large families that are great milk drinkers. Utah's
24 per capita milk consumption is one of the highest, if
25 not the highest, in the nation. Prior to Order Reform,

1 we enjoyed a high Class 1 utilization in the range of
2 35 to 50 percent. Following Order Reform, according to
3 USDA reports, Class 1 utilization has steadily declined
4 to 25.05 percent in the year 2000, 22.1 percent in
5 2001, and for the month of February 2002, it has
6 dropped to 17.05 percent. This has had a very real
7 impact on Utah producers and our ability to survive in
8 an ever-changing and challenging market.

9 On my own farm, I calculate that Order Reform
10 is costing me about \$1,500 a month. That \$1,500 would
11 make the payment on a newer tractor that I've not been
12 able to afford but need desperately. It would help to
13 pay down debt, buy some feed, or ease many of the other
14 demands on my paycheck. If this calculation holds true
15 for other dairymen, Utah producers are losing over
16 \$500,000 a month or \$6 million per year, all because of
17 disorderly marketing brought about by Order Reform.

18 Utah producers, their cooperatives and
19 processors have invested heavily over the years in the
20 necessary infrastructure, that is, plant distribution
21 systems, etc., to supply the Utah market with Class 1
22 milk. There's a very significant cost in servicing and
23 balancing the market.

24 As a result of regulatory loopholes in the
25 pooling provisions that have occurred under Order

1 Reform, distant dairy farmers through their co-ops or
2 handlers are receiving monies from the pool without
3 having to supply or service the market. This unearned
4 sharing of pool receipts lowers the blend price for all
5 Utah dairy farmers.

6 The benefit to the market must be earned by
7 performance, not by some pooling report. It is simply
8 unfair for this to continue. Dairy farmers should not
9 be collecting money from federal dairy money without
10 performing in the market. We recommend that the
11 pooling provisions be set at 70/30 rather than 90/10.
12 This is in line with surrounding federal milk marketing
13 orders and would create fairness and stability for
14 producers, handlers and consumers.

15 Dairy farmers in Utah support the Federal
16 Milk Market Order System. It should provide efficient
17 and orderly marketing of milk, market reporting and
18 auditing functions to ensure farmers are paid in a
19 timely fashion and that they are paid for the full
20 value of their milk. Order Reform has in many
21 instances created disorderly marketing of milk,
22 contrary to the purpose of the Milk Market Agreement,
23 Milk Market Act.

24 While Utah's a growing market for Class 1,
25 the local dairy industry is stagnant and lacks the

1 incentive for producers to expand or build new dairies.
2 With some of the lowest mailbox prices in the country
3 and the ability for milk to pool without performance,
4 dairymen are reluctant to invest in an uncertain
5 future.

6 A few common sense changes to Order 135 will
7 create a fair and stable environment for the orderly
8 marketing of milk, ensuring a viable dairy industry in
9 Utah.

10 Thank you.

11 JUDGE CLIFTON: Thank you, Mr. Friscknecht.

12 I'm going to ask you to go on to your Utah
13 Farm Bureau Federation statement before we invite cross
14 examination. Would you begin by stating your
15 connection to that organization and as well as
16 identifying the author of the statement?

17 MR. FRISCKNECHT: Your Honor, we hadn't
18 planned to -- to read this statement. We just wanted
19 to insert it into the record.

20 JUDGE CLIFTON: Very well.

21 MR. FRISCKNECHT: But if you prefer, I will
22 read it.

23 JUDGE CLIFTON: No, I don't require that you
24 read it. In fact, it will be move things along if you
25 do not. So, if you'll just identify again your

1 connection to the Utah Farm Bureau Federation, not only
2 your current office but your historical connection, and
3 also that of the person who signs the letter?

4 MR. FRISCKNECHT: I have been a member of the
5 Farm Bureau for many, many years. I am presently the
6 Chairman of the Farm Bureau Dairy Advisory Committee,
7 which gives input to the Board of Directors for them to
8 make decisions about dairy issues.

9 Mr. Reed Balls is the staff person over
10 Commodity Programs, such as the Dairy Programs, and he
11 is the author of that statement.

12 JUDGE CLIFTON: All right. I would now
13 invite questions for Mr. Friscknecht either with regard
14 to Exhibit 30 or with regard to Exhibit 31. If you
15 need a little more time to read 31, I'll be happy to
16 grant that at this time.

17 Let's -- let's go off the record for a few
18 minutes while you review the document.

19 (Pause to review document)

20 JUDGE CLIFTON: Back on record at 11:58.

21 Who would like to begin the questioning? Mr.
22 Marshall?

23 MR. MARSHALL: Thank you, Your Honor

24

25

1 CROSS EXAMINATION OF STEVE FRISCKNECHT

2 BY MR. MARSHALL:

3 Q Mr. Friscknecht, we've never met. I'm with
4 the cooperative based up in Seattle, and I begin by
5 just asking you just a little bit about where you're
6 located and what kind of farm -- what -- what your
7 actual size is and how you market milk?

8 A My farm's located in Central Utah, the
9 geographic center of Utah, towards -- close to Manti.
10 I market my milk through Dairy Farmers of America. I
11 milk about a 150 to 60 cows.

12 Q Thank you.

13 Excuse me. First question I have is
14 regarding your appearance today with respect to the
15 Utah Farm Bureau Federation. Are you here to testify
16 on behalf of Farm Bureau?

17 A Yes.

18 Q Okay. Now, as you might have observed, we --
19 I have been fairly brief in questioning dairy farmers,
20 but it's more common for a trade association to be
21 questioned in depth about its statement.

22 Are you comfortable answering questions about
23 the Utah Farm Bureau statement?

24 A Yes, I am. I have to say that I am not an
25 expert in Federal Milk Marketing Order. I'll answer

1 them to the best of my ability.

2 Q Well, I'm not an expert either, and I've been
3 at it for 20 years. So, I appreciate your dilemma
4 there.

5 All right. Well, a number of statements in
6 that -- a number of sentences in that statement and in
7 your own statement related to the impact of Federal
8 Order Reform. You heard some of the other questions
9 I've been asking today.

10 You, I can appreciate this, have done a
11 calculation that Federal Order Reform has cost you
12 about \$1,500 a month. So, let's start by having you
13 explain how you reached that conclusion, if you -- if
14 you wouldn't mind.

15 A I used some very conservative figures, 16,000
16 pounds average for a cow times a 150 cows times 45-
17 percent utilization times the differential, which is
18 \$1.90, and I subtracted from that the 17-percent
19 utilization figure, and it come to around \$1,500 in my
20 operation.

21 Q Okay. Let me see if I followed that. In --
22 in a way, it sounds like the key part of your
23 calculation was the difference between a 17-percent
24 utilization and what?

25 A And the 45 percent.

1 Q And then you multiply that difference by 190?

2 A By 190.

3 Q Which is, you indicate, the Class 1
4 differential in Salt Lake City. So, just to close the
5 door on that particular part of my questioning, you've
6 not considered the impact of higher Class 1 or 2 prices
7 or other changes in the Federal Order System that were
8 part of the reform process, is that correct?

9 A That's correct.

10 Q Strictly utilization-based calculation?

11 JUDGE CLIFTON: And you're nodding your head
12 yes?

13 MR. FRISCKNECHT: Yes, there are advantages
14 to Federal Order Reform, but Utah dairy producers won't
15 have been impacted positively if we would have been
16 alone rather than with the combined Order. So, when
17 Order Reform came in, they put the two Orders together.
18 If that hadn't of occurred, even with the difference of
19 the higher off, we would have been better off had we
20 been along rather than with the other Order, combining
21 the Orders.

22 BY MR. MARSHALL:

23 Q Well, asking you to put your Farm Bureau hat
24 on for a moment then, --

25 A Sure.

1 Q -- it's true, is it not, that there was more
2 than just a merger of the Orders, there was also a
3 change in the boundary to the south of us with respect
4 to the Las Vegas Market, was there not? That was
5 mandated by Congress? I see you're nodding your head
6 up and down again.

7 A That's correct.

8 JUDGE CLIFTON: I need an audible answer, so
9 that the tape recording will pick it up. So, when you
10 nod your head, say something.

11 BY MR. MARSHALL:

12 Q Do you, by chance, know if the Utah
13 senatorial delegation supported their colleague,
14 Senator Reed, in that exclusion?

15 A Could you repeat that?

16 Q Do you know if the Utah senatorial delegation
17 supported their colleague, Senator Reed, in excluding
18 Las Vegas from the Federal Order System?

19 A I don't know that.

20 Q I don't either. So, I don't mean to imply
21 that he did, that they did.

22 One of the changes occasioned by Federal
23 Order Reform was a practice that's been referred to at
24 this hearing as "double-dipping"; that is to say, it
25 made it easier to pool distant milk on this market,

1 including, as we've seen, milk from California that's
2 had the effect, according to estimates provided in
3 prior testimony, the effect of lowering the blend price
4 in this Federal Order by 10 cents, roughly 10 cents per
5 hundredweight last year.

6 Does Utah Farm Bureau have a position with
7 respect to that practice? Does Utah Farm Bureau
8 Federation have a position with respect to Proposal
9 Number 10 which would end that practice?

10 A We do not have a specific policy on that
11 issue. I think it comes back to being able to service
12 the market. Dairy farmers should not reach out and
13 take other dairy farmers' monies simply because of
14 regulations.

15 Q Do you believe that the milk from California
16 -- let me ask you this. The Farm Bureau has no
17 position -- let me ask you to take the Farm Bureau hat
18 off and put on Mr. Friscknecht's individual hat and
19 answer this question.

20 Do you believe that the milk in California
21 that's been pooled on this Order has had any
22 performance-based justification for being pooled under
23 this Order?

24 A You would have to ask the experts. I -- I
25 have no knowledge of that.

1 MR. MARSHALL: May I ask Mr. Hardy if he's
2 here speaking on behalf of Farm Bureau as well?

3 MR. HARDY: I also belong to the Dairy
4 Committee.

5 MR. MARSHALL: Of the Farm Bureau?

6 MR. HARDY: Farm Bureau.

7 MR. MARSHALL: Are you speaking on their
8 behalf?

9 MR. HARDY: I was invited to come and speak
10 as a dairy producer, not representing Farm Bureau.

11 MR. MARSHALL: As a dairy producer, do you
12 have an opinion regarding the practice that's been
13 described earlier in this hearing --

14 MR. HARDY: I do not.

15 MR. MARSHALL: -- as -- let me finish the
16 question for the record, --

17 MR. HARDY: Okay. Sure.

18 MR. MARSHALL: -- so that -- do you have a
19 question -- excuse me. The question was, do you have a
20 position as a dairy farmer with respect to the practice
21 of pooling California milk on this Order?

22 MR. HARDY: I'm not really understanding of
23 that. I -- I don't -- I don't have an opinion or
24 really a knowledge.

25 MR. MARSHALL: So, are you -- is it true then

1 that the Dairy Committee of Utah Farm Bureau Federation
2 was not made aware of that practice?

3 MR. HARDY: I was not at the last committee
4 meeting.

5 MR. MARSHALL: Aha. Well, that's what you
6 get for missing meetings. You have to come testify.

7 MR. HARDY: It was in St. George. I should
8 have been there.

9 MR. MARSHALL: Let me ask first Mr. Hardy and
10 then Mr. Friscknecht. Federal Order price shown in the
11 Farm Bureau Exhibit on Page 2, for the year 2001, it's
12 \$14.16. Would you agree with me that for dairymen in
13 Utah and the rest of the country, that 19 -- that the
14 year 2001 was, from a price standpoint, was approaching
15 satisfactory?

16 MR. HARDY: Yes.

17 MR. FRISCKNECHT: It was a good start.

18 MR. MARSHALL: With respect -- a question to
19 either of you who wishes to answer it.

20 With respect to the Farm Bureau statement
21 about the astonishing loss of 85 dairies in less than
22 two years under Federal Order Reform, how can you
23 relate Federal Order Reform and the prices shown --
24 please relate Federal Order Reform and the prices shown
25 on Page 2 to the loss of those 80 dairies.

1 MR. FRISCKNECHT: As has been stated here,
2 there are --

3 JUDGE CLIFTON: Please identify yourself so
4 that there will be no confusion.

5 MR. FRISCKNECHT: Yeah. Mr. Friscknecht. As
6 has been stated, there are a lot of reasons that dairy
7 farmers leave the business. The primary one is
8 economics.

9 Now, you can't take one year out of five or
10 10 years that -- that may be a good year and use that
11 to say that that's enough money for a dairy farmer to
12 stay in business. He may have other debts that he may
13 be catching up on. It's just a snapshot in time and
14 it's not a real true picture of what's occurring on
15 dairy farms in Utah.

16 BY MR. MARSHALL:

17 Q Would you agree with me that the overall
18 level of prices to producers across the United States
19 the last few years has been quite volatile?

20 A I would agree. Steve Friscknecht. I would
21 agree.

22 Q And Mr. Friscknecht, would that be due to
23 factors other than Federal Orders, such as shortages or
24 surpluses in the markets for cheese and butter and so
25 forth?

1 A Mr. Friscknecht. Yes, I think there are a
2 lot of issues that impact producer prices.

3 Q Is it the position of Utah Farm Bureau that
4 the loss of 80 dairies in the state of Utah since
5 Federal Order Reform was the result of Federal Order
6 Reform?

7 A It certainly helped. If you take my
8 operation, \$1,500 a month is considerable amount of
9 money. I can hire an employee for that. I can -- I
10 can make payments on a tractor or buy livestock.
11 There's many things I can do with that money, and it's
12 my opinion that that \$1,500 loss per month is a direct
13 result of Order Reform.

14 MR. MARSHALL: Okay. One question to Mr.
15 Hardy, if I may.

16 CROSS EXAMINATION OF MR. HARDY

17 BY MR. MARSHALL:

18 Q I believe you indicate you've got some 3,000
19 animals, some 3,000 dairy animals on your place in Box
20 Elder County.

21 Could you trace for us the history of your
22 operation with respect to size --

23 A Hm-hmm.

24 Q -- over the last, say, 20 years?

25 A Yes, I can. I became a partner or, I guess,

1 came into the operation in 1977. At that time, we were
2 milking about a 110 cows. I came into it, went to Farm
3 Credit, borrowed some money to put 50 animals in on my
4 own, had a brother come back or come into the operation
5 two and a half years later, did a similar thing, and we
6 have continued to grow from -- well, our -- our dairy
7 was established where it's at in the -- at the
8 particular location it's at, which is three miles south
9 of my grandfather's farm, where my father farmed in
10 1968, but like I said, I came into it in '77, another
11 brother two and a half years later, another brother six
12 or seven years later, and two-three years following
13 that, another brother, and we have grown maybe 10-15
14 percent a year. I don't know those figures work out,
15 but we have gone from a 110 cows in 1977 to 1,500
16 milking cows, plus replacements, at this time.

17 Q I think that's admirable, and I congratulate
18 you and your brother on that record of success.

19 Would you characterize your dairy as one of
20 the larger in the state?

21 A I would say we're probably in the top five
22 percent.

23 Q Do you believe that if you were still milking
24 a 110 cows as you were in 1977, that you would still be
25 dairying?

1 A I would not be dairying --

2 Q And --

3 A -- personally.

4 Q -- would that relate to the fact that it's
5 very hard to make a profit on a 110-cow herd?

6 A Well, can I refer to the -- I -- I did talk
7 about two sets of uncles with a dairy up the road from
8 us, and I -- I hate to get too personal here, but they
9 have made some choices not to allow their sons in,
10 particularly one set of uncles, and they milk 200 cows
11 maybe, and they have been at that 200 cows for quite
12 some time, and financially, they're in pretty decent
13 shape. They're not giving those opportunities of
14 growth to the other members of the family, sons or
15 whatever. That's a choice they made.

16 My father could have made that same choice
17 quite a few years ago when -- and not provided
18 opportunities for us to come into it, and -- and if we
19 were milking a 150 cows, there wouldn't be room for us
20 all. We would have gone somewhere else, had to have.
21 Whether that was off on our own, on, you know, a small
22 dairy or -- or any other sort of dairy, to be together
23 as a family, we had to -- to milk that many cows --

24 Q Hm-hmm.

25 A -- to generate that type of a revenue.

1 Q Well, I -- I would tell you that that is a
2 fairly common thing that I see throughout the region,
3 --

4 A Absolutely.

5 Q -- and again I'm -- I appreciate the fact
6 that your father made that decision and wish frankly
7 that there were more sons of dairy farmers still in
8 business today.

9 A Well, and I hope to -- as I mentioned in my
10 opening statement, I have two sons that are there now,
11 too, and I hope that they have that same opportunity.
12 I hope that the dairy economy and ag economy continues
13 to the point that they can stay, and they can dairy, if
14 that's what they want, and I have two younger sons.

15 Besides, as I mentioned, I have three
16 brothers who all have sons. I doubt they'll all be on
17 the dairy, but we would like to give them that
18 opportunity if they'd like to.

19 Q Great. When you receive testimony as we did
20 earlier today about 80-cow and 70-cow dairies going out
21 or even 200-cow dairies going out, do you attribute
22 that to price of milk in the last year or two or do you
23 attribute that to the choices that those dairy
24 operators have made?

25 A I think those that I am familiar with, and we

1 -- obviously for us to grow, we've had to buy animals,
2 and one of the herds out of Weber County that Mr.
3 Stratford talked about, we bought those cows. They
4 were basically tired of the battle. You know,
5 economically, it was tough, and they were just tired of
6 fighting. There were other -- there were other options
7 that they had that they were going to try and take
8 advantage of, and I -- I think that that's typical. I
9 think as I see it, they're in through Cache Valley, you
10 know. They're losing a lot of dairies, maybe their cow
11 numbers are staying similar, but it's the same
12 situation that we're in.

13 The cow numbers in Box Elder County are
14 staying the same, pretty close, but the number of
15 dairies are dwindling significantly.

16 Q As you go to Farm Bureau meetings and perhaps
17 other kinds of industry meetings and talk to producers
18 from other states, would you say that the experience
19 that you've just described is fairly typical of fewer
20 dairy farms and more cows per farm and more production
21 or at least the same amount of production?

22 A I don't know if it's typical. They're still
23 fought with the small dairies. They're still --
24 there's still dairymen out there that enjoy dairying,
25 you know, as an occupation. They still enjoy working

1 with cows. Some of them have made that choice to stay
2 small and to continue to do a lot of the work
3 themselves, tie themselves quite close to the
4 operation, and those are choices that they make.

5 I don't know that -- you know, yeah, there's,
6 you know, nationally, herd numbers are going down,
7 animal numbers, I think, are even going down a little
8 bit, also, but -- but I think the dairymen still have
9 choices.

10 MR. MARSHALL: Well, thank you very much,
11 both of you. I've enjoyed chatting with you.

12 JUDGE CLIFTON: Thank you, Mr. Marshall.

13 Other questions for either of these
14 gentlemen?

15 (No response)

16 JUDGE CLIFTON: Do you suppose this is
17 influenced by the fact that people are hungry?

18 MR. FRISCKNECHT: Well, it's a good time for
19 lunch.

20 JUDGE CLIFTON: Last chance for questions for
21 Mr. Hardy and Mr. Friscknecht.

22 (No response)

23 JUDGE CLIFTON: All right. Thank you,
24 gentlemen. You may step down.

25 MR. HARDY: Thank you.

1 (Discussion off the record.)

2 (Whereupon, the witnesses were excused.)

3 JUDGE CLIFTON: All right. Now, let's find
4 out what order of things will work out best for the
5 remainder of the day. I'd like to hear from each of
6 you what witnesses you hope to have testify today, and
7 let me get an idea of how we might best proceed.

8 Mr. Beshore?

9 MR. BESHORE: Mr. Hollon is prepared to
10 proceed with his testimony on Proposals 3, 3, 4, 6 and
11 7, I think it is. Several that are grouped together,
12 of which DFA is the proponent. So, we would -- we'd
13 like to proceed. I don't -- I'm not aware of any other
14 dairy farmers who are here. We certainly will yield
15 and want to yield to any of them who may be here to
16 testify. Otherwise, we're prepared to proceed with
17 proponent testimony on -- on those proposals.

18 JUDGE CLIFTON: All right. Thank you.

19 Let me ask if there are other dairy farmers
20 who would like to be heard today. Is there -- is there
21 any other dairy farmer that would like to testify
22 today?

23 MR. VETNE: Your Honor, there are two --

24 JUDGE CLIFTON: Mr. Vetne?

25 MR. VETNE: There are two dairy farmers who

1 have accompanied my clients and desire to present
2 opposition testimony on whatever it is that Elvin
3 Hollon is going to testify on next, and -- and they
4 would like to testify today as would John Davis
5 immediately after Elvin Hollon gets through.

6 JUDGE CLIFTON: All right. Thank you.

7 Mr. Marshall?

8 MR. MARSHALL: I would certainly support
9 whatever scheduling conveniences Mr. Vetne's clients
10 and witnesses would be interested in. I just want to
11 ask a procedural question.

12 Mr. Beshore had indicated that Mr. Hollon was
13 prepared to proceed with respect to what I would
14 characterize as the "pooling" provisions. There are
15 proposals relating to pooling provisions. There are
16 some other proposals that relate to other portions of
17 the Order, and my question is, do we wish to organize
18 the testimony along the subject matter lines or should
19 we just let people testify as to everything at this
20 point?

21 JUDGE CLIFTON: Mr. Beshore?

22 MR. BESHORE: Well, we -- we have organized
23 our proponent statements along subject matter lines
24 because we think it makes -- makes sense and bundles
25 things. So, that's how, you know, we've -- I think it

1 works best to proceed as much as possible. We can't
2 make it airtight, I don't think, in terms of the order
3 of witnesses and testimony, but that's how we'd like to
4 try to move forward. I think it makes sense to do it.

5 MR. MARSHALL: Your Honor, I can certainly
6 understand Mr. Beshore's desire to clump the subject
7 matters. Regrettably, I think the topics that Mr.
8 Vetne's clients might be here to testify to would
9 include maybe one of the other groups. So, John,
10 perhaps you should -- I'll be happy with whatever you
11 want to do. I just want to have clear understanding of
12 how our witness should proceed.

13 JUDGE CLIFTON: All right. My preference
14 would be that you try to stick to the subject matter of
15 these proposals as we go through them pretty much in
16 numerical order, but when you have a witness who wants
17 to testify about more than that, that's great, just
18 identify that. We'll hear the testimony.

19 Mr. English?

20 MR. ENGLISH: I do not have a dairy farmer
21 witness. I do have a witness who, if at all possible,
22 since it is his business to sell milk to consumers and
23 that is good for everyone in the room, would, if at all
24 possible, like to get on today. It can be the end of
25 the day today. It certainly does not have to be right

1 after Mr. Hollon. I understand Mr. Davis has a
2 schedule, and we're certainly willing to accommodate
3 that, and if worse comes to worse, and he can't go on
4 until tomorrow morning, we're prepared to do that. So,
5 it's not an ironclad, but it is a desire to be able to
6 get back to that which actually runs the show, which is
7 selling the milk.

8 JUDGE CLIFTON: All right. Thank you.

9 It looks to me that we must go late this
10 evening. Let's find out how late you're able to go.
11 This is a lot to get done, and I think we should try
12 because I think we're going to run out of time if most
13 of you would like to leave tomorrow night, which is
14 what everybody has indicated to me.

15 First of all, I assume everybody can go at
16 least as late as 6. If you cannot go as late as 6, let
17 me know.

18 (Nod of heads)

19 JUDGE CLIFTON: All right. Let's see if
20 anyone's interested in going later than 6 tonight. Mr.
21 Vetne? Mr. Hollon? Mr. Marshall? Mr. English? All
22 of you are interested in going later than 6 in the
23 interest of getting this work done.

24 Is there anyone who cannot go later than 6
25 tonight?

1 (No response)

2 JUDGE CLIFTON: All right. I think you
3 should -- I know it's hard on the -- the -- the out-of-
4 town staff from the Department because these hearings
5 require this of them all the time, but I think --

6 MR. STEVENS: We'll do what's necessary for
7 the hearing.

8 JUDGE CLIFTON: Great. Okay. Good. So, as
9 we break for lunch, I'd like you all to plan to be here
10 until 7. If we're almost done with somebody and can
11 finish that person by staying later, we may have to,
12 but I'd like to target 7 as our completion tonight, and
13 we can either break for lunch now or we can start --
14 would Mr. Hollon be the next person to start? We
15 better break for lunch.

16 Okay. Please -- please be back here at 1:15.
17 Thank you.

18 (Whereupon, at 12:25 p.m., the hearing was
19 recessed, to reconvene this same day, Wednesday, April
20 17th, 2002, at 1:15 p.m.)

21

22

23

24

25

1 JUDGE CLIFTON: Thank you, Mr. Beshore.

2 I ask the reporter to mark the documents as
3 you've said.

4 (The documents referred to
5 were marked for identification
6 as Exhibit Numbers 32 and 33.)

7 JUDGE CLIFTON: Again, it would be my
8 preference, Mr. Beshore, to take those into evidence
9 now, so that the witness may skip around, if he wishes,
10 he may highlight, he may repeat and so forth, knowing
11 that these things are already evidence.

12 MR. BESHORE: I'd like to follow that same
13 procedure. Also, I think it will be very helpful.

14 JUDGE CLIFTON: All right. Then I'd ask if
15 anyone wishes to Voir Dire Mr. Hollon with regard to
16 his statement, which is Exhibit 32, before I ask
17 whether there are any objections to it being admitted
18 into evidence?

19 (No response)

20 JUDGE CLIFTON: There's no indication that
21 anyone does.

22 Are there any objections to my taking into
23 evidence Exhibit 32, which is Mr. Hollon's statement
24 regarding Proposals 3 and 4 and 6 and 7?

25 (No response)

1 JUDGE CLIFTON: There being none, I hereby
2 admit into evidence Exhibit 32.

3 (The document referred to,
4 having been previously marked
5 for identification as
6 Exhibit Number 32, was
7 received in evidence.)

8 JUDGE CLIFTON: With regard to the exhibits
9 that concern those same proposals, those have been
10 marked as Exhibit 33. Is there any objection to my
11 admitting into evidence Exhibit 33?

12 (No response)

13 JUDGE CLIFTON: There being none, Exhibit 33
14 is hereby admitted into evidence.

15 (The document referred to,
16 having been previously marked
17 for identification as
18 Exhibit Number 33, was
19 received in evidence.)

20 JUDGE CLIFTON: Mr. Hollon, you remain under
21 oath.

22 Whereupon,

23 ELVIN HOLLON

24 having been previously duly sworn, was recalled as a
25 witness herein and was examined and testified as

1 follows:

2 JUDGE CLIFTON: Mr. Beshore, you may begin.

3 MR. BESHORE: Okay. Mr. Hollon, of course,
4 has previously testified and been qualified and without
5 any further preliminaries, I would just ask him to
6 proceed with his statement regarding Proposals 3, 4, 6
7 and 7 at this time.

8 DIRECT TESTIMONY

9 MR. HOLLON: Statement of Dairy Farmers of
10 America.

11 Proposals 3, 4, 6 and 7 deal with our concern
12 that performance standards in the Western Order are too
13 liberal. The current standards allow far more milk to
14 be associated with the market than can be considered a
15 necessary reserve and this results in such a reduction
16 in the blend price that milk production at the
17 geographic areas of order where Class 1 sales is the
18 greatest is declining.

19 Producers respond to blend prices and it
20 behooves the Secretary to administer the Orders in such
21 a way that blend prices can accomplish the purpose of
22 the Order. As local production declines, the cost to
23 serve the market increase and ultimately consumer costs
24 will increase as well.

25 Proposal 6 deals with the pooling standards

1 directly by reducing the amount of milk that can be
2 pooled by a handler on the Order. Proposals 3, 4 and 7
3 support the desired action called for by Proposal 6.

4 Statutory Purpose for a Federal Order.
5 Section 8(c)(18) of the Agricultural Marketing
6 Agreement Act, 7 USC Section 608(c)(18), states in
7 relation to Federal Order milk prices, that prices to
8 farmers are to be set at a level which will ensure a
9 sufficient quantity of pure and wholesome milk. The
10 statute is not directed to the supplies of cheese or
11 butter or other dairy products but to milk.

12 The Order and Decision amplified this point
13 as it described what Orders are intended to do.
14 Pooling standards of Milk Orders, including Order 30,
15 are contingent to ensure that an adequate supply of
16 milk is supplied to meet the Class 1 needs of the
17 market and to provide the criteria for identifying
18 those who are reasonably associated with the market for
19 sharing in the Class 1 proceeds.

20 Pooling standards under the Order are
21 reflected as the pool plant producer and the producer
22 milk definitions of the Order. Taken as a whole, these
23 definitions set forth the criteria for pooling. This
24 is the only basis viable for determining those eligible
25 to share in the pool.

1 It is primarily the additional revenue from
2 the Class 1 use of milk that adds additional revenue,
3 and it is reasonable to expect that only those
4 producers who consistently supply the market fluid
5 needs should be the ones to share in the distribution
6 of pooled proceeds. Citation 67 Federal Register 7050
7 February 14th, 2002.

8 Any benefits that accrue to producers from
9 the Order stem from the role Orders play in
10 accomplishing the primary objective of an Order,
11 obtaining an adequate supply of milk for the added
12 value of fluid use. Various other key principles of
13 Federal Order operation are subsidiary to the principal
14 purpose of serving the fluid market.

15 This principal to order the establishment of
16 minimum prices, while certainly valid, must be
17 evaluated in light of the primary objective of
18 obtaining an adequate supply of milk for fluid use.
19 The principals of equity that establish marketwide
20 pooling are also equally valid and necessary but must
21 be evaluated in light of the primary objective,
22 obtaining an adequate supply of milk for fluid use.

23 There is no basis in the statute for any
24 possible claim that all Grade A milk has a right to
25 share in the returns of the Order. When evaluated in

1 light of the primary objective of serving the fluid
2 market, milk that is excess to the market need or
3 situated so that it will rarely, if ever, serve the
4 market has no valid basis to share in the blend
5 proceeds.

6 Orders provide tests to measure if the milk
7 of a producer meets the primary objective. These
8 tests' term performance requirements generally requires
9 association at the supply plant level, which is Section
10 7 in most Order provisions, or association at the
11 producer level, which is Section 13 in most Order
12 provisions, with a distributing plant as the measure of
13 where the milk of a producer meets the primary
14 objective.

15 May I interject here that also in some
16 Orders, that association can be with a pool supply
17 plant?

18 The Orders do not provide a free pass for any
19 reason, including geographic location. At the supply
20 plant level, the milk supply must be transported or
21 diverted from the supply plant to the distributing
22 plant in some minimum quantity. The provisions usually
23 allow for some variation in quantities depending on the
24 month of the year. So, this section of the Order could
25 be changed to vary the volume of milk allowed to share

1 in the blend return in Order 135. However, there are
2 no supply plants on the market, so any changes in that
3 provision would have no effect at present.

4 Examining the Market Administrator Exhibit --
5 I don't remember which one it was -- reveals that that
6 there are no plants qualified as supply plants on the
7 Order thus far in Calendar Year 2002 or for all of
8 2001.

9 At the producer milk level, there are two
10 provisions that generally define performance. The
11 touch-base rules determine how many days of production
12 the milk of a producer must be delivered to the pool
13 plant during the designated period of time in order to
14 share in the blend returns. The diversion limitations
15 define how much milk of each producer or group of
16 producers may be delivered to non-pool plants and still
17 be allowed to share in the blend price.

18 DFA Exhibit 33, --

19 MR. BESHORE: 33.

20 MR. HOLLON: -- Table 1, --

21 JUDGE CLIFTON: Thank you.

22 Just so the record's clear, Mr. Beshore has
23 provided the Exhibit Number 6 and the Exhibit Number
24 33, correct?

25 MR. BESHORE: Yes, I have.

1 JUDGE CLIFTON: Thank you, Mr. Beshore.

2 MR. HOLLON: Table 1, Summary of the
3 Diversion Provisions Under Federal Milk Marketing
4 Orders, show that the producer milk provisions vary
5 from Order to Order, reflecting different market
6 conditions in each Order. In general, the higher the
7 Class 1 use, the more touch-base days that are required
8 and the lesser volume of milk is allowed to be diverted
9 from pool plants to non-pool plants in order to share
10 in the blend return.

11 In Order 135, there are large volumes of milk
12 associated with the Order that are not in or near
13 population centers. In recognition of this, the Order
14 requires only a one-time forever touch base, so long as
15 a producer does not deliver to another Order.

16 For Order 135, we support this standard.
17 Requiring a more frequent touch base could be costly
18 and inefficient. The Market Administrator Statistical
19 Summary for December shows that there were 828
20 producers pooled on the Order and that the average
21 daily deliver per producer was 17,978 pounds. In a 30-
22 day month, using a 50,000-pound farm pick-up load,
23 would require an average of 10 loads per day of touch-
24 base milk. 828 farms times 17,978 pounds per farm
25 equals 14.9 million pounds. 14.9 million pounds

1 divided by 50,000 pounds per load equals 298 loads, and
2 298 loads divided by 30 days in a month equals 10 loads
3 per day.

4 Given the weekly variation in fluid use
5 demand, one could construct a scenario that this demand
6 is utilized mostly over three days per week. With four
7 weeks per month, the delivery day, the delivery per day
8 of touch-base milk inflates to 25 loads per day.
9 Perhaps in some months, this might be accomplished
10 within a demand-driven scenario, but in many months, it
11 would not and would result in inefficiency in the
12 market where some milk supplies would be transported
13 away from the distributing plants in order to
14 accommodate milk that needed to be hauled in just to
15 touch base.

16 Noticeably no proponent requested a change in
17 the diversion -- that should be touch base rather than
18 diversion limitation language.

19 JUDGE CLIFTON: Start again with that
20 noticeably, please.

21 MR. HOLLON: Yes. Oh, I'm sorry. I got
22 ahead of myself. Okay.

23 Noticeably no proponent requested a change in
24 this provision during the notice period. Similar to
25 the other Order -- other Order handlers must feel as we

1 do that this provision is correct and adequate for the
2 market.

3 The remaining area of affected change is in
4 the diversion limitation language. This language
5 defines the volume of milk that can be delivered to
6 non-pool plants and still share in the blend return
7 from the market. Clearly, not all milk can be
8 delivered to pool plants every day because the market
9 will not demand it. This means that more milk must be
10 associated with the market than the minimum delivery
11 volume in order to have enough for the days that the
12 market will demand it.

13 Consumer demand is generally built up four
14 days of the week. The reserve needed to fill that
15 demand constitutes the remaining three days of milk
16 production. So, the most simplistic measure of the
17 necessary reserve would imply diversion limit of 43
18 percent. A delivery of 100 pounds of four days at 25
19 pounds per day would allow the remaining three days of
20 production, 75 pounds, to be pooled. Total poolings
21 would be 100 plus 75 pounds or 175 pounds.

22 Evidence for reduction in diversion limits.
23 We believe that the current diversion limits in Order
24 35 are far too permissive. We endorse the statements
25 made by the Utah Commissioner of Agriculture and the

1 representative of Senator Hatch concerning the impact
2 of the present regulations.

3 We suggest that a review of the market
4 conditions in the marketing area of the Order
5 demonstrate that the present Order diversion
6 limitations are not appropriate.

7 JUDGE CLIFTON: Mr. Beshore, would you help
8 us with the exhibit numbers for this paragraph, for all
9 the paragraphs on this page?

10 MR. BESHORE: Yes. They -- they would all
11 refer to Exhibit 33, the tables in sequence 2, 3 and 4.

12 JUDGE CLIFTON: Thank you.

13 MR. HOLLON: Exhibit 33, Table 2, Population
14 Data for Idaho and Utah Counties, detail that for the
15 states that compromise the largest portion of Federal
16 Order 135 the bulk of the population is in Utah, 69
17 percent, versus Idaho, 31 percent. The population is
18 further concentrated in just six Utah counties that
19 accounts for 69 percent of Utah's Order 135 population
20 and in turn these top six Utah counties account for 59
21 percent of all Order 135 population. The population
22 data indicates that consumption of Class 1 products
23 must be tilted toward the Utah geography.

24 Exhibit 33, Table 3, Comparison of Estimated
25 Non-Pool Plant Capacities by Type of Location -- by

1 Type of Plant and Location, Federal Order 135, Utah and
2 Idaho, shows the distribution of manufacturing plants
3 and their capacity in Utah and Idaho. The capacity
4 estimates were made by Dairy Farmers of America.

5 They show that Idaho has an estimated 500
6 million pounds of manufacturing plant capacity or five
7 times that of Utah. The Market Administrator's exhibit
8 prepared for Mr. Vetne, titled "Pounds of Milk Reported
9 as In-Area Sales by Handlers in the Western Order
10 Marketing Area, Federal Order 135, May-November 2000
11 and 2001," detail in-area sales by Idaho and Utah
12 handlers. This data indicates that the ratio of
13 distributing plants is just the opposite and weighted
14 towards Utah by a 3:1 ratio.

15 Exhibit 33, Table 4, Trends in Production
16 Factors in Idaho and Utah, details several items about
17 Idaho and Utah milk production conditions. Table A
18 recaps the annual milk production from the NASS Milk
19 Production Report. Data for the past 10 years shows a
20 steady and dramatic increase in Idaho milk production,
21 increasing from an annual production volume of 3.1
22 billion pounds in 1992 to nearly 7.8 billion in 2001.

23 The one-year increase in Idaho production of
24 7.8 percent ranks as the second-largest over year
25 change among all states for the 2000-2001 period,

1 Alaska was first, and tops among the major dairy
2 states.

3 Production in Utah has also increased over
4 1992 levels but it's only one-seventh of the Idaho
5 expansion. Production in 1.3 billion pounds increased
6 21.6 percent to 1.6 billion in 2001. The year-to-year,
7 however, change was a decrease of 3.1 percent.

8 Table B, taken from the NASS Dairy Products
9 Report, shows the total cheese production by state was
10 the same for the 1992 to 2001 period. There is no data
11 for the years '93 and '94 because NASS only reported
12 two reporting plants, thus preventing them from
13 reporting individual state data.

14 Cheese production in Idaho has grown by 171.5
15 percent over this period while declining 26.6 percent
16 in Utah. Based on 2001 data, Idaho is the fifth-ranked
17 state in cheese production in the U.S.

18 Table C details that a significant portion of
19 the milk supply in Idaho is used in cheese production.
20 During the 1992 to 2001 period, in only one year did
21 the percentage of milk used in cheese production fall
22 below 75 percent. During this period, there were both
23 expansions in cheese plant capacity and construction
24 and expansion of capacity for condensing.

25 Actually, the expansion of other than cheese

1 manufacturing capacity accounts for most, if not all,
2 of the reduction in percentage of milk supply used in
3 cheese-making. During the same period, the percentage
4 of the milk supply used in cheese-making in Utah
5 declined steadily. The percentage hovered above 60
6 percent in the early part of the 10-year period,
7 averaged in the 50-percent level in the middle, dropped
8 to the 40-percent range during the end of the 1990s and
9 fell below 40 percent in Calendar Year 2001. Over the
10 entire 10-year period, milk used in cheese production
11 in Idaho has grown 9.8 percent while declining 39.6
12 percent in Utah.

13 Looking again at Exhibit 33, Table 3,
14 Comparison of Estimated Non-Pool Plant Capacity by Type
15 of Plant and Location, Federal Order 135, Utah and
16 Idaho, we would add that the cheese plant capacities of
17 the Glanbia and Jerome Plants would rank them among the
18 largest milk plants of any type in the country. The
19 other two plants, owned by Kraft, at Rupert and
20 Sorrento-Lactalis Plant Canyon are owned by two of the
21 largest cheese-manufacturing and marketing companies in
22 the U.S.

23 Table D, with data drawn from the Market
24 Administrator-published statistical summary shows
25 production pooled on Order 135 by state of origin. It

1 should say for the month of December 2000, Idaho
2 production represented 53 percent of the pounds pooled
3 on the Order grow to 60 percent in 2001. Utah
4 production represented 36 percent in 2000 and declined
5 to 24 percent in 2001.

6 By analyzing the production and new
7 statistics, it's easy to see that Idaho's production
8 represents a large share of the pounds pooled on the
9 Western Order. Its share is growing. Equally clear,
10 however, the reason for its growth in the market for
11 which it is intended is the manufacturing market. No
12 rationale can be credibly advanced that this milk
13 supply is being developed for the fluid market or to
14 serve as the reserve supply. The data simply do not
15 support such a contention.

16 To further support this contention, one need
17 only to look at the procurement offerings from the
18 major manufacturing plants in the area. They all base
19 their procurement and payment practices on a cheese
20 yield formula. They are open and clear and up front
21 about this practice.

22 Exhibit 33, Attachment 8, Comparison of
23 Procurement Schemes, Western Order Cheese Plants,
24 details the milk procurement schemes offered by
25 Avonmore West, Glanbia Foods and Davisco Foods.

1 JUDGE CLIFTON: Excuse me, Mr. Hollon.

2 Sorry.

3 MR. HOLLON: Yes, ma'am.

4 JUDGE CLIFTON: Please -- please read that
5 again because this says payment, and you said
6 procurement.

7 MR. HOLLON: Okay.

8 JUDGE CLIFTON: Maybe --

9 MR. HOLLON: Exhibit 33, Attachment 8,
10 Comparison of Procurement Schemes, Western Order Cheese
11 Plants, details the milk payment schemes offered by
12 Avonmore West, Glanbia Foods and Davisco Foods, Jerome
13 Cheese, to producers. Clearly in both cases, the
14 prices paid to producers are derived mainly from
15 cheese-yield formulas.

16 Returning to Exhibit 33, Table 4, Trends in
17 Production Factors in Idaho and Utah, Section E,
18 outlines the effect on the prices paid to producers for
19 the large volume of milk pooled on the Order in excess
20 of any reasonable measure of a reserve supply.

21 Table E, Annual All-Milk Price Data, Idaho
22 and Utah, 1999 through 2001, details the all-milk price
23 as published by NASS. The all-milk price is a measure
24 of prices paid to dairy farmers for milk sales to all
25 uses. It is not a 3.5 percent butterfat-adjusted

1 price.

2 In the early '90s, the prices between the two
3 states maintained a fairly close relationship.
4 However, in 1998, the higher utilization and tighter
5 pooling provisions of the Great Basin Order combined
6 with a tighter milk supply boosted the Utah all-milk
7 price. By Calendar Year 2001, however, the larger-
8 than-called-for reserve on the market allowed by the
9 pooling provisions that more closely resembled the
10 former Southwest Idaho, Eastern Washington Federal
11 Order -- that should be Eastern Oregon.

12 JUDGE CLIFTON: Strike Washington?

13 MR. HOLLON: Yes, ma'am. Depressed the all-
14 milk price in the newly-formed Western Order. The all-
15 milk price fell 18 percent in Idaho, down to \$2.38 to
16 \$10.62. However, prices fell even further in Utah, the
17 section of the Order where the Class 1 use is the
18 highest, by 24 percent, down \$3.28 to 11.20. The 24-
19 percent drop was even more than the national average
20 decline for the year of 22 percent.

21 The ultimate measure of the depth of the
22 decline in price would be the number of dairy farms in
23 business. The best measure of this trend is the Annual
24 Survey done by Dr. Ken Olson for the American Farm
25 Bureau. This survey is published in Wards Dairymen

1 annually. It's quoted by organizations, such as FAVRI,
2 and there are congressional policy studies, and is used
3 by the industry media regularly.

4 This survey collects information about the
5 number of dairy permits in each state. The survey
6 results for the period 1991 to 2001 are shown in
7 Exhibit 33, Table 3-F, farm numbers in Utah and Idaho
8 1992 through 2001.

9 The number of Utah farms declined by 68
10 between 2001 and 2000. The 13.9 percent year-to-year
11 drop is the largest decline since the 1992-1993 period.
12 While the absolute decline parallels the Idaho drop for
13 2000 and 2001, the base from which the Idaho change is
14 measured is twice as large, making the percent of Utah
15 farms going out of business nearly double. An
16 additional reason to support a reduction in the
17 diversion limit is that the overly-loose provisions aid
18 milk coming off and on to the pool at will and many
19 times not being available to the market in the Fall
20 months when most needed.

21 Exhibit 33, Table 5, Comparison of Poolings,
22 Western Order, Calendar Year 2000 and 2001, was
23 constructed from Order data. It is designed to provide
24 a relative measure of the level of Class 3 milk pooled
25 relative to Class 1 utilization. All of the pounds

1 were converted to an average daily basis and then
2 indexed.

3 For the Class 1-3 comparison, the September-
4 November periods of 2000 and 2001 were used. For the
5 Class 3 computation, October of 2001 was omitted due to
6 price relationships that caused handlers to depool
7 Class 3 volumes. Chart 1, Comparison of Index Daily
8 Average Class 1 and Class 3 Pounds, Federal Order 135,
9 Calendar Years 2000 and 2001, demonstrates the
10 relationships between Class 3 and Class 1 poolings.
11 The chart shows that milk supplies contract and are not
12 available to the Class 1 market in the Fall months when
13 it's needed the most, but poolings expand in the Spring
14 months when it is needed the least.

15 Put another way, milk supplies choose another
16 market in the Fall and do not share those returns but
17 choose to pool the milk when it is no longer demanded
18 elsewhere in the Spring months and then share in the
19 blend returns.

20 Returning to Exhibit 33, Attachment 8,
21 Comparison of Procurement Schemes, Western Order Cheese
22 Plants, it is clear that bouncing on and off of the
23 Order whenever it is advantageous to ride the pool is a
24 deliberate and planned part for DAVISCO's business
25 practice. This process does not reward adequately

1 those producers who choose to supply the Class 1 market
2 year-round. It tends to raise their costs of obtaining
3 additional milk in the Fall months when spot
4 supplemental supplies are needed and lowers their
5 return in the Spring months when the milk that left the
6 market in the short season returns. This is not
7 orderly marketing. The year-round producers tend to
8 carry the reserve costs for a supply that they cannot
9 access when it is needed.

10 Our proposal would not prevent handlers from
11 choosing to market in this manner but would reduce the
12 effect of it on other producers who supply the Class 1
13 market year-round.

14 Exhibit 33, Table 6, Comparison of
15 Provisions, is a comparison of the producer milk
16 pooling provisions for the current Western Order and
17 the two primary predecessor orders. The Great Basin
18 Order regulated what is now the Utah portion of the
19 current Western Order and the Southwestern Idaho,
20 Eastern Oregon -- scratch Washington, insert Oregon
21 Order, what is now the Idaho portion of the Order.

22 Table 6 shows that the provisions chosen in
23 reform tilt towards the more liberal limits of the old
24 Southwestern Idaho Order. This helps explain why the
25 prices experienced by Utah dairy producers had eroded,

1 why Class 1 use has declined significantly, why
2 poolings in excess of reasonable reserves are being
3 accommodated and how significant quantities on reserve
4 supply can come on and off of the pool easily.

5 The reform decision noted that the initial
6 diversion percentage was set at 80 percent but was
7 changed to a higher level. This activity makes clear
8 that some type of decision-making analysis was
9 performed in order to change the standard. We would
10 hope that the additional detail and scrutiny which is
11 available through the -- through the -- through this
12 formal hearing process will lead to a change in that
13 decision.

14 We request that as the Secretary revisits
15 that decision, consideration be given to the following
16 facts: the data show that the population consumption
17 in the processing center, location of distributing
18 plants, of the market is located in Utah; the data show
19 that production farm count and prices are declining in
20 Utah; the data show that the Utah production is the
21 closest and best-situated to supply the market,
22 providing milk supplies to consumers at the most
23 reasonable prices; the data show that the Idaho milk
24 supply has grown but not for the purpose of being a
25 reserve supply for the Western Order but rather for the

1 purpose of manufacturing cheese.

2 Furthermore, the Idaho milk supply is being
3 used in cheese manufacturing in a greater and
4 increasing percentage. The data show that the reserve
5 milk supply decreases in its ability to supply the
6 market just at the time it is most critically needed
7 and returns to the market at just the time it is needed
8 least. This action penalizes the year-round supply of
9 the Class 1 market.

10 Furthermore, this practice is a planned
11 deliberate business event. The adoption of the
12 proposed 70-percent diversion standard would still
13 supply the market with an over-abundance of reserve
14 supply as evidenced in Exhibit 33, Table 7. This table
15 begins with the marketwide data showing poolings over
16 the past two calendar years.

17 Assuming that most handlers require suppliers
18 to deliver enough milk to meet the Class 1 and 2 needs
19 of their plants, all calculations are based on the sum
20 of two volumes. It is a reasonable yet charitable
21 assumption.

22 If the 43-percent diversion standard
23 developed earlier was applied marketwide in January
24 2001, the market would need total poolings of only
25 203.6 million pounds in order to serve as a reserve

1 supply for the monthly demand for Class 1 and 2 use of
2 116.1 million pounds. Application of this standard
3 would cause upwards of 200 million pounds of milk to
4 leave the pool. This is depicted in Columns F, G and
5 H.

6 Application of a 70-percent diversion
7 standard using the same logic above would, on a
8 marketwide basis, provide for far more reserves than
9 could ever be required and still accommodate a
10 significant volume of milk that has been traditionally
11 pooled on the market. This is depicted by Columns F, I
12 and J.

13 Finally, the application of the 90-percent
14 standard depicted by Columns F, K and L show the over-
15 generosity of this standard from a marketwide basis.
16 The current permissive diversion standard damages the
17 return to producers in the area of the market that
18 supplies the Class 1 market most of the time and it
19 should be changed.

20 The specific language required to implement
21 our proposal on diversion limitations is: Proposal 6,
22 135.113, Producer Milk, Section D, Paragraph 2, of the
23 quantity of producer milk received during the month,
24 including diversions, the handler diverts to non-pool
25 plants not more than 70 percent.

1 Our intent is to have no change in the
2 operation of this provision from current practice,
3 other than to reduce the limit from 90 to 70 percent.

4 Corollary proposals. In order to effectuate
5 the changes we are proposing and to make sure that the
6 intent is not mitigated, there are three additional
7 proposals that we have offered. Two of them deal with
8 net shipment provisions and the remaining one with the
9 cooperative supply plant provision.

10 Proposals 3 and 7 call for all performance
11 measures to be made on the basis of a net calculation;
12 that is, the diversion limit needs to be measured
13 against real deliveries to the Class 1 market. As the
14 limits are reduced in order to give recognition to
15 adequate performance, the pressure to ship milk into
16 the qualifying plant and back out to the supply plant
17 or pooling handler increases. This allows the handler
18 to seek qualification to pool more milk and to pool
19 milk without giving up any at all. In a way, this is
20 double dipping. No doubt there's some additional costs
21 to accommodate this goal, but if the PPD is high
22 enough, the action will take place.

23 Proposal 3 deals with the supply plant.
24 Proposal 3, Section 135.7, Pool Plant, Section C,
25 Paragraph 5, shipments used in determining qualifying

1 percentages shall be milk transferred or diverted to
2 and physically received by distributing pool plants
3 less any transfers of bulk fluid milk products from
4 such distributing pool plants.

5 Note. We would intend for the measurement --
6 for this measurement to take place on a monthly basis.
7 2. We would expect the measurement to take place only
8 between two handlers. If Supply Plant A ships 10 loads
9 into Distributing Plant B and Distributing Plant B
10 ships nine loads back to Supply Plant A during the
11 month, only a single load is available for computing
12 qualifications.

13 The calculation is to take place at the
14 handler level so that a multiplant handler cannot play
15 games with the shipments. We do not expect the Market
16 Administrator to sort out shipments that involve more
17 than two handlers. In the example above, if
18 Distributing Plant B ships out a load to Supply Plant
19 C, no net calculation would occur.

20 Proposal 7 makes the same type of
21 calculation, only at the producer milk level instead of
22 at the supply plant level. All of the qualifiers
23 reviewed in Items 1 above would also be in effect there
24 -- here. Additionally, we would make the wording
25 changes noted by the strike-through in bold text.

1 Proposal 7, 135.7, Pool Plant, D, Paragraph
2 3, strike the word "receipts", begin with "Deliveries
3 used in determining qualifying percentages shall be
4 milk transferred to, diverted to or", strike
5 "delivered", "from farms of producers pursuant to
6 Section 1000.9 Fee, delivered to and physically
7 received by plants described in Section 135.7A or B,
8 less any transfers or diversions of bulk fluid milk
9 products from such pool distributing plants."

10 Finally, we would support Proposal A by
11 saying that while there are no cooperative supply
12 plants on the market currently, See Market
13 Administrator Exhibit 6, the institution of our
14 proposals may create the desire for one. If so, we
15 offer Proposal 4 which would increase the cooperative
16 pool plant diversion delivery performance standard from
17 35 percent to 50 percent.

18 Proposal 4, 135.7, D, a milk manufacturing
19 plant located within the marketing area, that is
20 operated by a cooperative association, if, during the
21 month or the immediately-preceding 12-month period
22 ending with the current month, 50 percent or more of
23 such cooperative member producer milk and any producer
24 milk of non-members and members of another cooperative
25 association which may be marketed by the cooperative

1 association is physically received in the form of bulk
2 fluid milk products, excluding concentrated milk,
3 transferred to a distributing plant for an agreed-upon
4 use other than Class 1 at plants specified in Paragraph
5 A or B of this section either directly from farms or by
6 transfer from supply plants operated by the cooperative
7 association and from plants of the cooperative
8 association for which pooled plant status has been
9 requested under this paragraph, subject to the
10 following conditions.

11 Note. As the diversion limits increase --
12 decrease, we would anticipate that a handler may wish
13 to establish a cooperative supply plant under Section
14 135.7D. To do so, we propose that the standard be
15 raised from 35 percent to 50 percent to make sure that
16 an adequate performance level is met. No plants
17 qualify under this standard currently, so no current
18 plant would be affected.

19 Finally, with regard to our Proposal 2 and 9,
20 we'd note that a geographic distinction is made in this
21 provision and that was part of the provision prior to
22 Order Reform as a performance measure.

23 MR. BESHORE: That completes your -- the
24 statement part of your prepared testimony.

25 MR. HOLLON: Yes, it does.

1 DIRECT EXAMINATION

2 BY MR. BESHORE:

3 Q Okay. I'd like to turn to your exhibits,
4 Exhibit 33, the parts of that exhibit, please, Mr.
5 Hollon, and just go through these exhibits and make
6 sure the record reflects the manner in which they were
7 prepared, the sources of information that's provided,
8 and we'll go into a few questions on some of them,
9 explore some of the data in some of them.

10 First of all, Exhibit 33, Table 1, can you
11 describe what that information reflects and how you
12 prepared it?

13 A Table 1 was taken from the existing Order
14 language, and it was an attempt to summarize in a brief
15 form the conditions for -- under which a producer might
16 be able to divert and the handler diversion limits, and
17 it was prepared for the -- solely for the purpose of
18 showing that different orders have different standards.

19 Q Exhibit 33, Table 2, which has some
20 population data for Idaho and Utah by county, would you
21 describe the source of that information and how it was
22 prepared?

23 A This data was taken from the Market
24 Administrator data that's in Exhibit --

25 Q 36?

1 A And it reproduces the populations by state.
2 It does some sorting, does some summaries and -- and
3 notes that 69 percent of Utah's population is -- is
4 concentrated in six counties around the Salt Lake metro
5 area and 59 percent of the entire Order's -- of
6 -- of these two states in the Order's population is
7 concentrated in that area.

8 Q Okay. Would you do it for Exhibit 32, Table
9 3?

10 A Table 3 is the Comparison of Estimated Non-
11 Pool Plants Capacities by Type of Plant Location and --
12 Type of Plant and Location, Federal Order 135, Utah and
13 Idaho. The data from this table were put together from
14 DFA sources which include publication, web pages,
15 industry and media publications, things like press
16 releases and trade show-type publications, and the
17 summaries and the estimates were all made by DFA to
18 show that the non-pool plant -- estimated non-pool
19 plant capacity in Idaho to be approximately 500 million
20 pounds per month, and in Utah 105 million pounds per
21 month.

22 Q Okay. Now, you -- the -- the sequence does
23 not depict estimated capacities for each individual
24 plant. However, in compiling the exhibit, was it based
25 on individual plant capacity estimates which DFA has

1 compiled?

2 A It was. We -- we have a number for each
3 plant.

4 Q And can you -- you mentioned some of the ways
5 that you gathered that information, trade press, web
6 sites, public information. Did you also -- are you
7 also to privy some of the information by virtue of
8 trade agreements with the companies involved?

9 A In some cases, yes, and obviously some of
10 these are our own plants. So, we have that data.

11 Q You have a pretty good idea what they can do?

12 A Yes.

13 Q Okay. I'd like to focus on -- on the Idaho
14 information for just a moment. The estimated monthly
15 capacity of these non-pool plants is 500 million
16 pounds. What other -- these are all non-pool plants,
17 correct?

18 A Correct.

19 Q Okay. Now, the -- the remaining plant
20 capacity in the state of Idaho would be pool plants and
21 essentially pool distributing plants, is that correct?

22 A Correct. That's what we understand.

23 Q Okay. And their -- their production is
24 represented in the pool statistics and the state
25 information in the pool statistics the Market

1 Administrator has previously presented, correct?

2 A That would be true.

3 Q Okay. Now, I'd like you to -- to focus your
4 attention in Idaho on the plant capacity for the three
5 handlers who the record indicates are operators, have
6 been at one time or another the operators of
7 proprietary bulk tank handler pooling provisions.

8 Do you know what I'm talking about?

9 A Yes.

10 Q Okay. And those -- those three handlers
11 would be whom?

12 A Glanbia, Jerome and Sorrento. Those were
13 identified in the Market Administrator exhibit.

14 Q And right, the information provided by Mr.
15 Mykrantz?

16 A That's correct.

17 q Okay. Now, taking those three handlers and
18 aggregating the capacity for their plants in terms of
19 the information that DFA has, what monthly capacity is
20 represented by those three handlers?

21 A Somewhere in the range of 90 percent of the
22 500 million represented by those three.

23 Q Okay. Which would be in excess of 400
24 million --

25 A Correct.

1 Q -- pounds of capacity per month. Okay.
2 Let's -- by the way, in -- in later testimony, just
3 coincidentally and for everyone's advance notice, in
4 later testimony, you're going to talk in detail about
5 the capacity for DFA -- capacity and operating levels
6 of DFA's manufacturing non-pool plants in -- in Utah,
7 are you not?

8 A That is correct.

9 Q Okay. So, they can -- if somebody wants to
10 inquire about it, they can get a preview of that now,
11 but you're going to lay it all out later

12 A It would be a duplicate question.

13 Q Okay. Let's move to Table 4 of Exhibit 33
14 then. This has Charts A -- A through F in Table 4. Is
15 the source for each of those -- each of those charts,
16 individual charts identified on the -- on the exhibit?

17 A It is.

18 Q Okay. Now, is the National Agricultural
19 Statistics Service identified as the source for Chart A
20 on Table 4 of Exhibit 33? Is that the agency which you
21 referred to as "NASS" in your testimony?

22 A It is.

23 Q Okay. So, commonly, the initials N-A-S-S are
24 used to refer to that, and that's an agency of the
25 United States Department of Agriculture, is it not?

1 A Correct.

2 Q Now, I'd like to -- I'd like to look -- look
3 at the information in Table A with respect to the
4 production of milk in Idaho and Utah reported by the --
5 by NASS, by the USDA, and compare it, if we can, to the
6 milk presently being pooled in Order 135.

7 If I represent to you that -- first of all,
8 the Table D, what I'll call Chart D, of Table 4 is some
9 information regarding sources of milk for Order 135,
10 what states they came from, is it not?

11 A That is true.

12 Q Okay. Now, for what time period is that
13 information on the --

14 A That information was taken by the Market --
15 taken from the Market Administrator's publication for
16 the month of December of each month, and it was taken
17 from the publication that showed the number of
18 producers and pounds by state and county. So, there
19 was a sum for Idaho, sum for Utah, and a sum for the
20 Order.

21 Q Okay. So, the source or the -- the time
22 period for the numbers in -- in Chart D is December,
23 just one month, --

24 A Yes.

25 Q -- December of 2001? Okay. Do you have

1 information for the full year of 2001 that is in the
2 Market Administrator's Exhibit --

3 A I do.

4 Q -- 6?

5 A Yes.

6 Q Okay. Now, if we wanted to put another
7 column on our Chart D, Table 4, Exhibit 33, for the
8 full year 2001, can you provide those -- those figures,
9 first of all, for the state of Idaho?

10 A It would be 2.665 billion for 2001.

11 Q For the year 2001, 2.665 billion --

12 A Yes.

13 Q -- pounds of milk produced in the state of
14 Idaho were pooled on Order 135, correct?

15 A Right.

16 Q Okay. And for the state of Utah?

17 A For 2001, 1,316,000,000.

18 Q Could you repeat that, please?

19 A 1,316,000,000.

20 Q Okay. Do you have the Order 135 total for
21 the year 2001?

22 A 4713.

23 Q And the percentages from the two states would
24 be what?

25 A 56.5 Idaho, 27.9 Utah.

1 Q Okay. Now, focusing on the figures for the
2 year 2001, could you compare the -- for the state of
3 Idaho, the total milk produced in the state of Idaho as
4 reported by the National Agricultural Statistics
5 Service which you've reported in Chart A on this
6 exhibit for the year and the amount that has been
7 pooled?

8 A The NASS number for Idaho was 7,757,000,000,
9 and the amount reported pooled by Order 135,
10 2,665,000,000.

11 Q And that's approximately a little better than
12 one-third of the milk produced in Idaho was pooled in
13 2001 on Order 135, is that correct?

14 A That is correct.

15 Q Now, in other words, there was -- looked at
16 another way, there's five billion pounds -- more than
17 five billion pounds of milk produced in Idaho that's
18 not pooled on Order 135, correct?

19 A That would be correct, also.

20 Q By the way, if I represent to you that only -
21 - that the Market Administrator's Exhibit 5 shows that
22 in 2001, 211 million pounds from Idaho were pooled on
23 the Pacific Northwest Order, how much does that leave
24 of production in Idaho that's still not pooled in
25 either one of these Orders in the region?

1 A If you'd represent that number, I would agree
2 with you. Seven billion -- oh, wait. 4,881,000,000.

3 Q Okay. So, 4,881,000,000, approximately?

4 A Yes.

5 Q Okay. So, would it -- would those figures
6 demonstrate, among other things, that in spite of the
7 fact that pooling provisions in -- in this Order are
8 quite permissive at the present time, there's still
9 five -- nearly five billion pounds of milk in the state
10 of Idaho that's not on this pool?

11 A That would be a good approximation.

12 Q Or any other federal order pool in the
13 region?

14 A In the region, yes.

15 Q Okay. Okay. Now, let's look at Utah. The -
16 - the total production in Utah, as reported by NASS, in
17 -- by the way, on Idaho for a minute, is there any
18 amount of Grade B production, any substantial amount,
19 to your knowledge, of Grade B milk production in Idaho
20 that would be reflected in those NASS figures that
21 would materially change them?

22 A There is some Grade B milk production but not
23 very much, and it would not be a material number.

24 Q Okay. Let's move to Utah then. The
25 production -- total production in Utah in 2001 as

1 reported by NASS was 1.635 billion, is that correct?

2 A That's correct.

3 Q Okay. And you indicated, I believe, that
4 1.316 billion was pooled on Order 135?

5 A That is correct. That would leave 319
6 million as the difference between the two. Again,
7 there is some Grade B milk in Utah, not a lot, and
8 there is some Utah milk that is pooled on Federal Order
9 1 and that would account for substantially all of that
10 difference.

11 Q Okay. How -- you say there's some Utah milk
12 pooled on Federal Order 1. How is that?

13 A In the -- there's a plant in Utah that causes
14 distribution of its products and because of the way
15 Order regulations are written finds itself having Class
16 1 distribution in Federal Order 1. So, that plant
17 becomes pooled in Federal Order 1, and yesterday, when
18 Mr. Marshall was asking me about that, I was asleep at
19 the switch.

20 I am aware that the application of the
21 individual state order provisions are in effect, and
22 one case then would be this milk is pooled in Federal
23 Order 1 and is affected by that transaction.

24 Q Okay. I wanted to --

25 A There is --

1 Q I wanted to talk about the plant a little bit
2 first and then get into the Order --

3 A Okay.

4 Q The Order 1 stuff. But just for -- so the
5 record's clear, what plant is it in the state of Idaho
6 that is pooled on Order 1?

7 A The Dannon Yogurt Plant.

8 Q Okay. And that is a pooled distributing
9 plant on Federal Order 1, is it not?

10 A Yes.

11 Q Because the product they produce there is a
12 drinkable yogurt product?

13 A That's true.

14 Q That is classified as Class 1?

15 A Correct.

16 Q Okay. And it's pooled in Order 1 because
17 more -- a majority or whatever the qualifying
18 percentage is of that product is distributed in the
19 Northeast, in the New York and the Northeastern
20 marketing area, correct?

21 A That's right. The distribution network that
22 it has and the Order regulation calculations pooled it
23 in Order 1.

24 Q Okay. But it's supplied by dairy farms in
25 the state of Utah primarily?

1 A Yes.

2 Q Okay.

3 A Primarily.

4 Q Okay. And now, with respect to the Order 1
5 regulations, Order 1 has, as you testified yesterday,
6 regulations that are substantially similar to those
7 that DFA has proposed in this hearing be adopted for
8 Order 124 and Order 135 relating to milk pooled on the
9 Order from distant states, correct?

10 A That is true.

11 Q And Mr. Marshall asked you yesterday, you
12 said you were asleep at the switch, those regulations
13 in Order 1 are -- are operative with respect to, for
14 instance, the milk in Utah that's pooled in Order 1
15 through the deliveries to the Dannon plant, correct?

16 A That is true.

17 Q Okay. So, your ability to pool in Order 1
18 with respect to those Class 1 deliveries to the Dannon
19 Yogurt Plant are defined by the regulations of Order 1
20 as they would relate to milk that's in Order 1, is that
21 correct?

22 A That is true. That is right.

23 Q Okay. And you can't load Order 1 with any
24 more milk than somebody who is in Order 1 could --
25 could pool on it --

1 A That's right.

2 Q -- with the same milk supply? Okay. Are you
3 aware, also, that there's milk from other out-of-area
4 states that has been pooled on Order 1 utilizing the
5 same regulations we're -- we've been alluding to?

6 A There is -- there is milk supplies I'm aware
7 of in Minnesota that are pooled under the same
8 regulations that -- and provisions.

9 Q Okay. And -- and also, perhaps in the state
10 of Wisconsin?

11 A Yes, there may be. There may be some in the
12 state of Wisconsin, also.

13 Q Okay. And the same thing applies to those
14 milk supplies in those states as we've discussed in
15 terms of the principle that if you're out of area, you
16 produce -- you -- you can pool just fine if you
17 perform, but at the same rate as people who are in the
18 area?

19 A That is correct.

20 Q Okay. Let's go on then to Table 5 in Exhibit
21 33, if you would, Mr. Hollon. Actually, one -- one
22 other question on the information relating to
23 production in the state of Idaho.

24 What diversion limit would you need in Order
25 135 if the plants in Idaho wanted to pool all their

1 milk on the -- on the Order?

2 A I would have to try to calculate that. I
3 hadn't thought about that as the question. I'd have to
4 go look.

5 Q Now, you --

6 A I suspect it would be --

7 Q -- would have to think about that --

8 A -- that 99 number that was in the Western
9 Order.

10 Q 99.9 maybe or something?

11 A Perhaps.

12 Q Okay. Let's go to Exhibit 33, Table 5 then.
13 What -- what is this information, and how did you
14 compile it?

15 A The purpose for this information was to try
16 to come up with some way to measure the relationship of
17 Class 3 poolings to Class 1 poolings, and in order to
18 do that, I wanted to try to take the seasonality or to
19 index the figures to try to get a more comparable
20 basis. So, Column 1, 2, 3 and 4, labeled Class 1, 2,
21 3, 4, are simply Market Administrator-published pounds
22 of milk pooled in the Western Order and total under the
23 column labeled "Pounds". So, in January of 2001, it
24 was 322.6 million pounds pooled on the Order in total.

25 The daily volumes of Class 1 and Class 3 is

1 nothing more than the -- the pounds in the month
2 divided by the days in the month, and then I attempted
3 to create -- to index those pounds in some comparison
4 so that I could see what the relationships existed.
5 So, for the Class 1 purpose, the three-month average in
6 the Fall months, September, October, November, of 2001
7 -- that should be 2000 and 2001, I guess. I'm not
8 forecasting here.

9 JUDGE CLIFTON: I'm sorry, Mr. Hollon. Where
10 are you changing?

11 MR. HOLLON: The -- the month, year and month
12 labels that read currently January '01 and January '02
13 and the '01 should read '00 and the '02 should read
14 '01.

15 JUDGE CLIFTON: I understand this is to the
16 far left of this Table 5.

17 MR. HOLLON: Yes, ma'am. The index value
18 then for Class 1 would be -- is nothing more than the
19 average of 2.8 plus 2.8 plus 2.9 plus 2.7 plus 3 plus 3
20 for a 2.9 average of those three -- those six months
21 and the same type of calculation was made for Class 3
22 pounds, and I chose to omit the October 2001 data
23 because in that particular month, large quantities of
24 Class B were depooled for reasons of price. So, it
25 would have had an effect on my chart. That was really

1 not in the relationship. It wasn't caused -- it was
2 caused by the relationship that I wasn't attempting to
3 measure, and the chart itself then is on the next page,
4 and the line with the squares in it that hovers at
5 about the 95-percent value is the Class 1 pounds index,
6 and the chart that -- the line that is marked by the
7 triangles is the index value of the Class 3.

8 The Class 1 line does not have a tremendous
9 amount of variation in it, and the Class 3 line shows a
10 large increase in the Spring months and a tremendous
11 decrease in the Fall months. Just about the time that
12 milk was needed by the market, there's a pretty
13 dramatic disappearance and that trend shows through in
14 both years, and this would be a trend that would be
15 greater than be could explained by the normal seasonal
16 milk production changes, and so the -- the -- the
17 intent of this exhibit, which is to point out that in
18 the Fall months when milk is needed the most, it seems
19 to leave the marketplace for, you know, some reason.

20 BY MR. BESHORE:

21 Q Okay. So, Chart -- that -- I think you're
22 referred to that as Chart 1.

23 A Yes.

24 Q Chart 1 is just simply a graphic depiction or
25 a charted depiction of the data on Exhibit 33, Table 5.

1 A That is correct.

2 Q Okay. Let's turn then to Exhibit 33, Table
3 6, if you would.

4 A Exhibit --

5 JUDGE CLIFTON: Before we do, at the bottom
6 of Chart 1, where it says January '01, you want that to
7 read January '00?

8 MR. HOLLON: Yes.

9 JUDGE CLIFTON: And midway through the chart
10 where it says January '02, we want that to read '01?

11 MR. HOLLON: Yes.

12 JUDGE CLIFTON: Thank you.

13 MR. BESHORE: Thank you, Your Honor.

14 BY MR. BESHORE:

15 Q Can you tell us, Mr. Hollon, what Exhibit 33,
16 Table 6, is?

17 A This table is -- is a -- a compilation of
18 some Order provisions and the Class 1 utilizations that
19 were present in the predecessor Orders to the Western
20 Order. In Federal Order 139, the former Great Basin
21 Order, those provisions called for supply plants to
22 perform at a 50-percent level. They did -- it did
23 allow for a free ride period. There was some months
24 that the supply plant did not have to ship in order to
25 remain associated with the pool. Those months were

1 March through July.

2 The individual producer diversion limits were
3 75 percent and the Class 1 utilization in '95 through
4 '99 was, beginning in '99 and reading down, 51, 46, 37,
5 35 and 35.

6 In the former Federal Order 135, Southwestern
7 Idaho, the columns are designed to represent the same
8 things, and there, supply plants had to ship 25 percent
9 of their volume. There was a free ride period, that
10 was March through July, and the individual producer
11 diversion limit was 80 percent. In that market, the
12 Class 1 utilization in '99 was eight percent, '98 13,
13 '97 eight, '96 seven.

14 Q Now, those utilization -- Class 1 utilization
15 figures are year -- yearly --

16 A Correct.

17 Q -- aggregate numbers?

18 A Correct.

19 Q Okay.

20 A And in the Western Order for the two years
21 for which we have data, the supply plant percentage
22 number in the Order language is 35 percent. There is a
23 free ride period, March through August, and the
24 individual diversion limit is 90 percent. The
25 individual producer diversion limit is 90 percent, and

1 the Class 1 utilization under the Order is 26 in 2000
2 and 23 in 2001, and now the comparison that was drawn
3 out of here would be that the individual's diversion
4 limits were increased 75 in one Order and 80 in the
5 other Order. So, it wasn't you can pick one or the
6 other or somewhere in between, and that the Class 1
7 utilization was declined quite a bit from the Great
8 Basin Order to the Western Order and gone up from the
9 Southwestern Idaho to the Western Order.

10 Q Okay. So, when you compare the Western Order
11 with the predecessor Orders, as far as -- and I want to
12 go column-by-column here. As far as the supply plant
13 percentages are concerned, there are no supply plants
14 on the Order at present, correct?

15 A Correct.

16 Q Do you know if there were any supply plants
17 on the Orders, on the predecessor Orders?

18 A In the Great Basin Order, there were supply
19 plants from time to time. Like I know that there were
20 some. I can't tell you if they were there continuously
21 or not, and I am not aware in the Federal Order 135.

22 Q Okay. But at any -- at any rate, presently,
23 that number is not a number that is actually having any
24 impact on the marketplace in terms of --

25 A That's correct.

1 Q -- anybody using it?

2 A That's correct.

3 Q Okay. Now, with respect to the free ride
4 period, first of all, is the free ride period
5 applicable only to supply plants?

6 A Yes.

7 Q So that, I guess, is it applicable to
8 cooperative manufacturing plants as well?

9 A Yes, I think --

10 Q Of which there are none at present --

11 A There are none.

12 Q -- in the Order?

13 A But I think the -- I would think the way the
14 provision works, you'd have to ship over and over a 12-
15 month period. So, there's an average computed in
16 there. So, I don't know if -- I don't think it's an
17 apples and apples comparison that they have perfected
18 or not.

19 Q Okay. If it's -- if it's applicable or
20 whatever it is, the Order regulations show it, --

21 A That's right.

22 Q -- and there's nobody using that right now?
23 The -- so, the free ride period is not presently
24 affecting the pooling of milk on Order 135, correct?

25 A That is correct.

1 Q But the diversion limit is affecting the
2 pooling of milk on Order 135, is it not?

3 A That is true.

4 Q And what happened here is that in the reform
5 process, the diversion percentage was set at a level
6 that was higher, more permissive or more liberal, than
7 either of the predecessor Orders, correct?

8 A That is correct.

9 Q Okay. And has that contributed to the -- and
10 is that contributing to the Class 1 utilization at
11 present time in the Order?

12 A It is.

13 Q And to the level of the blend price or the
14 producer's price differential payable to producers
15 supplying the Order?

16 A It would be a factor in the level of that
17 price, also.

18 Q By the way, would this information with
19 respect to the predecessor Order 135 indicate that even
20 at a diversion percentage of 80 percent, you might only
21 get a seven- or eight-percent utilization?

22 A Repeat that.

23 Q Well, it appears to me, if I'm reading the
24 information correctly or understanding it correctly,
25 with the diversion percentage of 80 percent in Order

1 135, the predecessor, in '96, '97, '98, '99, there were
2 very low utilizations?

3 A That is right.

4 Q Okay. Now, perhaps there were actions that
5 suspended that diversion limitation or something during
6 that period of time, --

7 A That could be true.

8 Q -- I don't know, but it -- the utilizations
9 were quite low in any event?

10 A That's right.

11 Q Okay. Let's look at the Table 7 then of
12 Exhibit 33.

13 A Purpose for this table was to try to give
14 some marketwide effect of our diversion limits proposal
15 of 70 percent and make just some general comparisons to
16 a lower level and the current level, and again this
17 comparison is done for the marketwide effect. I'm not
18 sure if we can have Order provisions that are written
19 for specific players in the Order, specific parties in
20 the Order. I suspect we would all like to do that and
21 write them for ourselves.

22 But the -- on the marketwide basis, the way
23 this computation was made is I made an assumption that
24 the Class 1 and Class 2 pounds would be the deliveries
25 under which the diversion limit was measured. So, I

1 took for what should read January of 2000, so that
2 needs to be corrected, --

3 Q January '00 and January '01. These are for
4 -- again, the database you're using is the data for the
5 years 2000 and 2001?

6 A That is true.

7 Q Okay.

8 A And --

9 Q Perhaps you could just take January 2000 and
10 -- and go across from left to right, across the
11 information, and I -- explain what -- what you did in
12 each column.

13 A Column F is the sum of Columns A and B, 83.9
14 and 32.1.

15 Q Okay. So, to get the base from which you
16 were going to apply your hypothetical diversion
17 limitations, --

18 A Yes.

19 Q -- the base you calculated by taking both the
20 Class 1 and Class 2 volumes, correct?

21 A That is correct.

22 Q And why did you take the Class 1 and Class 2
23 volumes?

24 A I thought that would be a reasonable
25 assumption from which to measure and most fluid

1 customers would -- would demand that you deliver that
2 volume to them. They would seek that as a supply as
3 deliveries to their plant.

4 Q Is that because frequently, pool distributing
5 plants, Class 1 plants, have -- also process some milk
6 for Class 2 products at those plants?

7 A That is true.

8 Q Okay. And deliveries to those plants, as
9 long as they're pool distributing plants, are --
10 established eligibility for diversion?

11 A Yes.

12 Q Okay. So, the -- the base, if you will, are
13 the total Class 1 and 2 pounds in Column F. Move on
14 then to Column G.

15 A In Column G to Column F, they divided by one
16 minus .43 to get an idea of how many pounds would be
17 poolable, based off of that delivery. It's an
18 arithmetic calculation. So, that says if I delivered a
19 116.1 pounds or million pounds, and I had that as a
20 diversion limit, I could pool 203.6 million pounds.

21 Q Okay. So, Column G is testing how many
22 pounds can be pooled on the basis of a diversion
23 percentage of 43 percent, is that correct?

24 A That's correct.

25 Q And 43 percent was the number that you

1 testified to in your statement that represents three
2 days a week --

3 A Right, right.

4 Q -- of production?

5 A That is correct.

6 Q Okay.

7 A That was simply an explanation of -- of a
8 typical week's market. We're not proposing that as a
9 standard, that might not even be a reasonable standard
10 at this moment, but just for a comparison basis, that
11 would -- that would allow 203.6 million pounds to be
12 pooled. Compare that 203.6 by what was actually pooled
13 in that month, 322.6, and that would be a shortfall.
14 You would not be able to pool as much milk under the
15 Order by a 118.9 million pounds, and if the standard
16 were that, it would not be a single month in this two-
17 year period where the amount of milk that was pooled
18 could be pooled.

19 Q Okay. So, your -- your -- your information
20 in Columns G and H test how much milk could be on the
21 -- could be in the pool if the diversion percentage was
22 43 percent, and what you found was the milk that had
23 been pooled -- that that diversion percentage would not
24 accommodate all the milk that has been pooled in the
25 Order?

1 A That is correct.

2 Q Okay. Now, does the next two columns test
3 the diversion limit at 70 percent?

4 A The next two columns test the diversion limit
5 at 70 percent by making the same type of calculation,
6 same type of comparison.

7 Q And what did you -- what did you find when
8 you made that calculation?

9 A That again, when applied to a marketwide
10 basis, that there were 1-2-3-4 -- there were four
11 months out of 24 when the entire volume of milk that
12 had been pooled could not be pooled, and the remaining
13 months accommodated that volume plus additional volume.

14 Q So, would you say just very roughly that
15 taking the market at its present -- even at its present
16 diluted level, 70 percent diversion limitation would
17 accommodate all that milk in the aggregate?

18 A In the aggregate, from a marketwide basis,
19 yes, it would be a -- in our view, a reasonable
20 diversion limit.

21 Q Okay. Now, in the aggregate, how much milk
22 does the present 90-percent diversion limit provide
23 for?

24 A A charitable level. Looking down Column L,
25 it would be far greater than -- than now, perhaps not

1 enough to accommodate the entirety of the Idaho
2 production but would accommodate a large amount.

3 Q Okay. So, under the present 90-percent
4 diversion limitation, there is -- there's enough
5 looseness in the regulations viewing the market on
6 aggregate to pool hundreds of millions of pounds of --
7 of additional milk. Is that what you --

8 A That is true.

9 Q -- found? Okay. Let's move then to the
10 attachment, what you marked as Attachment 8 of Exhibit
11 33.

12 A These are two documents. The first one is
13 three pages, and the second one is a single page, and
14 they depict some information about the milk payment
15 schemes and patterns of the Davisco Foods Plant in
16 Idaho and the Avonmore West Plant. This is information
17 that we acquired as a part of our every-day procurement
18 activities in terms of calling on producers, in terms
19 of talking to -- to producers in the marketplace,
20 asking them what their view of things are, if they
21 might be interested in DFA members, and this is
22 information that they have shared with us, and so that
23 was -- that's the source of these documents.

24 JUDGE CLIFTON: If I might interrupt, just so
25 that the transcript has the spelling of the name right,

1 would you read what the letterhead says?

2 MR. HOLLON: The first document -- the first
3 three-page document is printed on the letterhead
4 stating Davisco Foods International, and that's spelled
5 D-A-V-I-S-C-O Foods International.

6 BY MR. BESHORE:

7 Q Okay. Now, since this document is a
8 photocopy of a fax of a fax, I guess, would you take --
9 take just a minute and so that the record reflects what
10 it says and read it for the record, please, Mr. -- Mr.
11 Hollon? It's addressed to all Jerome Cheese Producers,
12 is that correct?

13 A That is the way I read that.

14 Q Okay. And proceed from there.

15 A From Jon Davis regarding milk prices, date
16 August 5, 1977.

17 MR. VETNE: Your Honor, may I interpose an
18 objection here?

19 JUDGE CLIFTON: You may, Mr. Vetne.

20 MR. VETNE: This -- this exhibit and the
21 whole package has been received. It's part of the
22 record. It's in evidence. We are all experiencing a
23 little discomfort in constraint of time. I -- I think
24 it's redundant to read into the record what has already
25 been received in the record.

1 JUDGE CLIFTON: It's not legible.

2 MR. BESHORE: And that's why it's important
3 to -- not to interrupt.

4 JUDGE CLIFTON: Some portions are not clear.
5 Now, I don't know why this witness can read it when I
6 can't. I do need to know that, but I -- I can't --
7 without just guessing, I can't tell where the
8 beginnings of the words are on the left or the endings
9 of the words are on the right.

10 Mr. Hollon, why is it that you can tell?

11 MR. HOLLON: I guess I've spent more time
12 studying it, and you've looked at it for a few moments,
13 but I'm quite confident if we sat down for a few
14 minutes, you would be pretty comfortable with the same
15 reading that I would come up with.

16 JUDGE CLIFTON: All right. I -- I would
17 welcome Mr. Hollon's assistance in this regard, Mr.
18 Vetne.

19 MR. VETNE: Your Honor, I still have the
20 objection. It's there and as legible or illegible to
21 anybody as it is to Mr. Hollon. However, the author of
22 this letter, Jon Davis, will be a witness later on. If
23 there's anybody that can clear this up, I don't think
24 we should rely on Mr. Hollon's speculation as to what
25 it contains. We can all study it for hours and --and

1 come to our own conclusions.

2 MR. BESHORE: I would welcome a clear legible
3 copy of the document from -- from Mr. Vetne, if, you
4 know, if he would provide it for the -- for the record.
5 We're quite confident we know what it says, and we can
6 make that clear for the record, but if we've got one
7 that is an original clear and legible for the record,
8 that would be great.

9 JUDGE CLIFTON: All right. Mr. Vetne, do you
10 know whether we can get a better copy?

11 MR. VETNE: I don't at the moment. I just
12 saw this for the first time.

13 JUDGE CLIFTON: Okay. You may have some help
14 here.

15 MR. DAVIS: I can clear it up. Couple
16 things. Next time, Elvin, you need a document from me,
17 you don't have to sneak around and get it. You can
18 call me, I'll give it to you.

19 MR. VETNE: This is Jon Davis.

20 MR. DAVIS: I'm sorry. Jon Davis.

21 JUDGE CLIFTON: Mr. Davis, if you'd spell
22 your first name, please?

23 MR. DAVIS: J-O-N.

24 JUDGE CLIFTON: All right. And are you the
25 author of this letter?

1 MR. DAVIS: I am.

2 JUDGE CLIFTON: All right. If you do not
3 have a more legible copy available, would you read this
4 into the record?

5 MR. DAVIS: I could, but it's really
6 irrelevant because it's quite old, and it's no longer
7 how we price milk, and it hasn't been for some time.

8 JUDGE CLIFTON: All right.

9 MR. DAVIS: So, it's really irrelevant.

10 JUDGE CLIFTON: I'll hear your testimony at a
11 later point. If you don't want to read it in, then I
12 will have Mr. Hollon read it.

13 MR. DAVIS: You -- he can certainly read this
14 in.

15 JUDGE CLIFTON: All right.

16 MR. DAVIS: But it -- it's -- it's
17 irrelevant. It's no longer in existence.

18 JUDGE CLIFTON: Thank you.

19 MR. DAVIS: But next time, Elvin, you don't
20 have to send your field man to the dairy. You can call
21 me.

22 JUDGE CLIFTON: Mr. Davis, hold off.

23 MR. DAVIS: Okay.

24 JUDGE CLIFTON: Thank you.

25 MR. DAVIS: This is a little frustrating.

1 JUDGE CLIFTON: Mr. Hollon, please proceed
2 with reading the letter into the record.

3 MR. HOLLON: "As you are all now aware, as of
4 August 1, 1977, Jerome Cheese" --

5 MR. DAVIS: 1977.

6 JUDGE CLIFTON: Go more slowly because since
7 you're not the author of this, I want to make sure you
8 don't leave out any words. So, start again.

9 MR. HOLLON: Okay. "As you are all now
10 aware, as of August 1, 1997, Jerome Cheese will begin
11 buying milk based on a new formula. This formula will
12 be reflective of the Chicago Mercantile Exchange cheese
13 price for 500-pound barrels and 640-pound blocks.

14 Jerome Cheese produces 500-pound barrels and
15 640-pound blocks in differing amounts on a month-to-
16 month basis. Jerome Cheese will pay for milk monthly
17 based on our percent of 500-pound barrels and 640-pound
18 blocks manufactured during that month.

19 Historically, we have produced 60-percent
20 barrels and 40-percent blocks in the Winter months and
21 about 90-percent barrels and 10-percent blocks in the
22 Summer months. We expect that to continue in the
23 future but ultimately that will be determined by our
24 customers.

25 Due to the various rules and regulations in

1 the Federal Order in Idaho, there can be months where
2 it is advantageous to Jerome Cheese and to producers to
3 be involved in the Federal Order. In order to
4 economically accomplish this, we will have to pool some
5 milk from each producer every month. Satisfying the
6 Order requirements in this fashion will force us to
7 have two checks for each Grade A producer."

8 JUDGE CLIFTON: Two?

9 MR. HOLLON: "... milk checks for each Grade
10 A producer. One will be for milk that is associated
11 with the Federal Order and the other one will be for
12 milk not pooled in the Federal Order system.

13 This will allow us to keep all of our
14 producers eligible to pool their milk on the Federal
15 Order. In turn, this will allow us to pool all of the
16 milk in months where it is advantageous to do so. Case
17 in point would be a month with a large milk price drop.

18 We are certain that by paying for milk in
19 this fashion, we will put ourselves in position to
20 return the highest milk price to our producers. The
21 gross amount of this check will be based on a cheese
22 yield formula that will reflect the amount of cheese we
23 are able to produce from 100 pounds of a certain test
24 milk. The formula is as follows:" --

25 JUDGE CLIFTON: Excuse me. That -- that says

1 a 100 pounds of a certain test milk?

2 MR. HOLLON: Yes, ma'am.

3 JUDGE CLIFTON: All right. Thank you.

4 MR. HOLLON: "The formula is as follows:
5 (.93 times butterfat) plus (.78 times protein) minus 1)
6 times 1.09) divided by 1 minus moisture and equates to
7 a yield at 3.5 percent butterfat divided by 3.2 percent
8 protein of 9.6224 pounds per hundredweight. This yield
9 is multiplied by the weighted average block cheese
10 price for the month" --

11 JUDGE CLIFTON: The average?

12 MR. HOLLON: "... cheese price for the month
13 based on our production mix of 640-pound blocks and
14 500-pound barrels in the Chicago Mercantile Exchange
15 cash cheese price.

16 In addition to this price, we will pay a
17 somatic cell bonus based on the attached bonus summary.
18 Jerome Cheese will continue to be the premium buyer of
19 milk in Idaho as we have been since we began buying
20 milk in 1992.

21 If you have any questions, feel free to give
22 Mark or myself a call at your convenience."

23 MR. BESHORE: Okay.

24 JUDGE CLIFTON: Thank you, Mr. Hollon.

25

1 BY MR. BESHORE:

2 Q Could you go to the last page of Exhibit 33,
3 Mr. Hollon?

4 A The last page?

5 Q Which is the Avonmore West -- the title at
6 the top, Avonmore West Milk Pricing System. Do you see
7 that?

8 A Yes.

9 Q Okay. Is Avonmore West, Inc., a handler or
10 who -- who is that at the present time?

11 A That is the Glanbia West -- Glanbia Company.

12 Q Okay. And this document represented the
13 cheese price formula that they were utilizing to pay
14 their dairy farmers for milk production?

15 A That's correct.

16 Q Okay. Now, --

17 MR. VETNE: Excuse me. I need to make an
18 objection, Your Honor.

19 JUDGE CLIFTON: Mr. Vetne?

20 MR. VETNE: Because I -- I think there's a
21 lack of foundation for -- I should have jumped up
22 sooner -- for the last set of answers. The witness
23 testified that Avonmore West, Inc., is now -- what did
24 you say?

25 MR. HOLLON: Glanbia Foods.

1 MR. VETNE: It's now Glanbia Foods, Inc.

2 MR. HOLLON: Is that --

3 MR. VETNE: Is it --

4 MR. HOLLON: The companies are the same. I
5 may have the names not correct, but the companies are
6 the same or the intent of the companies is the same.

7 MR. VETNE: I see two different company
8 names, and they're both corporate. Do you have
9 information that in fact the corporations are the same
10 entity? Are we --

11 MR. BESHORE: Have we gone to cross
12 examination?

13 MR. VETNE: No. This has to do with the
14 relevance of this document, which, you know, I guess
15 we've received it, and it may be relevant to show
16 Avonmore West, Inc., pricing some years ago, but
17 there's no foundation for attributing whatever Avonmore
18 West corporate entity did as this witness has just done
19 to Glanbia today.

20 Unless this witness with some foundation and
21 personal knowledge or documentation can show that the
22 corporate entities are the same and that the names have
23 merely changed, I don't know, but the foundation has
24 not been laid for the conclusion that this represents
25 conduct of anybody that now markets milk in the market.

1 Thank you.

2 JUDGE CLIFTON: Wait, Mr. Vetne. You may
3 continue with your Voir Dire of this witness on this
4 document as you wish. Do you have any other questions
5 to ask him?

6 MR. VETNE: yeah. My question was -- I will
7 ask that.

8 VOIR DIRE

9 BY MR. VETNE:

10 Q There may be some relevance to this as
11 Avonmore West pricing, but, Mr. Hollon, --

12 A Yes?

13 Q -- do you have evidence demonstrating that
14 Avonmore West, Inc., and Glanbia Foods, Inc., are in
15 fact the same company entities?

16 A I believe that to be true.

17 Q Do you know that -- I understand you believe
18 it. Do you have documentation that -- that is the
19 case, that it's simply a name change and not different
20 corporate entities?

21 A Are we dealing with a legal chase here?

22 Q We're dealing with -- we're dealing with --
23 the person whose milk pricing formula you have
24 attached, --

25 A Hm-hmm.

1 Q -- we're dealing with who that person is and
2 whether that person is the same person as Glanbia.

3 A Okay.

4 MR. BESHORE: Can I get a word in?

5 JUDGE CLIFTON: Mr. Beshore, of course.

6 MR. BESHORE: I -- I -- I think, you know,
7 the -- the counsel for Glanbia Foods will have an
8 opportunity to present whatever information they wish
9 to present with respect to Glanbia Foods present or
10 past milk procurement programs in -- in Idaho.

11 Everyone in the room knows that Glanbia
12 acquired, succeeded to, merged or otherwise is the
13 present owner and operator interest of the Avonmore
14 West cheese production facilities in Idaho. Now,
15 that's the reason that the -- that the document has
16 been offered. It's certainly probative of the Idaho
17 cheese industry and its practices, and if it has to be
18 clarified in some way or otherwise impeached,
19 discounted or deregulated, Mr. Vetne will have an
20 opportunity.

21 JUDGE CLIFTON: Well, true, Mr. Beshore, but
22 even before we get to his opportunity, we should have
23 some foundation laid for the usefulness of this
24 document.

25 Now, if it's to illustrate a way that, for

1 example, people involved in the milk industry in Idaho
2 can take advantage of the provisions of Order Number
3 135, then it may be illustrative, even if it's old.
4 So, I can see some possible value for the document.

5 Nevertheless, I would like this witness to
6 lay as adequate a foundation as he can, based on how he
7 acquired it, as to when it was created, what it was
8 used for, whether it was part of the letter that he's
9 just read into the record, or from some other source --

10 MR. BESHORE: Okay.

11 JUDGE CLIFTON: -- and so forth.

12 MR. BESHORE: We can -- we can --

13 JUDGE CLIFTON: So, --

14 MR. BESHORE: -- ask more questions about it.

15 JUDGE CLIFTON: -- I -- I would like you to
16 lay more foundation for where it came from.

17 MR. BESHORE: Okay. Well, it's already been
18 admitted, and it's part of the record, and Mr. Vetne
19 had an opportunity to object at the time, and he didn't
20 --

21 JUDGE CLIFTON: Not really.

22 MR. BESHORE: -- do that.

23 JUDGE CLIFTON: I've been taking -- I've been
24 taking these direct testimony documents -- documents in
25 just as quickly as I could, as you know, and if there's

1 some question about some portion of it, I would like to
2 address that.

3 MR. BESHORE: Okay.

4 DIRECT EXAMINATION (RESUMED)

5 BY MR. BESHORE:

6 Q Mr. Hollon, was --

7 A Let me start over here.

8 Q Yeah. Go ahead and tell us -- tell us where
9 you got the document and why you're -- what you think
10 it -- it adds to our information here with respect to
11 --

12 A Okay.

13 Q -- milk procurement practices by the cheese
14 industry in Idaho.

15 A These two documents came into our possession
16 as a part of regular every-day routine business, where
17 our field service force staff calls on dairy farmers.
18 Frequently and almost every time, those conversations
19 ultimately revolve around price questions, and as a
20 part of those questions back and forth, there's always
21 give and take between, you know, what the -- what did
22 your organization pay, what does this organization pay
23 for milk.

24 This particular document was obtained by one
25 of our member service reps when he was -- he or she was

1 on a farm and that farm represented that they delivered
2 milk to this particular business that is either
3 Avonmore West or Glanbia Foods, but that -- that was
4 very clear. That's where the producer delivered his
5 milk, and he said this is how I get paid. Can you do a
6 better job of paying me? That was usually the type of
7 conversation that took place.

8 So, there would be no real doubt that that
9 producer was -- was getting paid under this scenario.
10 Now, whether that was last week or last month or a
11 month or two ago or a year or two ago. The date, I do
12 not know, but that would be the way that the document
13 came into play, and there would be no reason to think
14 that it's not representative of how that particular
15 producer was saying that he got paid.

16 Q Okay.

17 JUDGE CLIFTON: Can you identify, Mr. Hollon,
18 when your field service person came into possession of
19 the document?

20 MR. HOLLON: I cannot.

21 JUDGE CLIFTON: All right. Can you tell me
22 what year that happened?

23 MR. HOLLON: The best I could tell you would
24 be over the last year or two years because as we
25 gathered information for the record, we asked our local

1 employees if they had any information of this type, and
2 one came up with this in his particular file based on
3 his conversation with producers. You know, it was
4 labeled, and it's of the general nature that we know to
5 be reasonable, that these type of formulas are not --
6 you know, they're not mysticism, and that -- that this
7 is paid for and procured in Idaho today under these
8 scenarios.

9 JUDGE CLIFTON: All right. Thank you.
10 That's adequate foundation for my purposes.

11 Mr. Beshore, you may continue your questions
12 of Mr. Hollon about this document.

13 MR. BESHORE: Okay. Thank you, Your Honor.

14 BY MR. BESHORE:

15 Q With respect to payment for milk on -- on
16 cheese product formulas generally, can you tell us, Mr.
17 Hollon, you know, what -- what that is? What it --
18 what it represents? How it works?

19 A I do not pretend to be intimate with all of
20 these formulas. That's probably one of the reasons why
21 my degree in cheese and ice cream led me to economics
22 was I was not real intimate with these type of
23 formulas, but nonetheless, the general drift of them is
24 that they represent payment for milk based on the
25 product that can be made from it and they operate in

1 the general nature of a market price of some type minus
2 a make allowance for converting milk into cheese times
3 a yield factor, and this formula has that same general
4 make-up of a market price, a yield, a make allowance
5 and a yield factor, and then that end result more
6 closely in the minds of -- of the purchaser ties the
7 value of milk on that farm to the end product cheese.

8 These types of formulas are used in the
9 Federal Order System today to calculate and compute
10 Class 3 and Class 4 prices, and as well they may or may
11 not be this exact formula, but the general nature of
12 them are the same, and that would indicate again that
13 -- that that's -- that it's an intent by the buyer to
14 procure the supply that fits their business the best
15 and generally over time, they're successful and they do
16 that.

17 Q Okay. So, basically, would it be fair to
18 characterize it as an arrangement between a buyer and
19 processor of milk and a producer of milk in which the
20 buyer/processor says I'm going to pay you more for milk
21 that I can -- that will produce more cheese for me in
22 my cheese plant? I'm buying your milk to make cheese,
23 and when it makes more cheese, I'll pay you more money
24 and that's what this shows?

25 A That would be true.

1 Q Okay. Now, there was some reference
2 yesterday to an agreement or an arrangement between DFA
3 and -- and Sorrento-Lactalis or suppliers or Sorrento-
4 Lactalis. Sorrento-Lactalis being one of the -- the
5 only proprietary bulk tank handler cheese manufacturer
6 in Idaho that's not represented by Mr. Vetne.

7 Can you --

8 MR. VETNE: Yet.

9 MR. BESHORE: Yet.

10 JUDGE CLIFTON: Yet.

11 MR. BESHORE: I'm duly -- duly told,
12 informed.

13 BY MR. BESHORE:

14 Q Can you tell us without revealing proprietary
15 information, that you choose not to, a little bit about
16 that, you know, that business arrangement?

17 A Dairy Farmers of America, with most all
18 businesses and all -- all dairy businesses, when the
19 markets that it operates has communication from time to
20 time and seeks business arrangements and in discussions
21 with Sorrento-Lactalis, we agreed on a business
22 arrangement that provides them with the marketing
23 opportunities, and it provides us with some milk supply
24 for some of our customers and some balancing
25 opportunities, and so we were able after some

1 negotiating period to -- to reach that agreement with
2 both the buyer and interests were satisfied.

3 We -- for this market, we've had those
4 negotiations with other companies, like Sorrento. In
5 this case, it was acceptable. In other companies, it
6 is not successful primarily because of the lack of
7 desire to provide milk for the market.

8 Q Under that agreement, without getting into
9 any volume information that you do not care to release,
10 is Sorrento required and obligated and has agreed to
11 provide net volumes of milk for Class 1 customers for
12 the Class 1 market in Order 135?

13 A They have.

14 Q Okay. So, they've -- they're obligated to
15 give up milk that would otherwise be available for
16 their cheese manufacture net to supply the marketplace,
17 correct?

18 A That would be true.

19 Q And they've also agreed to buy from DFA on
20 days when the fluid market is not demanding its full
21 extent or seasonally balancing volumes of milk, is that
22 correct?

23 A That's part of the agreement.

24 Q Okay. Have you been -- have there been
25 occasions where -- perhaps you've alluded to this --

1 other -- other interests in the marketplace wanted
2 arrangements with DFA which did not involve -- it
3 pooled without giving up milk on a net basis for the
4 Class 1 market?

5 A We have had negotiations with other parties
6 in the marketplace, and frequently that has been a
7 sticking point, that we could not -- we could not agree
8 on, you know, terms that didn't involve some type of
9 net shipment to the marketplace, so the negotiations,
10 you know, ended amicably but didn't go any further.

11 Q Okay. Thank you.

12 MR. BESHORE: I don't have any other
13 questions on direct for Mr. Hollon.

14 JUDGE CLIFTON: All right. Before we begin
15 cross, I'd like to take either a 10- or a 15-minute
16 break, depending on what you all would like. How many
17 of you would like 15?

18 (Show of hands)

19 JUDGE CLIFTON: How many of you would like
20 10?

21 (Show of hands)

22 JUDGE CLIFTON: 10-minute break. Please be
23 ready to go at 3:26.

24 (Whereupon, a recess was taken.)

25 JUDGE CLIFTON: All right. Let's go back on

1 record. We're back on record at 3:28.

2 Mr. Beshore, are there any other questions on
3 direct?

4 MR. BESHORE: Two. I have two -- two small
5 questions to wrap up with Mr. Hollon on -- on direct.

6 BY MR. BESHORE:

7 Q Mr. Hollon, I'd like to direct your attention
8 to Exhibit 32, your statement, Page 6, about two-thirds
9 of the way down the page of text. You referred to --
10 and the printed exhibit says Exhibit 33, Table 3-F. In
11 fact, should that reference B, Table 4-F?

12 A That is true.

13 Q Okay. Thank you.

14 And one other question with respect to the
15 attachment, the materials in Attachment 8 of Exhibit
16 33, the Davisco and Avonmore West information. Were
17 those -- was -- were those documents and that
18 information obtained surreptitiously or against
19 anyone's knowledge or were they voluntarily provided to
20 DFA?

21 A They were voluntarily provided, and again
22 they were a part of the discussion by field -- field
23 personnel with dairy farmers about price comparisons,
24 and, so the sheets were out on the table, and they were
25 offered voluntarily.

1 Q Thank you.

2 MR. BESHORE: Mr. Hollon's available for
3 cross examination, Your Honor.

4 JUDGE CLIFTON: Thank you, Mr. Beshore.
5 Mr. Marshall?

6 MR. MARSHALL: Your Honor, I can easily
7 envision that examination of Mr. Hollon going on into
8 the evening hours. Earlier in this hearing, we had a
9 number of individuals indicate that they would like to
10 be called today, and I'm not sure that it's possible to
11 do so and get them all heard, unless we delay the
12 examination of Mr. Hollon, which would also allow us to
13 be better prepared for those examinations.

14 So, my suggestion would be that we consider -
15 - at least consider calling other witnesses at this
16 time.

17 JUDGE CLIFTON: Mr. Vetne, I think you have
18 about three witnesses who would come after Mr. Hollon's
19 cross examination, is that correct?

20 MR. VETNE: Well, they -- they would have,
21 but I would agree to put them on now that the direct is
22 through, yes.

23 JUDGE CLIFTON: Even before the cross?

24 MR. VETNE: Even -- even before the cross, so
25 that they can be accommodated.

1 JUDGE CLIFTON: All right. And so, you would
2 agree with Mr. Marshall?

3 MR. VETNE: Yes.

4 JUDGE CLIFTON: And Mr. English, you had one
5 witness that you'd like to have heard today, if at all
6 possible. Do you also agree with Mr. Marshall?

7 MR. ENGLISH: Well, I mean, we haven't heard
8 from Mr. Beshore yet, whether that's what he wants to
9 do with his witness. Again, we're a little more
10 flexible, as we said before. We would, of course, like
11 to get them on, but we are a little more flexible,
12 but -- but I also don't want to step on Mr. Beshore's
13 toes. I think I'd like him to speak for himself about
14 that.

15 MR. BESHORE: Well, I'm -- we're prepared to
16 make any reasonable accommodations to dairy farmers who
17 may be here and wish to testify. I -- I'm not prepared
18 to -- to agree to defer Mr. Hollon's cross examination
19 while the principals or employees or consultants of the
20 other opponent companies can make their presentation in
21 order to give their counsel time to prepare for
22 additional cross examination.

23 JUDGE CLIFTON: Well, Mr. Beshore, let me
24 make sure I understand that as a practical matter what
25 you say. You would be willing to have the two dairy

1 farmers in opposition to these proposals testify but
2 not Mr. Davis?

3 MR. BESHORE: If they -- if the dairy farmers
4 need to testify today, need to travel, and they're here
5 just for today, I don't have any problem considering
6 accommodating them, but I don't think it's -- it's
7 appropriate now, and I would object to, you know,
8 simply accommodating other, you know, representatives
9 of these companies for whatever reason, for the -- to
10 delay the cross examination.

11 JUDGE CLIFTON: All right. Mr. Vetne, would
12 it be your choice, if I took two dairy farmers now,
13 then I return to the cross examination of Mr. Hollon,
14 and then we call Mr. Davis? Would that --

15 MR. VETNE: No, that would not be preferable.
16 They -- they came down together, and they're going back
17 together, and their testimony is interlinked. So,
18 either finish cross or take them now.

19 JUDGE CLIFTON: All right. So, Mr. Beshore,
20 given those two choices, your -- your preference would
21 be to complete cross examination of Mr. Hollon before I
22 hear the package of the three that Mr. Vetne would
23 call?

24 MR. BESHORE: Well, I think that's my
25 preference. I'm not sure what -- what Doug's -- Mr.

1 Marshall's thoughts were exactly, and I'm willing to
2 hear them certainly.

3 JUDGE CLIFTON: All right.

4 MR. MARSHALL: Thank you, Mr. Beshore.

5 The only other party whom I know wants to
6 testify today would be a representative from Gossner
7 Cheese Company, a Mr. Dave Larsen, who cannot be with
8 us tomorrow.

9 JUDGE CLIFTON: I didn't even have him on the
10 list. I mean, I knew he would testify. I didn't write
11 it down as to who would want to be on today.

12 So, -- so, where -- what proposals would he
13 be most interested in?

14 MR. MARSHALL: Your Honor, I've just been
15 advised that tomorrow works for them.

16 JUDGE CLIFTON: Oh, good.

17 MR. MARSHALL: So, I withdraw the suggestion.

18 JUDGE CLIFTON: All right. Great. Okay.
19 Given Mr. Beshore's preferences, we'll proceed now with
20 cross examination of Mr. Hollon on these four issues.

21 Mr. Marshall?

22 MR. MARSHALL: Thank you, Your Honor.

23 CROSS EXAMINATION

24 BY MR. MARSHALL:

25 Q I would like to begin, Mr. Hollon, by talking

1 a little bit about the proposal at the bottom of Page
2 10; that is to say, the proposed changes in the
3 proposal.

4 MR. MARSHALL: And in order to do that, I'd
5 like, if I may, to approach and to provide copies of
6 the existing Order language to both the witness and
7 Your Honor.

8 JUDGE CLIFTON: Yes, thank you.

9 MR. MARSHALL: I might add there are copies
10 available in the back of the room.

11 JUDGE CLIFTON: Thank you.

12 Now, the court reporter will need one. Do
13 you have one?

14 COURT REPORTER: Yes.

15 JUDGE CLIFTON: All right. All right. And
16 I'd like to -- even though it's readily available for
17 everyone in the regulations, I'd like to make it an
18 exhibit, if you have no objection to that, Mr.
19 Marshall.

20 MR. MARSHALL: None at all.

21 JUDGE CLIFTON: All right. This would be 34.
22 I'd ask the court reporter to mark this as Exhibit 34.

23 (The document referred to was
24 marked for identification as
25 Exhibit Number 34.)

1 JUDGE CLIFTON: And what else is with it,
2 besides the regulation itself? Anything?

3 MR. MARSHALL: Your Honor, I just picked that
4 up for reference from the back of the room because I
5 wanted particularly to have the witness take us through
6 how his proposal and his amended proposal would work
7 with respect to the Order language that appears there.

8 I believe that to be an accurate copy of the
9 Order but only because I trust the Market
10 Administrator's staff, and I know that they routinely
11 prepare such materials for the convenience of the
12 parties. It had not been my intention to think that we
13 needed to take any more than administrative notice of
14 that.

15 JUDGE CLIFTON: Very fine. Thank you, Mr.
16 Marshall.

17 Is there any objection to the admission into
18 evidence of this document, Exhibit 34? Mr. Stevens?

19 MR. STEVENS: Your Honor, Garrett Stevens.
20 My only -- my only comment on this is that the -- that
21 the Orders are as written. They are according to the
22 regulations updated. I believe that these are accurate
23 representations of them. I haven't read every sentence
24 of these documents. I -- I like the rest of us in this
25 room trust the Market Administrator to prepare such an

1 exhibit, and I would only say that to the extent there
2 is any difference in these from the -- from the
3 official CFR recitations of these Orders, of Order 24,
4 135, in their present form, their extant form, they
5 exist today and are used by everyone, that that be
6 noted and that -- and I -- and in saying that, I don't
7 know that they need to be admitted as an exhibit.

8 It is -- it is a matter of existing
9 regulation, codified, available to everyone on the
10 Internet, I believe.

11 MR. MARSHALL: Yes, it is.

12 MR. STEVENS: Also in the Code of Federal
13 Regulations as updated to the present day. So, I mean,
14 everyone, I mean, all the working attorneys and -- and
15 interested parties are certainly -- they know of these
16 regulations. They use them. They may or may not use
17 them every day, but certain people look at them all the
18 time and are very familiar with them.

19 So, I -- I'm just saying as a matter of the
20 record, that I don't -- I don't know that we need to
21 put them in as an exhibit.

22 JUDGE CLIFTON: To the extent there might be
23 any variance from the actual regulation, I need to have
24 this as part of the record. In other words, this is
25 what the witness is going to rely on, but I agree with

1 you that the -- that if there is an error here, it
2 certainly does not change the Order.

3 MR. STEVENS: We -- we -- we agree, Your
4 Honor, and I would just add, I guess, if that were the
5 case, depending on the desire of the parties here, I
6 would ask that you take official notice of those -- of
7 those Marketing Orders as they presently exist,
8 codified in the Code of Federal Regulations, as
9 available on the Internet for all the parties' use
10 during the course of the hearing and for further use as
11 this proceeding goes forward.

12 JUDGE CLIFTON: Thank you.

13 I do take notice of those regulations. I do
14 also admit into evidence Exhibit 34 for the -- for the
15 use that we make of it in this hearing.

16 (The document referred to,
17 having been previously marked
18 for identification as
19 Exhibit Number 34, was
20 received in evidence.)

21 MR. STEVENS: Now, let me understand, if I
22 may, Exhibit 34 is -- is proposed on --

23 JUDGE CLIFTON: Do you have a copy?

24 MR. STEVENS: Well, I'm just -- I'm not sure
25 what we're talking about when you state for Exhibit 34.

1 Is it -- is it the --

2 JUDGE CLIFTON: Let me count the pages. Just
3 a sec.

4 MR. MARSHALL: Okay. Is the copy that is
5 available in the back of the room Part 1124, Milk Order
6 in the Pacific?

7 JUDGE CLIFTON: Part 1135.

8 MR. STEVENS: Okay. That's one that was
9 available in the back of the room. There also is a
10 copy of 1124 which is available in the back of the
11 room.

12 JUDGE CLIFTON: What I'm working with now is
13 1135, and it's -- it's the Order regarding milk in the
14 Western Marketing Area.

15 MR. STEVENS: All right. That has been
16 marked as Exhibit 35?

17 JUDGE CLIFTON: 34.

18 MR. STEVENS: 34. All right.

19 JUDGE CLIFTON: Would have been handier to
20 have it be 35 since it's about -- but at any rate, does
21 that adequately identify the document?

22 MR. STEVENS: Yes, Your Honor. Thank you.

23 JUDGE CLIFTON: All right. So, I do admit
24 into evidence Exhibit 34, and you may proceed, Mr.
25 Marshall.

1 MR. MARSHALL: Thank you, Your Honor.

2 BY MR. MARSHALL:

3 Q Again, Mr. Hollon, the purpose of my
4 providing that for you is to help us read in context
5 the proposal at the bottom of Page 10 of your prepared
6 testimony, also known as Exhibit 32, and the reason for
7 this is that the language that appears there, while
8 sufficient to tell us what would change, must be read
9 in context with the paragraphs that precede it.

10 So, my question is, would you please identify
11 for us and read to us the paragraphs that precede it to
12 which the references are being made?

13 A I think there's a reference out of whack
14 here.

15 Q Can I help you?

16 A Sure.

17 Q I believe the published Hearing Notice in the
18 Federal Register refers to this as a proposal to change
19 1135.13.

20 A You're right. So, the -- the Proposal Number
21 7, 1135.7, should be a 13 and producer milk rather than
22 a 7 and a pool plant, and then I think it lines up.

23 Q Okay. So, now that we've clarified that,
24 let's continue with business. We should all now be
25 focused on --

1 JUDGE CLIFTON: Mr. Marshall, let's do that
2 again, to make sure everyone was caught up with what
3 Mr. Hollon said.

4 Mr. Hollon, looking at your Exhibit 32, Page
5 10, tell us again what changes need to be made.

6 MR. HOLLON: Under Proposal Number 7, it
7 currently reads, "Section 1135.7, Pool Plant" should
8 read "1135.13, Producer Milk".

9 JUDGE CLIFTON: That's 1135.13?

10 MR. HOLLON: Correct.

11 MR. MARSHALL: And, Your Honor, if I may add,
12 that is the way it appears in the Federal Register
13 Notice of Hearing, Volume 67, Number 42, March 4th,
14 2002, Page 9624.

15 JUDGE CLIFTON: Mr. Marshall, throughout this
16 hearing, I have appreciated your attention to detail
17 and here again, I appreciate it very much. Thank you.

18 BY MR. MARSHALL:

19 Q But the issues here, Mr. Hollon, relate to
20 how it would work, about which your section has been
21 misrepresented here, mischaracterized in your exhibit,
22 and I thought I understood this coming into the hearing
23 because, as you can see, the provisions of Paragraph
24 1113(d) do refer to receipts, (d)(1), (d)(2), and then
25 this new (d)(3) would come along and talk about

1 receipts.

2 Now, all of a sudden, we don't want to talk
3 about receipts, we want to talk about deliveries, and
4 I'm having trouble understanding how that would work
5 technically.

6 A Okay.

7 Q You shifted gears on me which may be for
8 better language, but I'm even more confused. So, I
9 want to give you the opportunity to explain what it is
10 you're trying to accomplish with the changes. We're no
11 longer referring to receipts. We're referring to
12 deliveries. I see no reference in the paragraph to
13 deliveries.

14 A I can go back to the intent or the idea, was
15 to try to make sure that qualification was based on net
16 or real shipments and not, I guess, what's been
17 characterized as pumping on and pumping off, that
18 concept, and so it occurs to me or occurs to us that
19 not only does that measure need to be done at the
20 supply plant level, even though at present there are no
21 supply plant deliveries, but also at the producer milk
22 level, and so our intent here was to insert language in
23 the producer milk section that would effect that net
24 calculation, and our desire there was to take -- if I
25 would characterize how I think that it would -- how we

1 intended it to work would be that the Market
2 Administrator would take a pooling handler and his
3 deliveries and if there were deliveries to and sales
4 from on that report, there would be some type of
5 netting before the diversion computation was made.

6 Q All right. I think I understand your intent.
7 Now, what deliveries would be referred to? The
8 deliveries, for example, to non-pool plants?

9 A I think before I -- I get all the way down
10 into it, I'm going to need a little consultation on the
11 side. So, can -- can we refer to this after the next
12 break? Give me a few minutes to touch base?

13 Q That would be great, and I would alert you to
14 the fact that you might want to pay particular
15 attention to the last line, last full line, which
16 refers to "less any transfers or diversions".

17 A Okay.

18 Q And the "or diversions" part has been
19 stumping me both as to receipts and as to deliveries.

20 A That'll be fine. That may save us some
21 exploration time.

22 Q Excellent suggestion. On Page 4 of your
23 prepared statement, you begin by endorsing the
24 statements made by the Utah Commissioner of Agriculture
25 and the representative, Senator Hatch, concerning the

1 impacts of the present regulations.

2 As you heard this morning in my questions,
3 there seems to be some confusion -- I'm sorry. Let me
4 rephrase that.

5 There seems to be a number of factors going
6 on which can confuse an analysis of the impact of the
7 present regulations. So, I'd like to take you through
8 that. I presume you're prepared to help me understand
9 the statement that you're making regarding the impact
10 of the present regulations.

11 Now, one of the advantages we have in dealing
12 with an expert such as yourself is we can distinguish
13 between the mere before an event and after an event and
14 talk about the economic causes of what has happened
15 before and/or what has happened after. So, I want to
16 distinguish between the simplistic analysis of before
17 January 1, 2000, prices were good, after prices were
18 bad, therefore, it was because of the Federal Order
19 change.

20 A That's fair.

21 Q And you've got some data in your exhibit
22 designed, I think, to help us analyze that. So, let's
23 begin, unless you can suggest a better place to begin,
24 with Page -- well, the Exhibit 4, I think it's the
25 fifth page in, and you see an "annual all milk price"

1 in the Table E?

2 A Yes.

3 Q Let's begin by exploring what the annual all
4 milk price number would be composed of. Would you
5 agree with me that when the National Agricultural
6 Statistics Service or others in the industry use the
7 term "all milk", they are not referring to a published
8 Federal Order price but to something more like a
9 mailbox price?

10 A More like.

11 Q More like? You can clarify that, if you
12 wish, but the point I want to get to is that I believe,
13 see if you agree with me, there are three factors that
14 would go into the all milk price.

15 A Okay.

16 Q One for sure with respect to all milk that is
17 pooled would be the impact of a producer milk
18 differential under Federal Order that may or may not be
19 returned to the dairy farmer. One factor would be --

20 A I would agree.

21 Q -- the producer price differential. Another
22 factor that would apply to all milk, whether or not it
23 is pooled, would be the general supply and demand
24 conditions in the nation's dairy markets that might
25 reflect either shortages or surpluses of butter or

1 cheese or other commodities that in turn then affect
2 the general level of prices through the competitive
3 marketplace. Would you agree with that?

4 A When we started this discussion, I -- I
5 thought we were going to say A plus B equals C. So, we
6 were looking for factors that added up to the all milk
7 price. Are you doing that or are you asking for just
8 what might be general conditions that might underlie an
9 all milk price?

10 A I think we're thinking alike, although I was
11 going to start -- I was going to get to the Federal
12 Order pricing of Class 3 and 4 as an intermediate step
13 in that summary.

14 A Okay.

15 Q Because there's some milk that's not pooled.
16 So, for milk that's not pooled, it would generally
17 reflect all of the national supply and demand
18 conditions, plus local supply and demand conditions,
19 would it not?

20 A Okay. I would -- I would agree that that
21 local/national supply conditions would be an underlying
22 effect of what the all milk price might be.

23 Q And in particular, with respect to the
24 Federal Order payment price shown in the Uniform Price
25 Statistics or the Blend Price Statistics, that would be

1 reflected in the Class 3 price and then again any of
2 the other factors from the Class 4, 2 or 1 be reflected
3 in the Producer Price Differential, correct?

4 A Yes.

5 Q And the third factor in the all milk price, I
6 submit to you, is what the producer is paid either
7 above or below that Federal Order price in a situation
8 where the producer might be pooled, he wouldn't
9 necessarily be receiving the full price?

10 A I guess I wouldn't -- I wouldn't disagree
11 with those. You might throw in there some value for
12 butterfat because I don't think the all milk price is a
13 3-5 adjusted price. So, that would --

14 Q Thank you. That's a good catch.

15 My point then is that these statistics would
16 not be expected to correlate precisely with Federal
17 Order Uniform Blend Price public -- statistics that
18 have been received into evidence earlier?

19 A Month-by-month-by-month, no. General trend,
20 you should be able to see some correlation.

21 Q Okay. All right. Now, as an expert in the
22 field of dairy economics, would you agree with me that
23 in the Fall of 1999, we saw perhaps the lowest Class 3
24 price that the Federal Order System had seen since you
25 and I were both young kids?

1 A I think that's correct.

2 Q We were both young kids about 1978, I think,
3 right?

4 A Yep. That's right.

5 Q So, that factor, would you trace that as
6 having any impact on the all milk price that's shown
7 for 1999 and for the year 2000?

8 A Yes. It would be -- it would be a factor in
9 both lines, both the Idaho line and the Utah line, and
10 all three lines, and the U.S. average line.

11 Q And that was quite apart from the changes
12 that came along January 1, 2000, in the Federal Order
13 System, was it not?

14 A Hm-hmm. That was.

15 Q All right. The question that has been --
16 that I have posed to others earlier and would hope that
17 you could help us out with is, to what extent the
18 changes unique to the Federal Orders, either in this
19 Order 135 or in the Federal Order System generally, to
20 what extent have those changes of the so-called reform
21 process impacted these all milk prices? Do you have
22 any evidence --

23 A Could you run that question by me one more
24 time?

25 Q Yes. The changes that became effective

1 January 1, 2000, so-called reform changes, would have
2 had some impact on these prices, I gather from the
3 earlier testimony, and my question is, have you come
4 prepared to tell us any more about what portion of the
5 changes in price might have been applicable -- that
6 might be traced directly to the changes in the so-
7 called reform process?

8 A Okay. When we started out the discussion, we
9 -- we framed it with four parameters, an all milk, PPD,
10 general price condition, above and below the Federal
11 Order and butterfat value. Are we agreeing that those
12 are the -- our four parameters we're going to measure
13 off of?

14 Q Until we think of another one, yes, that's
15 fine.

16 A Well, I think maybe as long as we're having a
17 general discussion, we can agree because if my answer
18 doesn't agree with yours, then you'll think of another
19 one.

20 Q What I want to do is try to determine
21 specifically what were the factors that are unique to
22 the PPD --

23 A Okay.

24 Q -- and/or to other considerations that -- any
25 other --

1 A Okay.

2 Q -- considerations that may have been a direct
3 result of the Federal Order changes January 1, 2000.

4 A The way I would answer that -- answer you,
5 again based on our discussion thus far, is that there
6 are a number of -- of external factors that would be
7 like the level of water in a bathtub. You know, you
8 identified a key one as the level of Class 3 prices,
9 and as poor as they've been and that would certainly
10 have and did have, you know, a rough effect and a tough
11 effect on -- on Order prices and all prices, but that,
12 I think, had the same effect on all.

13 You could point out perhaps the higher-out
14 provisions as having, you know, some effect, positive
15 or negative, but I think that had an effect on all
16 prices. The one thing or a thing anyway that would be
17 the difference between one side of that line, the '99
18 side of that line and the 2000 side of that line, might
19 be the utilization factor.

20 I think it would be pretty clear to say that
21 the utilization factor was different on the '99 side of
22 that line and the 2000 side of that line. So, holding
23 all other things constant, as we've agreed, affects the
24 whole broad level of the prices.

25 The one thing that we don't hold constant is

1 the utilization side of that line and that --

2 Q Well, you --

3 A -- has a bearing on the absolute level of
4 prices.

5 Q But you'd agree, would you not, that one of
6 the major changes in the Federal Order Reform process
7 was the institution of a new Class 1 price mover?

8 A Sure.

9 Q Which also cannot be held constant, can it?

10 A Well, yeah. For purposes of our discussion,
11 that -- that -- it was -- oh, it -- it was -- it was
12 different from '99 to 2000. No doubt about that. But
13 it was the same for whether you're measuring a Utah
14 price or an Idaho price.

15 So, for the purposes of our discussion, which
16 I think is -- is -- is, you know, what -- why was the
17 morning's discussion about price so terrible?

18 Q Yes. I'm asking how to help us answer why
19 that occurred.

20 A So, the -- the higher-out discussion would --
21 would be common to both audiences, that it was -- the
22 difference in now and then, it was a higher-out in both
23 cases but between the two markets, both were affected
24 by that.

25 Q Okay. So, if you're just comparing Utah and

1 Idaho, then you're saying that they're subject to the
2 same Federal Order price considerations, except, of
3 course, as to non-pooled milk?

4 A Yes, for the most part. But the -- but the
5 one key difference, as I would see it, between '99 and
6 2000, you know, in -- in the -- for the people who
7 spoke this morning was the effect of the utilization on
8 their price.

9 Q Okay. Well, that opens up a little different
10 line of inquiry, but I wanted just to start with the
11 fact that the Producer Price Differential factor
12 includes a number of changes made effective on January
13 1, 2000, including, as you pointed out a moment ago,
14 the higher of Class 1, 3 or 4 as the Class 1 price
15 mover.

16 A Right.

17 Q Also, a Class 2 formula that has turned out
18 to be substantially more advantageous in most months,
19 has it not?

20 A It has provided some revenue, yes.

21 Q All right. Now, do you have any evidence as
22 to the overall impact of the combination of factors on
23 the Producer Price Differential before and after the
24 so-called reform occurred?

25 A I -- I have no numbers to put in the record.

1 In times when I have done that, it's been -- it's
2 probably been six or eight months since I've done that.
3 You can see -- you can see during the first -- the
4 first 18 months or so of reform that the higher-out
5 provisions added some revenue.

6 Q Yeah. Well, we'll try to put in that data
7 then, Elvin.

8 Let's go the other direction that you were
9 headed there as between Idaho and Utah. Assuming for
10 the moment we're just talking about the pooled milk in
11 Idaho, the pool price was similar, but there is a
12 difference in the amount that could be drawn out of the
13 pool in Idaho, is there not?

14 A Hm-hmm. Hm-hmm.

15 Q Could you explain that just for the record as
16 a background point?

17 A Whatever the PPD is paid only on milk that's
18 pooled. So, if milk's not pooled, it doesn't collect
19 the PPD from the Order system, and so there would be no
20 way to get the effect.

21 Q I was referring to the fact that there is a
22 different location value in Idaho plants.

23 A The -- you said all the counties in Idaho at
24 least on the Western Order have a differential value of
25 the \$1.30 to \$1.60, and all the counties south of

1 Idaho, up to somewhere around the middle of Utah, have
2 a \$1.90 differential. The southern counties in Idaho
3 have a \$1.60 differential.

4 Q So, in this comparing the two states, as you
5 were a minute ago, the difference between them would be
6 principally that as to pooled milk, --

7 A Hm-hmm.

8 Q -- the Idaho producers would receive 30 cents
9 hundredweight less --

10 A Yes.

11 Q -- relative to the same statistic --

12 A Right.

13 Q -- than the Utah producers? Now, can you
14 tell --

15 A When --

16 Q -- us why the --

17 A -- we've had discussions about that this
18 morning, though? Isn't that where we started, about
19 the folks who spoke this morning?

20 Q They were -- they were talking -- I'll remind
21 us both that they were talking about the devastating
22 impact of Federal Order Reform on them, and my question
23 to you as an economist, an expert economist is, why
24 would you suppose there's been as much growth as there
25 has been in Idaho with a 30-cent lower price compared

1 to the statistically -- somebody offered 18-percent
2 reduction in dairy farms in Utah?

3 A Why has there been such a growth there?

4 Q Compared to an alleged decline in Utah.

5 A I suppose there could be a number of factors
6 there, could be management issues, could be
7 environmental issues, could be a management ability
8 issues, could be availability of feeds and forages,
9 land values, climate is conducive to dairying. New
10 entries into the marketplace generally bring fresh
11 capital and that does afford, you know, newer and
12 different management techniques, some better. Creed or
13 attitude and philosophy. All those things may be
14 likely to attribute to that growth factor.

15 Q Quite apart from any change in the so-called
16 reform process?

17 A Yes.

18 Q Okay. Let me turn to some of the rationale -
19 -

20 A Would you -- would you also say that in --
21 that all that growth has occurred in spite of the price
22 differences that we all talked about -- that we just
23 talked about?

24 Q You can so testify, and I would agree with
25 you.

1 A That growth seems to have occurred in --
2 despite the price differences that we've talked about.

3 Q Now, let's shift subjects and consider your
4 -- some of your rationale about milk that's delivered
5 to cheese plants or not being intended for cheese
6 plants, perhaps not sharing -- not -- not being
7 suitable for sharing in the Class 1 returns of the
8 market. Did I hear your testimony correctly on -- on
9 that?

10 A One more time.

11 Q Milk that's intended for the cheese market
12 should not be allowed to share in the Class 1 returns
13 through the pool.

14 A I think the way that I would characterize
15 that is that the -- the Order declines performance
16 standards, and, you know, the application of those
17 standards is what determines who gets to share in the
18 pool.

19 Q Okay. But we're about -- in this hearing,
20 we're about determining what those standards should be.

21 A Correct.

22 Q And you advanced some rationales for
23 suggesting different standards.

24 A Hm-hmm.

25 Q One of them was there's all this cheese milk

1 that isn't intended to serve the market. Therefore, I
2 think you conclude from that, correct me if I'm wrong,
3 that milk ought to be kicked out of the pool.

4 A I think the way I characterized that is
5 that -- is that access to the pool is not an
6 entitlement, and so just because anyone expects to --
7 to be a part of the pool because they are a Grade A
8 shipper or they're a good guy or they wear an "S" on
9 their chest or they belong to Dairy Farmers of America
10 or Northwest Dairymen or don't like cooperatives and
11 don't belong to any, there is no entitlement that's
12 there. So, just because I produce milk in Location A,
13 B or C, again there's no entitlement to share in the
14 pool value.

15 So, once we get past that step, if we agree
16 there, then we have to determine reasons why someone
17 gets to share in the pool, and the reasons that we
18 offered, the performance standards that we offer, one
19 of the definitions was the diversion limit of 70
20 percent as a standard for producer of milk and milk
21 producers at that volume share in the pool return.

22 Someone who might advance the argument that I
23 ought to get the share because, I think he has to stop
24 and that that's not -- that's not a viable standard.

25 Q Let me refer you to Page 4 of your Exhibit 32

1 prepared testimony, the paragraph that begins by
2 "analyzing the production use statistics".

3 A What page?

4 Q I'm sorry. Page 5.

5 A Page 5. Okay.

6 Q "Equally clear, however, the reason" -- this
7 is now the -- the paragraph begins, "By analyzing the
8 production use statistics", --

9 A Yes.

10 Q -- and the next sentence after that, "its
11 shares growing equally clear. However, the reason for
12 its growth in the market for which it's intended is to
13 manufacturing market."

14 A Yes.

15 Q So, your intention is that milk intended for
16 the manufacturing market should not be pooled?

17 A The -- the -- the intent here in this
18 paragraph again is to go back to it's not an
19 entitlement, Number 1, and Number 2, there should be
20 standards and sometimes the standard is advanced that I
21 should get to share in the pool because I'm a part of
22 the reserve supply, and that I've had some performances
23 as a part of the reserve supply, and the data suggest
24 to me that this milk does not -- there's no
25 entitlement, so it'll continue to stay there, but

1 there's also no intent to be part of the reserve
2 supply.

3 You should go back and look at the data
4 that's in Table 4, and you look at the growth in the
5 production, you look at the -- at the products that's
6 manufactured from it, at the overwhelming percentage of
7 those products that's not raw milk. So, then you can
8 no longer advance the rationale that I should share in
9 the pool because I'm a part of the reserve.

10 Q Well, let's take it a step at a time, Elvin.
11 Equally clear as it's intended, the use for which it's
12 intended is the manufacturing market.

13 A Okay.

14 Q Is it your belief that milk that's being
15 produced perhaps under contract or being sold under
16 contract to a manufacturing market should not therefore
17 be pooled?

18 A Again, it depends on if it meets the
19 performance requirement, and if it does meet the
20 performance requirement, and it performs, it deserves
21 to be pooled. It gets to share in the blend returns,
22 like every other -- every other producer and milk that
23 meets that. If it doesn't meet those requirements,
24 then I would intend -- I would say that it should not
25 be pooled and should not share in the return.

1 Q So, if it sometimes does serve the fluid
2 market and it sometimes does serve the manufacturing
3 market --

4 A And the performance standards -- and the
5 performance standards include that definition of
6 sometimes in a way that's, you know -- that -- that's
7 understandable, yes, it should.

8 Q All right. Well, the proposal that I have on
9 this, and I'm going to toss you a softball and let you
10 hit a home run with it, is that my understanding is
11 that DFA has certain contracts to supply cheese plants.

12 A Hm-hmm.

13 Q And how can you justify that milk which is
14 intended for the manufacturing market being pooled?

15 A I guess you have to look at that supply --

16 Q First of all, am I right that there are such
17 contracts?

18 A There may be some.

19 Q Well, are there or are there not?

20 A Again, there may be some.

21 Q Well, you're -- you're asking -- I mean,
22 let's go back to the -- we were talking about Order
23 1135 market. Okay. Are there contracts to supply
24 cheese plants with manufacturers of milk?

25 A Yes, there are.

1 Q All right. Proceed.

2 A That's a part of -- again, you're coming back
3 to the characterization of how -- how does DFA
4 rationalize having its milk supplies.

5 Q I am.

6 A Is that the purpose of your question?

7 Q That's my question.

8 A And so, does your question revolve around the
9 entirety of DFA's milk supply or are you segregating it
10 into these -- into the little slices of --

11 Q That's the very dilemma I'm asking you to
12 address, is that you are segmenting it into parts that
13 are going to the manufacturing market and parts that
14 are not, --

15 A Hm-hmm.

16 Q -- and you're drawing -- similarly drawing an
17 argument out of the fact that milk is produced for
18 cheese or other manufacturing uses and suggesting that
19 that milk is not intended for the Class 1 market,
20 therefore should not be pooled.

21 A Hm-hmm.

22 Q At the same time, you're committing milk not
23 for the Class 1 market. So, please explain that
24 apparent contradiction.

25 A The -- the entirety of -- of the DFA producer

1 milk in the Western Order, which includes some of that
2 -- some of that milk, it includes, you know, other
3 volumes of milk, the entirety of that volume meets the
4 performance standard and ships and serves and balances
5 the Class 1 market, and any other block of milk that
6 meets that same definition, you know, whatever the
7 performance standards are, it should serve it.

8 Q Okay. As long as -- as long as it can be --
9 I'm sorry. Finish.

10 A It should -- it should share in the pool
11 returns. It should share in the pool returns if it
12 performs.

13 Q So, as long as it can be pooled off of your
14 base, it's okay that it goes to a manufacturing
15 facility?

16 A I think I said as long as it performs for the
17 market, it can share in the returns.

18 Q You drew a distinction there that I do not
19 understand.

20 A And you -- and you characterized that
21 distinction in a different way than it was made. So.

22 Q Okay. Is it true then that you're basically
23 saying as long as you have the ability to pool the
24 milk, it doesn't matter what use it goes to?

25 A If there is a milk supply that performs for

1 the market in accordance with the performance
2 standards, it should be able to pool.

3 Q Okay. Let's break that down.

4 A So, DFA's milk supply in its entirety, and I
5 would say that DFA's milk supply in its entirety
6 performs for the market under the performance
7 standards, the entirety of that supply should be able
8 to pool. If it doesn't, then it should not be able to
9 pool. If Northwest Dairymens, the entirety of its milk
10 supply meets the performance standards of the market,
11 it should be able to pool. If some subset of it can't
12 meet the performance standards of the market, it
13 shouldn't be entitled to pool.

14 Q Would you agree with me that that gives us
15 larger organizations an advantage in pooling over
16 smaller organizations?

17 A I have no real opinion there. I know some
18 small organizations that supply and some that don't.

19 Q Let's shift subjects every so slightly to
20 Page 6, and the concern that you expressed there about
21 milk coming off and on to the pool at will.

22 A Yes.

23 Q At the bottom of Page 6. Would you -- would
24 DFA support a lock-in provision such that milk pooled
25 in one month might have to be in the pool at least the

1 following month or two or three?

2 A We do not consider that at -- at this
3 hearing, but we would be open to discussing that. I
4 can't tell you off the cuff if I would or would not,
5 but I can tell you that I wouldn't outright reject it.

6 Q Would you agree with me that that's a subject
7 quite different from diversion limitations?

8 A I suppose the intent is in the same
9 direction, but the mechanics of how you might get there
10 would be different. But it seems like that that --
11 that would be just yet another performance standard
12 that we should, you know, look at and say is it a good
13 -- is it a good standard? Is it a reasonable standard?
14 Is it a way we ought to, you know, define the
15 performance standards?

16 Q Bottom of 7. "Reform decision noted that the
17 initial diversion percentage was set at 80 percent but
18 was changed to a higher level." I'd like to explore
19 what actually happened there.

20 A You're directing your question to the wrong
21 person.

22 Q Well, I think we can take it in steps between
23 you and me. Would you recall, as I do, that the so-
24 called reform process was an expedited process in which
25 some of the usual rulemaking steps were omitted --

1 A Yes.

2 Q -- and that one of the -- one of the steps in
3 that was kind of a preliminary peek under the covers
4 that involved, for example, some discussion --

5 A There were two of those.

6 Q Let me finish my -- my question. Involves
7 some discussion about Order areas and hypothetical
8 utilizations and that sort of statistical information
9 was prepared well in advance of the final rule?

10 A That is correct. There were two drafts of
11 those, and the first draft was more general than the
12 second draft, and the final was -- was more specific --

13 Q Right.

14 A -- and had changes in it.

15 Q Right. But then the sentence you're
16 referring to that I just read, that you have -- have
17 appearing at the bottom of Page 7 --

18 A Right.

19 Q -- refers to that change to the final rule --

20 A Correct.

21 Q -- from earlier drafts, does it not?

22 A Correct.

23 Q Would you agree with me that there were a
24 number of other changes with -- that affected the Order
25 -- what's become the Western Order area, including the

1 removal of the Las Vegas Market from that potential
2 market area?

3 A You know, I don't remember. I think that's
4 right, but I don't remember exactly, but I think that's
5 the case, that the geographies were drawn differently
6 between the --

7 Q Well, then you may not --

8 A Between the --

9 Q -- be able to --

10 A -- two.

11 Q Excuse me. Let me finish.

12 A Between the -- between the -- the first --
13 the first decision -- what do you call this? The first
14 release, the second release and the final release,
15 there were some geographic changes, and I think that
16 was one, that that moved from the Western Order to the
17 Nevada Las Vegas Order.

18 Q And do you recall that DFA would have
19 objected to that change?

20 A No, I do not.

21 Q I'm sorry. Was DFA formed at January 1,
22 2000?

23 A 1/1/98 was the actual incorporation date.

24 Q Okay. So, Dairy Farmers of America would
25 have been involved, not WDCI, as to this order?

1 A That is correct.

2 Q Okay.

3 A From a legal definition standpoint, yes.
4 During that time period, there was still a lot of the
5 -- those parties making those decisions and working
6 their way through that.

7 Q Similarly, do you recall, as I do, that there
8 was a proposal earlier before the final rule that the
9 Western Colorado Federal Order Area would have been
10 included with the Western Order?

11 A Yes.

12 Q And do you recall that --

13 A I do recall that.

14 Q Excuse me. Finish.

15 A I do remember that.

16 Q And do you recall that that was a very high
17 Class 1 utilization market?

18 A Hm-hmm. Yes, it was.

19 Q And do you recall that DFA proposed that that
20 be moved to the Central Order rather than the Western
21 Order?

22 A I don't remember that specifically, but I can
23 believe that that would be true.

24 Q And the question then I have for you is would
25 not the removal of the two high Class 1 utilization

1 areas, i.e. Las Vegas and Eastern Colorado, have
2 warranted an increase in the diversion percentage from
3 80 percent to 90 percent as a matter of Federal Order
4 Theory?

5 A I think you're going to need to develop your
6 treatise just a little bit more.

7 Q Well, one of your points made in your
8 testimony is that there's a correlation in other Orders
9 between the amount of Class 1 sales and Class 1
10 utilization and the diversion limitations --

11 A Okay.

12 Q -- and so it would have been logical if when
13 USDA in its pre-final decision discussions had looked
14 at this Western Order as a market including more Class
15 1 sales and higher Class 1 utilization to have used an
16 80-percent assumption, and then when that changed, it
17 would have been logical for them to have increased the
18 diversion limitations, would it not?

19 A I think that's logical and that's
20 hypothetical, but in the final decision, that was never
21 mentioned, and about the only paragraph on this that
22 matches up with this was a reference to a brief by one
23 of the parties requesting that it go from 80 to 90, so
24 it's 90. So, the discussion we're having about logic
25 in Federal Order Theory may well -- could well be true

1 but that was not what was presented in the final rule,
2 and basically what I characterized was -- was what --
3 what was presented.

4 Q We began our discussion a few moments ago
5 talking about a netting rule, and I'm going to ask a
6 question. If you wish to defer it until our later
7 discussion, that'll be fine.

8 The -- I call your attention to Page 10, Note
9 3, in the middle of the page.

10 A Yes.

11 Q Is that a hypothetical in which follows from
12 the prior hypothetical where Supply Plant A --

13 A It does.

14 Q -- ships to Supply Plant B -- correction --
15 to Distributing Plant B and then loads out to Supply
16 Plant C? There would be no net calculation in that
17 case; that is to say, there would be no reduction in
18 the base for diversions?

19 A That's correct. That's always an issue that
20 has plagued net shipment provisions, but there doesn't
21 seem to be a reasonable way -- I'd be open to
22 suggestions, but there doesn't seem to be a reasonable
23 way to have the Market Administrator to understand all
24 those intents. So.

25 I would -- I would add to that, that in many

1 times, the economics, though, sorts that out and the
2 extra costs of the third leg of that movement sometimes
3 is greater than the cost benefit.

4 Q Let's turn to your Exhibit 33, which has your
5 exhibits, and let's talk about the graph that appears
6 on, oh, midway through, which shows the data from the
7 prior page and the series of pumps.

8 A Right.

9 Q And your conclusion that in both years, '00
10 and '01, poolings decrease in the Fall months when
11 Class 1 needs rise.

12 Now, --

13 JUDGE CLIFTON: Are you on Chart 1?

14 MR. MARSHALL: Ma'am, I don't -- I don't see
15 -- oh, that's now called Chart 1? I'm sorry. I didn't
16 note that earlier.

17 JUDGE CLIFTON: Does it look like this?

18 MR. MARSHALL: Yes, that's the one.

19 MR. HOLLON: Chart 1.

20 MR. MARSHALL: Thank you, Your Honor. Chart
21 1.

22 BY MR. MARSHALL:

23 Q In both years, Class 3 poolings decrease in
24 the Fall months when Class 1 needs rise. I'd like to
25 explore that with you a tad --

1 A Okay.

2 Q -- and ask why you think that occurs?
3 Specifically, what else goes on in the Fall of each
4 year that would cause a pattern?

5 A I don't know that I can identify all of the
6 reasons, but it appears like that there is this --
7 there's some type of trend that is rather dramatic, and
8 the point of this chart was to show that if in the Fall
9 months when milk is needed by the Class 1 market and
10 it's harder to come by, that if the amount of Class 3
11 milk on the Order decreases, then as a source for that
12 extra needed supply decreases.

13 Q Well, you used the phrase "milk is harder to
14 come by" and that's something I want to talk about in a
15 minute.

16 A Okay.

17 Q But let's -- let's stay with what appears to
18 be -- just look at two years and two -- two camel humps
19 there.

20 A Which is all the data we have for the Western
21 Order.

22 Q Understood. And I'm asking you as an expert
23 who understands how milk markets work, what might cause
24 a seasonal pattern, if there is one? Now, there may
25 not be, and I'm not at all insinuating that there has

1 to be. Why would you see that seasonal pattern, if
2 indeed it is in your judgment a seasonal pattern?

3 A Well, it appears as though for some reason,
4 Class 3 milk dropped or left off the market. There
5 could be reasons. Perhaps it was sold to another
6 market as a supplemental milk supply. It could also
7 have been that for whatever reason, the qualifications,
8 maybe the 90 percent wasn't enough in those months.
9 That could potentially be a reason.

10 Another reason could be that, you know,
11 whoever uses it or utilizes that Class 3 milk supply
12 chose not to make it available to the market.

13 Q Well, let me --

14 A For whatever -- if you assume that -- let's
15 assume that that's the full universe, that's all that
16 there is, you know, those seem to have gone away by the
17 time we got back to the Spring, in addition to some
18 increases in seasonal milk production, a large quantity
19 of milk came back on to the pool.

20 Q Well, is it your expert opinion that there is
21 a seasonal pattern or that there are underlying
22 seasonal economic factors that would cause milk to come
23 on to the pool in what I'll call the late Winter or
24 early Spring and come off the pool in what I'll call
25 late Summer or --

1 A There is --

2 Q -- is there more likely to be a coincidence?

3 A There is a seasonal pattern to milk
4 production, no doubt. Again, there would be no denying
5 that, and then -- but beyond that, it appears to me
6 like that there's something at work other than a
7 coincidence and that there is some reason, I don't know
8 that I can identify it, that milk was not available to
9 the pool or to the Class 1 market during that time.

10 Q Do you see any correlation here in your
11 opinion between the data shown in what I will call, for
12 lack of a better term, the "artificial" addition of
13 Class 3 milk from California at any point in time?

14 A I don't think that that -- that that milk
15 supply -- once it got here, I don't think that it left.
16 So, it seems like it would have made the humps, you
17 know, get closer together rather than further apart.

18 Q You don't think that's the factor then that
19 would cause whatever pattern we're seeing here?

20 A I don't -- I don't think so because I think
21 the -- the Market Administrator's statistics show that
22 volume, shows that it was pretty constant over the
23 whole time period.

24 Q Well, what if --

25 A Would that milk cause some of the milk to

1 leave?

2 Q I -- I heard you phrase a question there. I
3 don't know that that was testimony, but if it was, feel
4 free to amplify on it.

5 A I -- I can't -- I can't see that there'd be a
6 correlation between those two events.

7 Q Can you see any correlation with any other
8 factors that would explain the timing, other than the
9 seasonal pattern of milk production?

10 A Well, again, the -- the factors that I
11 mentioned could be, that the milk went to another
12 market as a supplemental milk source. I think that
13 sometimes the milk out of the Western Order moves to
14 the Southeast and as -- as the supplemental supply, not
15 in great volumes but some moves.

16 It could also be that the use, the
17 manufacturing use stepped up which happens in the Fall
18 and they did not want to make -- whoever makes that did
19 not want to make that milk available to fluid. Cheese
20 production in the Fall months increases.

21 Q Well, let's -- you said a whole bunch there
22 that I hope I can remember to follow up on. Let's
23 start with milk moving out of the Western Order towards
24 the East to meet the seasonal needs of the -- Fall
25 needs of other markets.

1 Are you aware of that happening with any kind
2 of significance --

3 A No.

4 Q -- out of the Western Order?

5 A But I'm aware that it does happen but not
6 with great significance. The haul is pretty long. So,
7 the need has to be pretty great, but -- but it has
8 happened.

9 Q And where would that milk have gone?

10 A Again, into markets in the Southeast.

11 Q Really? And that would have been pooled in
12 the Southeastern Order and would therefore not show up
13 on these statistics. Is that what you're thinking?

14 A I was not the maker of those arrangements.
15 So, I -- I don't know all of those details.

16 Q Okay. So, that might have occurred. We've
17 identified seasonal production of milk patterns that
18 might have -- might correspond to these humps. Any --
19 any other factors that you think you might have
20 mentioned that I might have missed?

21 A No.

22 Q Okay. Then you indicated in testimony a few
23 moments ago and imply in this comment that in both
24 years, Class 3 poolings decreased when Class 1 needs
25 arise.

1 Are we to believe from that that it's your
2 belief that Class 1 needs are not being met?

3 A There were times and there are times in the
4 Fall months of the year, even in this market, that is
5 difficult to obtain some -- some supply for Class 1.
6 It would certainly not be in the measure that you might
7 characterize again in Order 5 or Order 7 or Order 6,
8 but there are times and days when there's some stress
9 of doing that.

10 Q Well, Mr. Hollon, you've put in evidence and
11 commented on some of the gyrations that many of us have
12 to go through to get our milk pooled. If there's a
13 need in the Class 1 market not being met, why wouldn't
14 it be a lot easier for us just to go meet that need
15 rather than go through those gyrations?

16 I find it incredible to believe that any
17 Class 1 need of the Salt Lake City Market or anywhere
18 in the Western Order went unfilled. Do you know of any
19 specific instance when a handler, bottler, let's say, a
20 distributing plant, -- let me rephrase my question.

21 Do you know of any specific instance in which
22 a distributing plant was unable to get milk when it
23 placed an order more than, let's say, 48 hours ahead of
24 time?

25 A Is that your only definition of difficulty in

1 obtaining a need?

2 Q Well, let me explain my question a bit and
3 let's put on to the record some facts that I think you
4 and I know, and that is, that sometimes when a bottler
5 hasn't planned very well, they might call up in the
6 early morning and ask for a load maybe by noon.

7 A I'm willing to exempt that from both of our
8 --

9 Q Right.

10 A -- questions.

11 Q And so, we're both agreeing that in those
12 circumstances, no matter how well structured the market
13 may be to supply the Class 1 needs, in those
14 circumstances, it may not happen as readily as the
15 particular bottler may complain --

16 A I would agree with that.

17 Q -- that it should. Aside from those kinds of
18 situations, do you know of any situation since January
19 1 of 2000 where a distributing plant under the Western
20 Order was unable to get the supply of milk it needed
21 for bottling or for Class 2 uses when -- when such
22 adequate notice was in fact given?

23 A Yes. There have been times when we made
24 attempts to supply our customers that we've had some
25 struggles in getting supplies of milk to meet their

1 orders --

2 Q You're telling me --

3 A -- in the way that they ordered them.

4 Q And what steps did -- you're referring to
5 customers of DFA?

6 A Hm-hmm.

7 Q What steps did DFA take to ascertain from
8 those of us who hold significant reserve supplies in
9 this market to have that milk delivered to your
10 customer?

11 A I don't know all of those particulars. I'm
12 not able to tell you.

13 Q You're testifying, I believe, as an expert.
14 Are you testifying as an expert in market conditions in
15 the Western Order?

16 A As far as every single day, day-by-day, no.

17 Q Well, I'm not trying to quibble here, Elvin.
18 I just want to know the limits of your familiarity with
19 the Western Order Market, and it's critical, I think,
20 in this hearing that Dairy Farmers of America
21 demonstrate that there has indeed been a difficulty
22 serving the Class 1 marketplace if it is to ask the
23 United States Department of Agriculture to tighten the
24 percentages that are designed after all to ensure an
25 adequate supply of milk is made available to the

1 bottlers.

2 So, I'm asking a very fundamental question
3 that I'm sure you thought about as you prepared your
4 testimony. How can we, DFA, demonstrate that in fact
5 Class 1 needs of the market are not being served
6 because of the liberal pooling requirements and/or
7 other institutional factors that we've discussed?

8 A Okay. As we walk through the entirety of
9 this exhibit, the fact that the standards are more
10 liberal than they used to be, that the local milk
11 production is declining. There's been some impacts on
12 price, that there's been testimony by other than DFA,
13 by other than myself, that there has been price impacts
14 that have caused them tremendous harm, that local --
15 that local close-in milk supplies are declining, that
16 there are in this chart volumes of milk that seem to
17 lead the market in certain times and come back when
18 it's not available, that there are procurement patterns
19 that take as a deliberate attempt to set up their
20 business plans to take advantage of coming on the Order
21 and off the Order at will.

22 All those are pieces of evidence that we
23 would put in place that says that the diversion
24 standards need to be tightened, so that some of those
25 conditions will improve and some of those happenings

1 can occur.

2 Q And the effect of tightening the pooling
3 requirements would be what?

4 A To raise prices to producers who have
5 demonstrated that they're willing to serve the market
6 every day and all the time.

7 Q Well, if they have higher prices, that
8 doesn't mean they can deliver any more milk than they
9 already produce, does it?

10 A They may then be able to produce more milk
11 and deliver more.

12 Q So, the purpose is to ensure that the current
13 suppliers to the market get a higher price, not to
14 ensure deliveries to the Class 1 market?

15 A The purpose would be to ensure that there's
16 an adequate supply of fluid milk to meet the needs of
17 the market.

18 Q Now, we've seen statistics indicating that
19 Class 1 utilization has been low as 17 percent in this
20 market. Is it your testimony as an expert in national
21 supply and demand conditions that one would expect to
22 see difficulty procuring milk in a market with a 17-
23 percent -- only a 17-percent Class 1 utilization?

24 A The function of that 17 percent is also -- is
25 also a mathematical derivation of the large amount of

1 milk that's on the market that's in greater than --
2 greater supply or greater quantity than any reserve,
3 and so in spite of that scenario, that -- the
4 utilization is -- the utilization statistic is a low --
5 low number. The utilization number is lower because of
6 the large volume of milk.

7 Q All right. So, see if I interpret what
8 you're saying. I'm giving you a lot of latitude here,
9 Elvin, and you can take these questions as any
10 direction you want, and we'll come back to my issues,
11 but I think what you just said, and I want to make sure
12 I'm understanding you, is that in your opinion as an
13 expert, the fact that there's all this milk that would
14 cause such a low Class 1 utilization does not by itself
15 make that milk available to the Class 1 market.

16 A Say that again.

17 Q I believe that you are testifying about other
18 factors that cause a low utilization that are quite
19 independent of factors that would bring milk to the
20 Class 1 or the distributing plant market.

21 A There is no doubt a low utilization and that
22 has -- that has an effect on milk that's available for
23 the market, and the question that you asked me was, is
24 there milk -- is there adequate milk available for the
25 market. I'm saying that these factors that we pointed

1 out are causing the utilization to be low and causing
2 prices to be low and affecting the ability to supply
3 the market.

4 Q But, Elvin, you still haven't answered my
5 question, which is, is there a shortage of milk for any
6 distributing plant in this Western Order Market, and if
7 so, which one, where, and why?

8 A And the first time that you asked me that
9 question, did DFA experience -- does DFA ever
10 experience some trouble in -- in filling orders of its
11 customers, and I answered that question, that yes,
12 there are times, not frequent but there are times, that
13 we experience trouble in filling those orders.

14 Q And let me ask if you considered sources of
15 supply other than DFA members?

16 A Sources of supply other than DFA members?
17 Yes, from time to time, we do.

18 Q Have you ever asked other organizations who
19 have milk labeled as a reserve supply to the market to
20 supply DFA customers?

21 A Yes, from time to time, we've attempted to
22 initiate agreements with -- in answer to the question
23 earlier today, agreements with other milk suppliers in
24 the marketplace that would provide supplemental milk,
25 supplemental balancing, milk supplies available when --

1 when needed, and in some cases, we've been successful
2 at negotiating those agreements. In other cases, we
3 have not.

4 Q Are you telling me it's necessary to
5 negotiate some kind of an agreement to have access to
6 other supplies rather than, for example, just picking
7 up the phone and calling and asking if we got some
8 extra milk?

9 A I would say that our long-term intent is to
10 have supply agreements with definition to them that
11 are, you know, reasonable for both parties.

12 Q So, as long as an organization, be it a
13 cheese plant or another co-op, as long as that
14 organization doesn't elect to enter into those kinds of
15 formal agreements, you will not ask them to supply your
16 customers, even if the distributing plant customer is
17 short of milk, is that correct?

18 A That would not be our preference. That may
19 change from time to time, but by the same token, if we
20 make those overtures and are rebuffed, and we have no
21 way of forcing anybody to do business with us.

22 Q Would you agree with me that your argument at
23 this hearing would be a whole lot stronger if you
24 called us up or if you called up one of these cheese
25 plants that, as you put it, have bounced in and out of

1 the market and asked them for milk?

2 A I didn't say that we didn't. I said awhile
3 ago that we have made attempts to contact people in the
4 marketplace to -- to make arrangements for reserve
5 supplies and those arrangements have not always -- not
6 been successful in every case. In some cases, they
7 have been successful, and we have negotiated agreements
8 to do that.

9 JUDGE CLIFTON: Mr. Marshall, would this be a
10 good time for a 15-minute break?

11 MR. MARSHALL: It would be a wonderful time.
12 Thank you.

13 JUDGE CLIFTON: Come back at 4:50.

14 (Whereupon, the witness was excused.)

15 JUDGE CLIFTON: Back on record at 4:53.

16 Mr. Marshall, you may proceed.

17 MR. MARSHALL: Thank you, Your Honor.

18 BY MR. MARSHALL:

19 Q Mr. Hollon, during the break, did you think
20 of any specific circumstances regarding inability of a
21 distributing plant under the Western Order Market to
22 get adequate supply of milk?

23 A Again, I pointed out the things I discussed
24 with you before, and I guess I would also point out
25 that that's not an unusual occurrence, and that just a

1 few months ago in Order 32, the utilization was not far
2 different. The handler's on record there as struggling
3 to get milk supply. I participated in hearings in
4 Order 30 with the same issue. So, it's not an unusual
5 occurrence, and I guess the final thing I will say,
6 that's not our only, you know, thought process here,
7 and we think that the regulations don't fit for the
8 market and they need some change.

9 Q Well, let's stay for a moment with the
10 question, I think, that's important for the hearing
11 record, as to whether there are in fact --

12 A I think --

13 Q -- people writing --

14 A -- I gave you several answers to that
15 question. I'm not sure how many more I can give you.

16 JUDGE CLIFTON: Mr. Hollon, let him finish,
17 please.

18 MR. HOLLON: Well, he's asked me five times
19 the same question.

20 JUDGE CLIFTON: Well, not exactly the same
21 question.

22 MR. MARSHALL: Is there an objection?

23 JUDGE CLIFTON: Mr. Beshore?

24 MR. BESHORE: Well, I realize Mr. Marshall
25 didn't complete his formulation of the inquiry, but it

1 sounded like it was going down the path that we've been
2 down several times, and I don't think Mr. Hollon needs
3 to -- should be asked or the rest of us should be
4 burdened with the -- the same inquiry again. It's
5 repetitive, and I would object.

6 JUDGE CLIFTON: Thank you, Mr. Beshore.

7 Mr. Marshall, I will allow you to ask another
8 question along this line. You may proceed to finish
9 your question.

10 BY MR. MARSHALL:

11 Q The question -- the question that I wanted to
12 address next is whether you have -- whether you are
13 aware then of any refusal on the part of organizations
14 like ours that pool milk on this Order that have
15 reserve supplies that, if you will, ride the pool but
16 have failed in the opportunity to deliver milk to the
17 Class 1 market?

18 A Yes.

19 Q You are aware of such cases?

20 A Yes.

21 Q Would you like to share those for the record?

22 A No broader than what I have. We have made
23 inquiries of the parties in the marketplace from time
24 to time to establish supply arrangements, and in some
25 cases, we've been successful. In some cases, we've

1 not, and they fit the definition of parties in the
2 market with milk supplies available.

3 Q This would be arrangements of a contractual
4 nature, would they?

5 A Primarily.

6 Q Well, let's explore that. You testified that
7 DFA has entered into some arrangements that included an
8 obligation to supply the market. Would one of those
9 have been the one you testified to with Mr. -- under
10 Mr. Beshore's direct examination, Sorrento-Lactalis?

11 A We have had negotiations with Sorrento-
12 Lactalis. That's correct.

13 Q And they do -- I think you testified earlier
14 that they did supply the Class 1 market. I assume that
15 would be the plant in Boise?

16 A They make supplies available to the Class 1
17 market.

18 Q On the days that their milk goes into the
19 Boise plant, is there DFA milk backed out into the
20 Sorrento plant at Nampa?

21 A Not always. Sometimes it happens that way,
22 but frequently, it does not, and they would make net
23 shipments to the Class 1 market.

24 Q That's an important opportunity, is it not,
25 to the Sorrento people to have access to pool on the

1 Class 1 market?

2 A Rephrase.

3 Q The Sorrento people were anxious to have an
4 arrangement to be able to serve the Class 1 market,
5 were they not?

6 A I can't say for sure. I can only say that
7 the -- the negotiation wasn't consummated the first
8 time. So, they were eager. Perhaps they weren't as
9 eager as you might think.

10 Q Well, the word on the street is that they're
11 paying 25 cents a hundredweight for the right to pool
12 their milk, is that true or false?

13 A I guess you'll have to listen to the street.
14 I don't have any comments on those transactions.

15 Q You cannot share with us the details of that
16 contractual arrangement?

17 A That is correct.

18 Q Are you aware of any other circumstances in
19 which other organizations have been charged a fee for
20 pooling their milk on the Western Order market?

21 A No.

22 Q No?

23 A No.

24 Q Would you necessarily be aware if there are
25 such arrangements?

1 A I may be aware. It would not be a part of my
2 day-to-day business responsibilities.

3 Q So, you're not able to testify that there are
4 no such other arrangements, you're only able to testify
5 that you're not aware of them?

6 A That is correct.

7 Q Would DFA expect to put on a witness that can
8 testify to the local supply and demand conditions and
9 arrangements for supplying the Class 1 market in the
10 Western Order marketplace?

11 A If that question means to reveal business
12 arrangements like you just described, no.

13 Q Do you think it's relevant to the
14 government's analysis of these proposals that the
15 practice of selling pooling rights goes on in this
16 market?

17 A I don't -- first of all, I don't know, you
18 know, if -- if that's the characterization that happens
19 or doesn't happen, but I'm not sure if I -- I guess I
20 have no -- no direct opinion on that.

21 Q Well, you've already testified to some other
22 kinds of situations where costs are incurred by
23 organizations to make sure that they can pool milk. I
24 believe you referred to the in and out or -- let me
25 clarify that.

1 I believe you referred to the practice of
2 moving milk into a plant and back out as a way to get
3 cooling accomplished. There's a cost to that, is there
4 not?

5 A I don't know. We don't do that.

6 Q You don't do that any where in the United
7 States? Are you telling me that in your 20 years,
8 you're not aware of the practice of interplant
9 transfers --

10 A That's --

11 Q -- for purposes of pooling?

12 A That was a different question.

13 JUDGE CLIFTON: Just a moment. Mr. Beshore?

14 MR. BESHORE: Well, that is a complete
15 mischaracterization of the testimony, and I object to
16 it.

17 MR. MARSHALL: Well, let's take it a step at
18 a time. Can you clarify --

19 MR. BESHORE: In addition, -- in addition, --

20 JUDGE CLIFTON: Just a moment.

21 MR. BESHORE: In addition, all transactions
22 from coast to coast in Mr. Hollon's 20 years of
23 experience are not within the relevant scope of inquiry
24 of this hearing.

25 JUDGE CLIFTON: Your objection is sustained.

1 MR. MARSHALL: I'll with -- fine. I can
2 appreciate that. I misunderstood Mr. Hollon's
3 statement. I thought he said that DFA doesn't do that.

4 JUDGE CLIFTON: I think that's -- if you
5 will, ask another question, Mr. Marshall.

6 MR. MARSHALL: As an expert --

7 JUDGE CLIFTON: Do you want clarification of
8 -- of that one first?

9 MR. MARSHALL: Let me just take it a step at
10 a time, Your Honor.

11 JUDGE CLIFTON: All right.

12 BY MR. MARSHALL:

13 Q Mr. Hollon, as an expert in the field of milk
14 marketing, are you aware that organizations do move
15 milk into and out of plants for purposes of achieving
16 more deliveries to distributing plants and that the
17 better to meet the diversion percentages of the various
18 Federal Orders around the United States?

19 A Am I aware that that practice may occur?

20 Q Have you ever been involved in an
21 organization where that has happened?

22 MR. BESHORE: Your Honor, I -- I --

23 JUDGE CLIFTON: Mr. Beshore?

24 MR. BESHORE: -- object to that. It's beyond
25 the scope. Has he ever been involved in 20 years from

1 coast to coast?

2 MR. MARSHALL: Your Honor, he --

3 MR. BESHORE: He hasn't been in a situation
4 where that has happened. It's -- we could -- we could
5 be here forever literally probing into those type --
6 that type of minutia.

7 MR. MARSHALL: May I speak, Your Honor?

8 JUDGE CLIFTON: Yes, you may, Mr. Marshall.
9 But you changed your question. Your -- your question
10 was, first of all, whether the witness was aware, and
11 then you changed it to has he been involved.

12 MR. MARSHALL: Yes, I did, Your Honor. That
13 was the second question, and the reason for that is
14 that he's been qualified as an expert in the field, I
15 suppose, of dairy and milk marketing and practices in
16 the United States, and I'm trying to draw on whatever
17 experience he may have to ascertain the cost factors
18 that are involved in that practice.

19 JUDGE CLIFTON: The cost factors that are
20 involved. Is this a follow-up on your -- your earlier
21 inquiry which indicated that if milk is offloaded and
22 then reloaded for delivery to Party C, that the cost
23 benefit ratio may prohibit some of that activity? Is
24 that -- is that the kind of information you're seeking?

25 MR. MARSHALL: Actually, no, Your Honor, and

1 for the benefit of the witness as well as to answer the
2 question, where I'm really going with this is that
3 there are a lot of costs being incurred by parties in
4 this marketplace today in order to get pooled, costs
5 which would indicate that they would be more than ready
6 to send as a source of supply to the Class 1 market, if
7 they were just asked. That's where I'm going with
8 this.

9 MR. STEVENS: Your Honor?

10 JUDGE CLIFTON: Mr. Stevens?

11 MR. STEVENS: I -- I understand what Mr.
12 Marshall's saying, but I have to agree that we're going
13 by what this man knows about the United States and what
14 he's done in 20 years. I mean, those questions that
15 you just talked about, certainly asking those
16 questions, but I think we are going far afield, and we
17 all -- there is limited time to do this hearing, and I
18 think we ought to use it judicially, and I certainly
19 have nothing against you asking questions about this
20 Order and what happened, but what happens in his 20
21 years and what happened all over the United States, I
22 don't think it gets us anywhere. So, I -- I -- with
23 all respect to counsel, I think we ought to limit the
24 inquiry to the Notice of Hearing issues, to evidence
25 that involves these hearing -- I mean, these market

1 areas and -- and get on with it.

2 JUDGE CLIFTON: All right. Thank you.

3 Mr. Marshall, let me ask you if you can do it
4 this way. First of all, I'd like you to limit the
5 question in terms of location and time and that kind of
6 thing, so that it's relevant to the issues before us
7 here with regard to the Western Order and the current
8 time period.

9 But secondly, if you can be a little more
10 specific in your questioning and not so broad, I think
11 you can get the information you want from this witness
12 more quickly.

13 I don't want to impinge on your -- your right
14 to gather the information you need so that it's in the
15 record, but I am mindful of the time of day.

16 MR. MARSHALL: I understand, Your Honor, and
17 I thank you for that assistance, and I think we'll just
18 put in the cost data through our own witness. That'll
19 simplify that.

20 BY MR. MARSHALL:

21 Q The general question to which I was leading
22 up when I learned that Mr. Hollon couldn't confirm what
23 I thought was a fairly obvious fact, the question I'll
24 now turn to is, are there not a lot of people incurring
25 costs to whom you could have gone looking for milk,

1 people whom one might reasonably assume would have been
2 anxious to help DFA supply the Class 1 needs of the
3 market?

4 A I don't know that I know the answer to that.

5 Q Fair enough. Let me ask this question and
6 again, I'm asking this, Elvin, just because you need to
7 know that -- not because. I'm asking this question to
8 give you a chance to uphold what I think is your burden
9 of proof here, that there's a need to tighten the Order
10 requirements, and that there are plenty of people
11 around, such as ourselves, who would be more than happy
12 to serve the Class 1 market. That's where this hearing
13 is going. You're on the witness stand now.

14 JUDGE CLIFTON: Mr. Marshall, who's on the
15 witness stand now?

16 MR. MARSHALL: He is, and so I'm asking him
17 if he has any reason to believe that an organization
18 such as ours does not stand ready to serve the Class 1
19 needs of the market.

20 MR. HOLLON: We've looked at all of the
21 issues and proposals that we've made, and they address
22 a broad range of topics, and in terms of performance
23 requirements, and there may -- there may be sometimes
24 when what you say may be true. There may not be, but
25 the broad range of performance requirements that we put

1 out are designed to try to fit the market to the
2 situations that we think need attention, and so I guess
3 to come down to the end, there could be times when
4 there may be some milk supplies available from your
5 organization, there may not be.

6 MR. MARSHALL: All right. Let's end this
7 line of inquiry and turn to another.

8 BY MR. MARSHALL:

9 Q As a general proposition, would you agree as
10 an expert that it is relevant to analyzing the
11 competitiveness of the market to look at whether the
12 service charges above Federal Order prices that are
13 being charged are high, which would indicate that there
14 is a difficulty serving the market, or low, which would
15 indicate that there's plenty of competition to serve
16 the market?

17 A Yes, that could be a factor in -- in level of
18 service charges.

19 Q And do you have information indicating that
20 the service charge levels in the Salt Lake City market
21 or anywhere in the Western Order market are high that
22 would indicate difficulty in attracting milk to those
23 distributing plants?

24 A I don't think that we've had any discussion
25 about level of service charges in any of our

1 testimonies.

2 Q Well, your -- you and Mr. Beshore called a
3 number of witnesses earlier today, including one, a
4 producer, who shared that he had been told that there
5 were some long-term supply contracts in the Salt Lake
6 market with low service charges. Do you recall that
7 testimony?

8 A No, I wasn't in the room, but if that was the
9 case, I'll accept that. I did not hear that.

10 Q Can you confirm that that is the case?

11 A There are long-term supply agreements with
12 customers in the market.

13 Q And are those -- can you confirm the portion
14 about the service charges being low?

15 A I would say that there are service charges
16 there. As to the relative high/low, I'm not willing to
17 make any comments on that.

18 Q Is Dairy Farmers of America reluctant to let
19 outside suppliers serve customers to whom they have an
20 exclusive supply arrangement?

21 A No. We have arrangements in many markets
22 that describe just exactly what you have outlined.

23 Q Well, I think I'm done for now. Would this
24 be a good time to talk about the questions earlier on -

25 -

1 A Yes, it would be.

2 Q -- on Proposal Number 7, I believe it is?

3 A Correct.

4 Q Okay. Then let's -- let's get that one taken
5 care of.

6 You recall the earlier question about what
7 the -- how that Order language would work? I'll invite
8 you to comment on your intention as to how it would
9 work with the changes being proposed.

10 A All right. Regarding Page 10 of my direct
11 statement and regarding specifically Proposal Number 7,
12 --

13 JUDGE CLIFTON: Exhibit 32.

14 MR. HOLLON: Exhibit 32. Thank you. The
15 first point I would make is that again to the intent,
16 the idea here is to try to ensure that -- that as a
17 handler of producer milk, that the numbers that need to
18 be derived for diversion are based on net shipments.
19 So, that is an overall intent. That's a desire, that
20 they be net real shipments.

21 So, with regards to this language, first, it
22 is mislabeled. It should be Section 135.13, and it
23 should say producer milk. It does refer to Section D.
24 We would be moving current 3 to 4 and inserting a new
25 3, and so since we're talking about how we would

1 determine the diversion percentage numbers for producer
2 milk, producer milk is delivered to, though that word
3 "deliveries" used in determining qualifying percentages
4 shall be milk transferred to, diverted to or from farms
5 of producers pursuant to 9, Part 1000, 9(c). So, those
6 are the ways that you might -- that if you had producer
7 milk on a market report, you would get it to a pool
8 distributing plant.

9 Delivered to and physically received by
10 plants described in Section 135.7(a) or (b), less any
11 transfers, and we strike the word "or diversions",
12 that must have missed one of our edits as we went
13 through the language, of bulk fluid milk products from
14 such pool distributing plants.

15 MR. MARSHALL: Thank you. I appreciate your
16 courtesies and look forward to talking with you later.

17 Thank you.

18 JUDGE CLIFTON: So, I just wanted to have you
19 repeat that for me, Mr. Hollon.

20 MR. HOLLON: Okay. Would you like me to read
21 --

22 JUDGE CLIFTON: You would strike the words
23 "or diversion"?

24 MR. HOLLON: Yes, ma'am.

25 JUDGE CLIFTON: Thank you.

1 All right. Additional cross examination of
2 Mr. Hollon? Mr. Vetne?

3 CROSS EXAMINATION

4 BY MR. VETNE:

5 Q Mr. Hollon, for -- for your reference and
6 those of other folks here, I'm looking at Exhibit 8.

7 A Okay.

8 Q Which is the materials, statistical materials
9 prepared by the Market Administrator, and looking in
10 there at the fourth page, which contains a list of
11 handlers in the Western Market, --

12 A Okay. Is that Table 1, alphabetical list?

13 Q Yes.

14 A Okay.

15 Q For 2001.

16 A Okay.

17 Q There are two pages. I'm looking at the most
18 recent. Okay. Cream o' Weber in Salt Lake City, Utah,
19 is a distributing plant that's pooled in the Western
20 Market. Is Cream o' Weber supplied by DFA?

21 A Yes.

22 Q Is Cream o' Weber under a full supply
23 contract with DFA?

24 A Yes.

25 Q Does that contract have a period of years to

1 run?

2 A I think that's about as far as the details of
3 the contract I'm willing to get into.

4 Q A period of years as opposed to weeks or
5 months?

6 A Again, you asked a second question, and from
7 there on out, you know, no reply.

8 Q Okay. Further on down, there's a -- oh, by
9 the way, does DFA have any ownership interest in Cream
10 o' Weber at all?

11 A Yes.

12 Q What is that ownership interest?

13 A Cream o' Weber is a part of the National
14 Dairy Holdings Group, of which DFA is an investor.

15 Q And what is DFA's investment share in
16 National Dairy Holdings?

17 A Fifty percent.

18 Q Okay. The next distributing plant in Utah is
19 Gossner Foods, Inc., of Logan, Utah. What is the
20 nature of that plant?

21 JUDGE CLIFTON: Hold on a minute till that
22 plane goes by.

23 (Pause)

24 JUDGE CLIFTON: Did you hear the question?

25 MR. HOLLON: I did. I did. I'm not

1 completely familiar with the nature of that plant, but
2 I think they're going to have a witness up in a few
3 minutes --

4 MR. VETNE: All right.

5 MR. HOLLON: -- or hours.

6 BY MR. VETNE:

7 Q Does DFA supply any milk to Gossner Foods?

8 A No.

9 Q The next plant in Utah is KDK, Inc., in
10 Draper, Utah.

11 A I'm not familiar with the nature of that
12 plant.

13 Q Okay. Do you know enough about the plant to
14 know that it's a small distributing plant?

15 A That -- I would say that.

16 Q Okay. And to your knowledge, DFA does not
17 have a regular supply of milk to that plant?

18 A Not to my knowledge.

19 Q Okay. Do you know whether KDK, Inc., is
20 supplied by a group of independent patrons or another
21 cooperative?

22 A I -- I'm not familiar with the make-up of
23 their supply.

24 Q Okay. Meadow Gold Dairies, Inc., of Salt
25 Lake City. Is that a plant that DFA supplies?

1 A DFA has supplied Meadow Gold Dairies, yes.

2 Q Okay. Is that supplied under a full supply
3 contract with Meadow Gold?

4 A In the -- we have -- we have an arrangement,
5 and we supply that plant. I'm not interested -- not
6 willing to discuss or divulge any of the further
7 details about the supply arrangement.

8 Q Okay. You -- you -- just so I'm clear what
9 you're not willing to do, you're not willing to share
10 with the record whether it's a full supply contract or
11 not?

12 A I said that we had supply agreements with the
13 plant. That was the -- would be the end of my
14 declaration.

15 Q Does anybody other than DFA have a regular
16 supply to the Meadow Gold plant?

17 A No. I do not know.

18 Q Can you tell us whether the supply
19 arrangement that you have with the Meadow Gold plant
20 has a period of years as opposed to weeks or months to
21 run?

22 MR. BESHORE: Your Honor, I would like to
23 interpose a general objection to inquiries with respect
24 to, you know, the details of these contracts. They are
25 proprietary information, and I would like to suggest

1 Mr. Hollon not -- be instructed not to divulge them and
2 that'll speed things up here with Mr. Vetne's inquiry.

3 JUDGE CLIFTON: Mr. Beshore, Mr. Hollon so
4 far has merely acknowledged the existence of the
5 contract.

6 MR. BESHORE: That's where we want to leave
7 it.

8 JUDGE CLIFTON: Any other detail that you
9 think would be permissible to divulge?

10 MR. BESHORE: Not at this point.

11 MR. ENGLISH: Excuse me, Your Honor. I
12 realize this is not my witness. On the other hand,
13 this is my client's client, and I -- I certainly would
14 -- would join in that objection and -- and indicate
15 that we're not prepared to have the details of our
16 agreements read upon the record.

17 JUDGE CLIFTON: All right. Thank you.

18 Mr. Vetne, you may proceed.

19 MR. BESHORE: Okay. I'm not sure I received
20 an answer to my last question. So, I'll ask it again.

21 BY MR. VETNE:

22 Q Can you reveal whether your supply
23 arrangement -- are you -- first of all, do you know
24 whether your supply arrangement with Meadow Gold has a
25 period of time to run?

1 A In answer to the earlier question, I
2 acknowledged that we supply milk to Meadow Gold. I
3 have no further comments on any questions about that
4 supply arrangement.

5 Q My -- my question is not about the specifics
6 of the arrangement. My question is whether you have
7 knowledge. My next question is whether you are willing
8 to or unwilling to share that knowledge. If you don't
9 have the knowledge, then I don't need to ask the next
10 question. Do you have knowledge?

11 JUDGE CLIFTON: Mr. Vetne, it doesn't matter
12 whether he has knowledge. He need not disclose any
13 further information.

14 MR. VETNE: Your Honor, I think it's very
15 important for this record and it's certainly important
16 for myself having I think what's going to be the only
17 witness from DFA to know, first of all, if the witness
18 has knowledge that he refuses to share for proprietary
19 reasons, that is his right.

20 It's also important to know that if the
21 witness -- that the witness does not have knowledge
22 because this is the witness on a specific market, and
23 if this witness doesn't have knowledge, it affects the
24 weight and credibility given to his whole testimony.

25 I'm not insisting that the witness provide

1 any information that he deems proprietary. I am
2 insisting to know exactly what things he does consider
3 proprietary and is unwilling to share with the record,
4 and I would also like to know what he doesn't know.

5 JUDGE CLIFTON: Well, I understand that, but
6 we're not here to test the breadth and width and depth
7 of his knowledge. He is an expert in the field, and it
8 doesn't matter to me whether he has intimate knowledge
9 of the detail of every contract.

10 MR. VETNE: Okay.

11 JUDGE CLIFTON: So, I'd ask you to merely
12 determine if there is a contract in existence and let
13 it stop there.

14 MR. VETNE: All right.

15 BY MR. VETNE:

16 Q Let's go to Kroger Company. Is Kroger
17 Company a distributing plant in Utah that is supplied
18 by DFA?

19 A We have no sales with Kroger Company, and
20 they are a distributing plant in Utah.

21 Q Okay. Is that under contract with DFA?

22 A Again, I have no further information to
23 supply.

24 Q You will not because of proprietary reasons,
25 is that correct?

1 A That's correct.

2 Q Okay. And Western Quality -- well, let's go
3 back to Kroger. You don't -- you don't have any
4 ownership interest in Kroger, do you?

5 A No.

6 Q Okay. And the last one in Utah is Western
7 Quality Foods. Is that a plant in which DFA has an
8 ownership interest?

9 A Yes.

10 Q And what is the nature of that ownership
11 interest?

12 A I have no other information about that
13 interest to divulge. Well, I could tell you, it's
14 small. I don't know the exact percent, but it's
15 considerably less than 50.

16 Q All right. And it's not pooled in December.
17 Do you know why?

18 A No, I don't.

19 Q Does DFA supply all the requirements of
20 Western Quality Food products?

21 A I think that gets back to pool supply-type
22 questions. So, I think I'm going to decline to answer
23 that.

24 Q Decline to answer? Okay. With respect to
25 the plants that you've testified that DFA does supply,

1 what is the aggregate Class 1 volume average per month
2 of those plants combined?

3 A I don't have that figure.

4 Q If you would look with me -- do you have
5 Exhibit 9 in front of you?

6 A Tell me the title of Exhibit 9.

7 Q It's the things I asked for.

8 A Some of them. Which one?

9 Q These pages aren't numbered, but it's --

10 A Your question?

11 Q -- four from the back, Volume of In-Area
12 Sales.

13 A Is that Question 9?

14 Q Question 10.

15 A I don't have that one.

16 JUDGE CLIFTON: Let me hand you this one.

17 MR. HOLLON: Thanks. Okay.

18 BY MR. VETNE:

19 Q Based on your knowledge of deliveries to
20 specific Utah plants, do you know in a ball park
21 fashion the proportion of Class 1 in-area sales
22 represented by plants to which DFA delivers milk?

23 A I would say that we have sales to a majority
24 of the plants, as you outlined in your other question,
25 and then we have a large amount of sales to those

1 plants.

2 Q And am I correct that you're unwilling to
3 disclose any further details?

4 A As to the exact volumes, yes, I would be
5 unwilling.

6 Q Okay. There was a document published by USDA
7 called "Producer Milk by State and County", which is
8 published periodically, and I'm going to represent to
9 you that for the year 1990, that publication shows Utah
10 milk being delivered to one Federal Marketing Order and
11 for the year 2000, it shows Utah milk being delivered
12 to five Federal Marketing Orders.

13 A Okay.

14 Q Okay. For the year 2000, was DFA responsible
15 for marketing Utah milk to five separate Marketing
16 Orders?

17 A The only thing I can say with certainty is
18 that there would be two.

19 Q What two?

20 A 135 and, I think, Federal Order 1.

21 Q And you don't know whether or not DFA was
22 responsible for marketing two or three other Orders?

23 MR. BESHORE: Could I? For clarification,
24 was that inquiry with respect to Idaho milk or Utah
25 milk?

1 MR. VETNE: Utah milk.

2 MR. BESHORE: Utah milk. Okay.

3 MR. HOLLON: What were the other Orders?

4 MR. VETNE: I don't have it in front of me.

5 MR. HOLLON: Oh, well.

6 MR. VETNE: I just see the number there.

7 MR. HOLLON: I'm sorry. I can tell you with
8 certainty two. The others, I do not know.

9 MR. VETNE: All right.

10 BY MR. VETNE:

11 Q Now, if you would turn with me to your
12 Exhibit 33, Table 3?

13 A Yes.

14 Q Okay. First of all, let's look at the non-
15 pool plants there in -- in Idaho. DFA supplies some
16 milk to Glanbia Foods, correct?

17 A Correct.

18 Q Is that milk pooled by DFA?

19 A I think for the most part, yes.

20 Q Okay. Is that milk that has touched
21 base at a pool plant one time and then for the most
22 part continues to be delivered to Glanbia?

23 A I would say for the most part, yes.

24 Q Okay. Are you -- do you have personal
25 knowledge of any exception to the most part rule?

1 A No.

2 Q Does DFA have a regular supply of milk to
3 Kraft Foods?

4 A No.

5 Q Okay. And you've testified that DFA has a
6 regular supply of milk to Sorrento-Lactalis or -- or
7 maybe you don't.

8 A No, I don't think that's correct.

9 Q Okay. There is a regular supply of milk
10 pooled by DFA that is delivered to Sorrento-Lactalis.
11 Is that a better way of stating it?

12 A We have a marketing agreement with Sorrento,
13 with Sorrento-Lactalis that incorporates several
14 factors and that is one of them.

15 Q Okay. For that milk, DFA is the pooling
16 handler, correct?

17 A Yes.

18 Q And the milk that goes there is milk of
19 producers that are not members of DFA?

20 A Correct.

21 Q Do they include producers that are also not
22 members of River Valley Milk Producers?

23 A Yes.

24 Q So, in addition to those six, there are
25 others?

1 A Correct.

2 Q Okay. Is the -- are you aware of Grade A
3 producers that are associated with Sorrento-Lactalis
4 that are not pooled by anybody?

5 A I am not aware that there are some, but I'm
6 aware that there could be some.

7 Q Okay. Is it -- is it your belief that for
8 the most part, DFA pools the milk supply, the Grade A
9 milk supply of Sorrento-Lactalis?

10 A We pool in accordance with the agreement that
11 we have. I'm not sure that we're the ones who selects,
12 you know, or accommodates producers, but we pool the
13 milk according to the terms of the agreement.

14 Q Okay. And with respect to that milk, that's
15 reported on DFA's 9(c) handler report as diverted milk,
16 correct?

17 A I would assume, yes.

18 Q Okay. And in order to qualify, that milk has
19 to hit a distributing plant or a pool plant one time,
20 correct?

21 A Would have to meet the performance
22 requirements of the Order.

23 Q And for individual producers, that means
24 delivery to a pool plant one time, correct?

25 A Correct.

1 Q Okay. With respect to those producers, are
2 there producers whose milk since initially qualifying
3 have been delivered to milk plants other than Sorrento-
4 Lactalis?

5 A I do not know.

6 Q Okay. With respect to milk of those
7 producers, are there producers after qualifying whose
8 milk has been delivered to a distributing plant?

9 A Try that again.

10 Q With respect to the milk that DFA pools for
11 Sorrento-Lactalis, --

12 A Hm-hmm.

13 Q -- and after those producers have met their
14 initial delivery performance requirements, are there
15 any of which you have personal knowledge that at some
16 point subsequent to qualification were delivered to
17 distributing plants?

18 A You mean would they would deliver to a
19 distributing plant again as a part of the sale or
20 supply?

21 Q Delivered to a distributing plant for any
22 purpose, once being qualified.

23 A Yes.

24 Q Okay. Are there any producers whose milk is
25 regularly so delivered?

1 A I don't know the make-up of the milk supply.
2 So, I would assume it could be some that just because
3 of their location perhaps or they could be for other
4 reasons that that could be the case. So, it would --
5 it would make some logistical sense that the answer
6 would be yes.

7 Q Okay. Would there have been some producers
8 that were associated with Sorrento-Lactalis who --
9 whose production was more efficiently located to Meadow
10 Gold-Boise than part of the DFA supply that was going
11 to Boise before the Sorrento agreement?

12 A That hypothetical could be true.

13 Q Okay. And would you expect that in order to
14 maximize your own organization's efficiency, that milk
15 of those producers would be directed to Meadow Gold-
16 Boise while milk of another DFA producer whose milk was
17 probably less efficiently located to Boise would in
18 turn be directed to Sorrento?

19 A That could be true.

20 Q Okay. Do you know whether that in fact has
21 happened?

22 A I -- I do not know exactly that has happened.

23 Q Okay. Would it be logical to assume for
24 purposes of maximizing revenue and efficiency that that
25 would happen?

1 A Yes.

2 Q Okay. With respect to the milk supply that
3 -- of DFA that is delivered to Boise, what
4 manufacturing plant or plants is it delivered to on
5 days or during parts of the year when it's not needed?

6 A I don't know those day-to-day arrangements.
7 So, I can't tell you.

8 Q Okay. Let's go down to the non-pool plants
9 in Utah on Table 3. Are there -- of that list of non-
10 pool plants, there's a plant in Beaver, Utah, that is a
11 DFA plant.

12 A Correct.

13 Q Okay. What does that plant produce?

14 A Cheese, makes condensed, sells cream. That's
15 its primary manufacturing lines.

16 Q Okay. And Smithfield, Utah, what does that
17 make?

18 A Cheese.

19 Q Just cheese?

20 A Yes.

21 Q Okay.

22 A Primarily, yes.

23 Q Okay. Other than the plants that are
24 identified as DFA plants, are there any plants that are
25 primarily or fully supplied by DFA?

1 A Ask that one more time.

2 Q In the list of non-pool plants in Utah, --

3 A Hm-hmm.

4 Q -- other than the two obvious DFA plants,
5 what plants are primarily or exclusively supplied by
6 DFA?

7 A I don't know that there's any exclusive, but
8 I would know that we would have some milk sales to the
9 extent that there might be milk sales to the Meadow
10 Gold plant in Orem. I think that's primarily an ice
11 cream facility. So, it wouldn't be a lot of direct
12 milk supplies, and certainly the Western Quality Foods
13 in Cedar City, there'd be some milk supplies in those
14 plants. The remainder of the plants, I would guess
15 there would be some on a few of them but not a whole
16 lot.

17 Q Okay. Does DFA market milk for Class 4 use
18 from the Western Order milk supply?

19 A Only in a limited case.

20 Q Hm-hmm. And where would that milk go when
21 it's limited?

22 A Depends on what was available at the time it
23 needed to be moved.

24 Q Well, where -- where are the plants that make
25 Class 4 products that are accessible to this market?

1 A In -- that are acceptable to the market --

2 Q Okay. Where are the plants that make Class 4
3 products to which Western Order milk is delivered?

4 A I think the only two in the market are the
5 two West Farm Foods plants.

6 Q Are those the ones identified as non-pool
7 plants in the Idaho portion of this exhibit?

8 A I think that is correct.

9 Q All right. Your testimony generally referred
10 to organizations bringing in and bringing out --
11 bringing milk into the Order, bringing -- taking it off
12 of the Order when it's financially advantageous to do
13 so. Do you recall that?

14 A Yes, I made references to that.

15 Q On a couple of occasions?

16 A Correct.

17 Q Okay. That is something that DFA also does
18 for the same reasons, correct?

19 A Correct.

20 Q Okay. In your prior testimony, you -- you
21 stated, "It's your responsibility to maximize all the
22 opportunities afforded by the system to secure funds
23 for DFA members." That fiduciary duty to your members
24 is why you maximize revenue by pooling, depooling,
25 repooling, etc., correct?

1 A I'm not sure what the repooling meant, but --
2 but the first two, yes.

3 Q Well, that's bringing it back on the pool
4 after it's off.

5 A Oh, okay. Yes.

6 Q Okay. And -- and that is also why you've
7 elected to pull some milk from California in this
8 Order, correct?

9 A That is correct.

10 Q Okay. The -- the revenue that's drawn from
11 California, is that distributed back in this Order or
12 is it distributed to California producers?

13 A I'll give you a general answer to that
14 question and then from that, I think we could probably
15 take the answer that when you asked me that in Order 30
16 and 32 hearings, but the general answer to that is that
17 those types of decisions, the actual decisions and the
18 revenue decisions are made at the DFA Council level,
19 and there's seven of those DFA Councils, and they in
20 turn interrogate the transaction and they provide the
21 instructions for the revenues, where they go at that
22 point.

23 Q In this case, would the California milk
24 that's pooled in the Western market, that revenue be
25 decided by a Western -- a California Council or a

1 Western Market Council?

2 A Both. You get stuck here on the names, but
3 the DFA Western Area Council, which is comprised
4 primarily of California producers, and the DFA Mountain
5 Council, which is the operating entity in this
6 geographic area, would then make the decision you just
7 asked me about.

8 Q Okay.

9 A And that's about as far as we'll -- as I'm
10 willing to drill down in that line of questioning. So.

11 Q All right. Let me see if you're willing one
12 more -- one more step there. You can say no.

13 A Okay. Give me one.

14 Q With respect --

15 MR. BESHORE: I'm not sure I will.

16 MR. HOLLON: Okay.

17 MR. VETNE: Well, he can say no. I get to
18 ask the question. You don't get to object before it's
19 objectionable.

20 JUDGE CLIFTON: However, you may hover near
21 the microphone.

22 BY MR. VETNE:

23 Q With respect to those -- the pool drawing
24 California milk, do you -- are you willing to share
25 with us whether a majority of that draw ends up in the

1 pockets of Western Market dairy farmers versus
2 California Market dairy farmers?

3 MR. BESHORE: I am willing to object to that
4 question and direct Mr. Hollon that it's proprietary
5 information.

6 MR. VETNE: So be it.

7 BY MR. VETNE:

8 Q Mr. Hollon, you referred a couple places in
9 your testimony to lower blend prices ultimately driving
10 up costs to distributors.

11 A Yes.

12 Q Okay. Do you have any objective detail
13 within your personal knowledge that that has happened
14 in the Western Market?

15 A The -- the things that would cause that to
16 happen have begun to take place. The actual transfer
17 of some of that cost has not taken place yet.

18 Q Okay. Was your statement one of your general
19 experience in the Federal Order System and to the
20 extent it referred to anything in the past, it referred
21 to things in the past outside of the West?

22 A In some of the other Federal Order Markets
23 where we're experiencing some of this same type of end
24 result, there have been some of those costs that have
25 been passed back on. For example, if you have to go

1 further to procure milk both every day and
2 supplemental, if you have to pay additional premiums to
3 maintain supplies. So, yes, those are not happening on
4 a current basis in the Western Order. As of this
5 point, they have not happened yet.

6 Q All right. And again on another page of your
7 statement, you say that "processors where blend prices
8 are going down need to pay additional premiums to make
9 up for lost blend dollars to keep producers in
10 business."

11 A Yes.

12 Q Okay. Has that happened to your personal
13 knowledge in the Western Market?

14 A Yes, I would say that has happened.

15 Q Okay. What processors, to your personal
16 knowledge, are paying additional premiums for that
17 purpose?

18 A As I talked to some of our field service
19 staff, one of our competitors, who would fit the
20 definition you just described, has tended to raise
21 their level of prices, and one of the reasons given is
22 that it takes more money to maintain their milk supply.

23 Q Which of your competitors?

24 A You can ask them when they get on the stand.

25 Q Which -- which one is going to get on the

1 stand that I can ask?

2 A Mr. Marshall's witness.

3 Q Okay. And that pertains to the Western
4 Market as opposed to the Pacific Northwest Market?

5 A Yes.

6 Q And he -- and it's your -- your testimony
7 that somebody in NDA told you that the reason that
8 premiums --

9 A Oh, no.

10 Q -- were raised was because --

11 A No.

12 Q -- of the lower blend price?

13 A No, no. What -- what -- what you asked me
14 was, was I aware in this market?

15 Q Oh.

16 A Did I have knowledge in this market, and my
17 answer was I think that -- my answer was that in
18 discussions with our procurement people, that our
19 competitor, one of our competitors has become more --
20 has paid more at a higher level, and my -- our
21 discussion is that they paid more to procure more milk,
22 and one of the reasons for that is that the blend price
23 levels are lower.

24 Q Oh, you're talking about the pay price of
25 your cooperative competitor to their dairy farmers?

1 A You asked me was I aware of any processor
2 that had paid more money to procure milk supply, and I
3 think they fit that definition, and the rest of the
4 definition also fits.

5 Q Hm-hmm. Okay. Well, --

6 A I guess if they want to get up and say they
7 haven't paid more, they can.

8 Q When you refer in your testimony a couple of
9 places to local milk, with reference to the Western
10 Order, what do you mean by local milk?

11 A I think in that scenario, the idea or the
12 impression I was trying to give was that milk that is
13 close to the Salt Lake City Market, that has supplied
14 the Salt Lake City Market for some time.

15 Q I'm -- I'm -- I'm referring to your use of
16 the geographic term "local" and nothing else.

17 A Hm-hmm.

18 Q Okay. Performance or whatever. Unless you
19 intended something more by local than geography, and if
20 so, please give me the definition, but when you use the
21 term "local" as an adjective to modify milk, --

22 A Okay.

23 Q -- okay, if you intended something more than
24 geography, tell me what that more is.

25 A Okay. I think the intent there was again in

1 this market would be milk supplies that were close, in
2 reasonable proximity, to the Salt Lake City Market.

3 Q Okay. Okay. Now, by close and reasonable
4 proximity, do you have a parameter, a circumference, a
5 mileage or --

6 A That's kind of a moving target across the
7 country. Local in Green Bay and Madison is a lot
8 closer than local is in Salt Lake City.

9 Q Please. I'm just talking about the Western
10 Market.

11 A Okay.

12 Q With respect to the Western Market, which
13 you've identified now as Salt Lake City, --

14 A Hm-hmm.

15 Q -- if you were to draw a circle or define
16 counties, what is your definition of local --

17 A Okay.

18 Q -- for purposes of understanding your
19 testimony when you refer to local milk?

20 A I would say generally in the 200-mile range
21 would be a general definition.

22 Q From Temple Square or City Hall or -- all
23 right.

24 A Is that the Order?

25 Q You made some calculations which formed a

1 good part of your testimony as well as your exhibit
2 concerning the reserve supply of a plant.

3 A Of a market.

4 Q Of a market.

5 A Yes.

6 Q Excuse me. Your testimony says that
7 "generally, consumer demand is filled over four days of
8 the week."

9 A Yes.

10 Q So, your assumption is that the reserve
11 supply represents milk produced on three days a week?

12 A That's a simplistic assumption to try to get
13 the idea across.

14 Q Simplistically, and that that milk produced
15 three days a week goes to some other use?

16 A Yes.

17 Q Okay.

18 A It also implies that on the four days, you
19 need more than just those four days to meet that
20 demand.

21 Q Okay. With respect to the plants that you
22 supply in the Western Market, do all plants receive
23 milk seven days a week?

24 A No.

25 Q Okay.

1 A Not every single one.

2 Q Not every single one. Do most plants receive
3 milk seven days per week?

4 A Most receive some. We actually have an
5 exhibit, I thought we were going to get to today, in
6 another proposal that outlines some details on that and
7 shows some variations, both seasonally and during the
8 week, for the Salt Lake City Market.

9 Q Is there a financial incentive in your
10 agreements for plants to receive milk seven days a week
11 at a fairly uniform rate each day?

12 A I think they are uniform receiving credits in
13 this market. I can find that out.

14 Q Okay. Would it be fair to say it's common --

15 A It is common.

16 Q -- throughout the nation to have uniform
17 receipts and provide some financial incentive to
18 encourage plants to receive seven days a week?

19 A That is a common practice.

20 Q And in effect, what those plants are doing is
21 receiving milk on each of seven days to accommodate
22 their bottling schedule, even though the bottling
23 schedule may be four days?

24 A That's a common -- that's a fair
25 characterization. That's a common practice, but it

1 doesn't necessarily mean that it always occurs, and it
2 doesn't mean that it always handles that supply, but
3 your generalized characterization is right.

4 Q To the extent that seven-day receipts is
5 common in the market, would you also agree with me that
6 the amount of reserve that needs to be kept for the
7 market is going to be less than where plants receive
8 milk four days a week?

9 A Again, in general, yes, I would agree with
10 that.

11 Q And is your testimony later on going to
12 address the extent to which the reserve might be
13 reduced by virtue of actual experience in the Western
14 Market?

15 A Not sure I follow you.

16 Q Okay. Forty-three percent is hypothetical --

17 A Correct.

18 Q -- and doesn't take into account seven-day
19 receipts?

20 A That is true.

21 Q Is later testimony going to address what is
22 the actual reserve, not hypothetical reserve, --

23 A No.

24 Q -- for -- okay.

25 A Let me rephrase that. It will point out, you

1 know, in our case with our balancing facilities, you
2 know, what some of the capacity necessary to do the
3 balancing. So, I guess you would say that there is
4 some, you know, volume data that's in the exhibits.

5 Q You refer on Page 7 of your testimony to milk
6 bouncing on and off the pool, and we agree that DFA
7 does that, and anybody that can make a buck will do
8 that?

9 A When there are financial incentives to pool
10 or depool, that's a frequent occurrence, yes.

11 Q In the first -- second full paragraph, you
12 say that "this does not reward producers who supply the
13 market year-round and tends to raise their costs of
14 obtaining additional milk in the Fall months when spot
15 supplemental supplies are needed."

16 Is that statement in that paragraph of your
17 testimony one of general experience or is it one of
18 which you have specific personal knowledge in the
19 Western Market?

20 A It is both.

21 Q Okay. Could you identify a Fall month and a
22 plant and a spot shipment scenario that actually
23 occurred in the Western Market?

24 A Certain amount of answering your question
25 would be proprietary. So, again, I would have to say

1 no. I can outline in general in answer to some of Mr.
2 Marshall's questions that we have approached from time
3 to time participants in the marketplace about
4 agreements, you know, long, short, with --

5 Q Okay.

6 A -- balancing performance, delivery, payment,
7 payment for milk, and in some cases, we've been
8 successful, in some cases not, and those approaches
9 have included participants in the Western Market.

10 Q Okay.

11 A Western Order.

12 Q My question specifically involves spot
13 shipments. Do you understand what -- that -- well, let
14 me -- let me define spot shipments. Spot shipments, as
15 I'm familiar with them, and it's my experience that is
16 drawn from the Midwest, --

17 A Hm-hmm.

18 Q -- is milk from somebody who doesn't
19 ordinarily supply milk to a buyer who doesn't
20 ordinarily buy from that supplier, that is infrequent
21 and usually on fairly short notice, maybe --

22 A I would agree with that definition.

23 Q Okay. Are you aware of any specific instance
24 of spot milk meeting that definition in the Western
25 Market, and if so, in what month of what year, to what

1 customer, and under what arrangements? Any part of
2 that question that you can answer, please do.

3 A I think that you asked me four. Am I aware,
4 and then three qualifiers.

5 Q Yes.

6 A The first one yes, and then the next three,
7 I'm not going to provide the details.

8 Q All right. Are you -- are you able to
9 provide enough detail so that we can ascertain whether
10 the plant that needed spot milk is located in Utah,
11 Idaho or elsewhere?

12 A In that -- in that case, it would be a
13 Western Order and a pool distributing plant. So, it
14 would not be outside the marketing area or in another
15 Federal Order.

16 Q Okay. So, either in Utah or --

17 A Yes, Idaho.

18 Q Or Idaho. All right. No, I'm not going to
19 ask that question.

20 Oh, Exhibit 33, Table 5. Table 5 and Chart
21 1, Chart 1, as I understand it, both address pool
22 volumes and hypothetical volume that can be
23 accommodated by the pool, is that right?

24 A No.

25 Q No, that's not it. This is Price Request 4.

1 Where's the hypothetical --

2 A The last table.

3 Q The last table? All right.

4 A Table 7 fits the definition you were
5 describing.

6 Q Table 7. Okay. Now, the -- both the pooled
7 and the hypothetical portion include as a base for
8 pooling all of the Class 1 milk that is supplied by DFA
9 under commitment to some fairly large distributors in
10 Utah?

11 A Includes all Class 1 and Class 2 milk in the
12 marketplace.

13 Q Okay.

14 A As published in the Market Administrator
15 Report.

16 Q Okay. With respect -- if -- let's -- let's
17 put it for a moment in your mind. Subtract the volume
18 of Class 1 milk that DFA supplies under some commitment
19 from this chart. Okay?

20 A Okay. Yep.

21 Q With that thought in mind, would you agree
22 that with that volume subtracted, it very dramatically
23 reduced the volume of milk that can be pooled on the
24 remaining Class 1?

25 A Mathematically, if you make the subtraction

1 so the numbers -- the end result would change.

2 Q Is that a yes?

3 A No.

4 Q It's not a yes? Okay. Let me try to ask it
5 again and see whether -- what it is.

6 A I agree that mathematically, if you take out
7 some of the volume, the -- the result of this chart
8 would change.

9 Q I'm saying if you take out the DFA-committed
10 supply, would it be -- what I'm trying to ask is, would
11 it be a lot less milk that can be pooled or just a
12 little bit less?

13 A I have no qualification, no adjectives to
14 offer you here.

15 Q Because you feel that's proprietary?

16 A To some extent, yes.

17 Q And to what other extent can you not offer
18 information?

19 A Well, I did offer you that it would be less.
20 So, I've helped you there.

21 Q Okay. I mean, to some extent, proprietary.
22 Is there another reason why you can't answer that other
23 than proprietary?

24 A No.

25 Q All right. So, to the complete extent, it's

1 proprietary?

2 A Correct.

3 Q All right.

4 MR. VETNE: I don't think I have any more
5 questions at this time. Thank you.

6 JUDGE CLIFTON: Thank you, Mr. Vetne.

7 Mr. English?

8 MR. ENGLISH: I'm going to be a lot shorter.

9 MR. VETNE: They've all been asked.

10 MR. ENGLISH: No, they haven't.

11 MR. VETNE: Not all answered but all asked.

12 CROSS EXAMINATION

13 BY MR. ENGLISH:

14 Q Mr. Hollon, Pages 9 and 10, let me just carry
15 over from 9 to 10, with respect to Proposal 3 and your
16 net shipment proposal, --

17 A Yes.

18 Q -- you have not proposed a net shipment
19 proposal for proprietary bulk tank handlers, correct?

20 A That is correct.

21 Q And that is because you have another proposal
22 that you have yet to discuss that, if it were adopted,
23 it would eliminate the proprietary bulk tank handler
24 provision, --

25 A That's correct.

1 Q -- correct? So, I'd like to speak sort of
2 hypothetically for a moment about where you might be
3 with your proposals. If the Secretary, in her wisdom,
4 were to not adopt Proposal Number 5 that has not yet
5 been discussed that would, if adopted, abolish the
6 proprietary bulk tank handler provision, -- are you
7 with me so far?

8 A I am with you so far.

9 Q Would you believe -- would you then as a
10 modification to your proposal say that this language
11 like this, probably not the identical language but
12 language like this that's in Proposal 3 for net
13 shipment, should be adopted with respect to your
14 proprietary bulk tank handlers?

15 A We would either propose or support in either
16 case that, yes. We did not think about that at the
17 time. So.

18 MR. ENGLISH: And that's my only question.

19 (Applause)

20 MR. WILLIAMS: My name's Jeff Williams. I'm
21 an employee of Glanbia Foods. That's J-E-F-F
22 W-I-L-L-I-A-M-S.

23 Your Honor, I'd like to maybe get some
24 clarification on an exhibit that Mr. Hollon included in
25 his packet, Exhibit 33, Attachment 8, which talks about

1 Avonmore West, Inc., milk pricing system.

2 Just for the record, I believe Mr. Hollon
3 said that he believed that this pricing -- this sheet
4 of paper was one to two years old. For the record,
5 this -- this formula that's represented in this
6 exhibit, this attachment, was in place prior to July
7 1st, 1997. So, in fact, it's nearly five years old.

8 JUDGE CLIFTON: Could I place you under oath
9 for that testimony at a later time?

10 MR. WILLIAMS: Yes.

11 JUDGE CLIFTON: All right. And -- and will
12 you be here tomorrow?

13 MR. WILLIAMS: I suppose so, if I can't
14 testify tonight.

15 JUDGE CLIFTON: Okay. What I'd like to do,
16 if we finish Mr. Hollon tonight, I'd like to take your
17 testimony tonight on that issue.

18 MR. WILLIAMS: Okay.

19 JUDGE CLIFTON: If we don't finish Mr. Hollon
20 tonight, I think I'd like to interrupt his testimony on
21 that point for -- for your testimony --

22 MR. WILLIAMS: Okay.

23 JUDGE CLIFTON: -- on that point.

24 MR. WILLIAMS: That's fine.

25 JUDGE CLIFTON: And now, you may proceed with

1 the questions that you have.

2 MR. WILLIAMS: Okay. I have just a couple
3 questions of Mr. Hollon.

4 CROSS EXAMINATION

5 BY MR. WILLIAMS:

6 Q Referring to your Exhibit 33, Table 4, down
7 in Section E, where you make a comparison of milk
8 prices between Idaho -- annual all milk price between
9 Idaho, Utah and the U.S. average, --

10 A Yes.

11 Q -- I noticed that in 2001, you omitted the
12 Utah average price. So, is it true that the changes
13 from 1996 through 2001 and also the changes from year
14 2000-2001 would not be minus 100 percent if in fact you
15 put the 2001 price there?

16 A You're correct. You're correct.

17 Q Okay.

18 A There's not any 2001 data because NASS has
19 not provided a number yet. Even though they have
20 provided a U.S. average, they have not provided a Utah
21 average as of yet.

22 Q Okay.

23 A But your mathematical observation is right.
24 That was a mistake.

25 Q Okay. Thanks.

1 I heard a lot of testimony this morning from
2 Utah dairy farmers, and some of that testimony was
3 quite emotional about the fact that they felt that
4 Idaho milk being pooled on the Western Order was -- was
5 -- was one of the factors for the exodus of dairy
6 farmers from the Utah Market.

7 Do you recall that --

8 A I do.

9 Q Some of that testimony? Okay. Well, if you
10 look at Section F of that same Exhibit 33, Table 4, did
11 you do the math and subtract where Idaho is in terms of
12 dairy farmers? In 1992, there were 1,550 dairy farmers
13 according to your table.

14 A Hm-hmm.

15 Q And in 2001, there were 847 dairy farmers.

16 A Hm-hmm.

17 Q Do you know what that difference is?

18 A The only calculations I made here were '96
19 and 2000. So, whatever those two numbers show were the
20 only calculations I made.

21 Q Okay. Well, I did the calculation, and in
22 Idaho, between 1992 and 2001, Idaho lost 703 dairy
23 farms, and in that same period, if you do the math, you
24 take 750 dairy farms in Utah in 1992 and compare that
25 to the 420 dairy farms that are reported here in 2001,

1 that's a loss of only 330 dairy farms.

2 So, in fact, Idaho lost more than twice as
3 many dairy farms in that same period of time from 1992
4 to 2001. Would you agree with that?

5 A Sure. I would agree with the math.

6 Q Okay. And then, back to Section E, if you
7 take the milk price for Idaho for 1992 through 2000,
8 and I admit -- I omitted 2001 in my calculation because
9 there was not a calculation for Utah for a good
10 comparison, and if you take my -- if you take the
11 average Idaho annual all milk pay price from 1992 to
12 2000, that average is \$12.56.

13 A Okay.

14 Q Would you agree with that?

15 A Hmm. Well, I haven't had a chance to do the
16 arithmetic. So.

17 Q Okay. And then, on the same hand, if you
18 take the Utah annual all milk price from 1992 through
19 the same period, 2000, --

20 A Right.

21 Q -- and you take the average, it's \$12.86.

22 A Okay.

23 Q So, that's a 30-cent advantage for Utah
24 farmers over Idaho farmers. So, based on the fact that
25 Utah had a higher pay price over that period of time of

1 30 cents, and based on the fact that Idaho lost more
2 than twice as many dairy farmers as Utah, would you
3 agree that -- that we should have some Idaho dairy
4 farmers up here talking about the fact that they lost
5 more farms? We lost more farms in Idaho and the fact
6 that the pay prices were worse as opposed to dairy
7 farmers in Utah bemoaning that fact?

8 A They certainly had the opportunity to come
9 and do that.

10 MR. WILLIAMS: Okay. Thank you.

11 JUDGE CLIFTON: Thank you, Mr. Williams.

12 Additional cross examination for Mr. Hollon?
13 Mr. Carlson?

14 CROSS EXAMINATION

15 BY MR. CARLSON:

16 Q Yes. Elvin, we had heard you characterize he
17 agreement that you had with Sorrento-Lactalis, --

18 A Yes.

19 Q -- and you've indicated that they -- some of
20 their milk goes to the -- to the Class 1 plant that you
21 service sometimes during the month or sometimes during
22 the week and during the weekend, milk returns to that
23 plant, to the Sorrento plant, is that correct?

24 A Yes.

25 Q Are you aware of the receiving facilities or

1 the lack thereof, the storage capacities at the Class 1
2 plant that you service in Boise?

3 A It doesn't receive -- well, I think they do
4 not receive milk on weekends.

5 Q Okay. So, does this concern you in your
6 Proposal Number 3 where the net shipments in that case
7 would not really identify the value of that plant as a
8 supply plant to the market?

9 A The situation you're describing would be a
10 concern. We thought about it, and we couldn't figure
11 out a way around that that we thought was feasible and
12 the greater good lie on the -- you're talking about the
13 net shipment provisions, but you raised a valid point
14 in that case.

15 Q It's -- obviously it's a concern for -- for
16 the entire market when somebody abuses those kinds of
17 privileges.

18 A Correct.

19 Q Now, there's -- if there were some way to
20 identify that the shipment out of the plant was done on
21 a different time of the week than the shipment into the
22 plant, that could help in a situation like that?

23 A It may, but our experience is that usually --

24 Q Do you agree?

25 A -- that -- that doesn't work.

1 Q Okay. Mr. Marshall in his questioning stated
2 -- made the statement that the parties in this market
3 are paying a pooling fee, and relating that back, that
4 must indicate that people are anxious or parties are
5 anxious to serve the Class 1 market.

6 Would your experience -- if -- if that is
7 true, in your experience, would you feel like that's
8 more a situation where parties are trying to avoid
9 servicing Class 1 market and still being pooled?

10 A There are situations where that is certainly
11 true.

12 MR. CARLSON: Okay. Thank you. That's all.

13 JUDGE CLIFTON: Thank you, Mr. Carlson.

14 Additional cross examination for Mr. Hollon?
15 Mr. Tosi?

16 CROSS EXAMINATION

17 BY MR. TOSI:

18 Q Elvin, I have several questions. Does the
19 Order ever refer to the intentions and the criteria for
20 pooling?

21 A I'm sorry. Say that again.

22 Q In the Western Order, Order 135, --

23 A Okay.

24 Q -- does the Order ever refer to intentions or
25 the intent of people?

1 A No.

2 Q In your experience, are you aware of any
3 decision by the Department or the Secretary that bases
4 its criteria for holding on to what someone's intent
5 is?

6 A No. As -- as we would see it, there are, I
7 think, maybe two levels of that decision. First, no
8 one is entitled to -- to -- to the pool, and then if
9 you perform -- then the performance standard is defined
10 as to how you get to participate in the pool. So, I
11 think that those would be the evaluation process, the
12 procedure.

13 Q Well, maybe we should refer to Page 1 on your
14 statement, Exhibit 33, please.

15 A Okay.

16 Q The citation that you've taken from the
17 tentative position --

18 A Yes.

19 Q -- and is subsequently approved by the
20 producers in the Upper Midwest, May 1st of this year.

21 A Yes.

22 Q Is it -- would it be your testimony that the
23 findings that were applicable to Order 30 with respect
24 to what's important about pooling standards being
25 twofold, that the pooling standards assure an adequate

1 supply of milk for the full use of the market should
2 continue?

3 A You said there were two standards?

4 Q Right. That's -- that's the first one.

5 A Okay. Yes.

6 Q And then, that we have the proper
7 identification of milk producers who are serving the
8 market?

9 A Yes.

10 Q And to the extent that others have asked you
11 about putting this in focus on the notion of your
12 knowledge about whether or not Class 1 handlers had
13 difficulty obtaining the supply of milk, and your
14 answers were what they were, in that regard, would it
15 be your opinion then that to the extent that they were
16 able to procure milk from sources that they may not
17 have normally procured from, that should be eligible
18 for pooling as well?

19 A Try that question again.

20 Q Excuse me. I'm trying to --

21 A I understand.

22 Q -- reformulate it.

23 A It's been a long afternoon.

24 Q Yes. Maybe I can ask it a slightly different
25 way.

1 A Okay.

2 Q With respect to the pooling standards for
3 Order 135, --

4 A The performance -- was that performance
5 standards?

6 Q Pooling standards which --

7 A Okay.

8 Q -- include performance --

9 A Okay.

10 Q -- standards.

11 A Okay.

12 Q That of equal importance to an adequate
13 supply of milk is the proper identification of
14 producers and the milk of those producers that are
15 regularly serving the Class 1 needs of the market?

16 A I would agree with that.

17 Q And that milk that is not regularly servicing
18 the needs of the Class 1 market needs to be looked at
19 and inspected as to whether it should be eligible to be
20 pooled and therefore share in the Class 1 proceeds of
21 the 135 Market?

22 A That's what we're requesting. That's what
23 we're requesting with our proposals, yes.

24 Q Also, one other thing. Your proposal, I
25 think it's Proposal 4, where you're proposing to

1 increase the performance standards for 7(d)-type
2 financing, would you explain your rationale for wanting
3 to increase that standard?

4 A Yes.

5 Q The testimony, at least from what I can
6 gather from your written statement and from what I was
7 able to hear, didn't really touch on --

8 A Yes.

9 Q -- the need for the justification and the
10 basis for increasing that standard.

11 A Okay. Our -- our only justification is
12 fairly narrow. There has not been any of those plants
13 in awhile, but we have a concern that if the other
14 proposals are indeed found for and the pooling
15 standards are reduced or tightened, that someone may
16 want to be one, and if someone does want to be one, we
17 think that the standard ought to be higher than the 35
18 and should go to the 50 and that's the only criteria
19 and justification or the only reason why we advance
20 that proposal.

21 Q And -- and to the extent that if, by chance,
22 some time in the future, that the Order would have a
23 sudden increase of supply plants, you're not suggesting
24 that they should also ship 50 percent of their receipts
25 --

1 A No.

2 Q -- on the same grounds as a manufacturing
3 plant operated by cooperative association?

4 A We did not make that proposal.

5 MR. TOSI: Okay. Thank you.

6 MR. HOLLON: Okay.

7 JUDGE CLIFTON: Additional cross examination
8 of Mr. Hollon? Mr. Vetne?

9 CROSS EXAMINATION

10 BY MR. VETNE:

11 Q In response to a question by Mark Carlson,
12 you affirmed that it has happened that there is milk
13 that is pooled that has avoided serving the Class 1
14 market. Do you recall that question?

15 A No.

16 Q All right. Well, let me see if I can
17 paraphrase my recollection of the question and answer.
18 Okay?

19 A Okay.

20 Q Question.

21 A Would it be easier to just ask the question
22 you want to ask, if I would have said that?

23 Q Yes. Yeah. Well, okay. It has happened was
24 your answer, and the question was, is the milk that is
25 pooled that has avoided serving the Class 1 market?

1 My question with respect to that is, if that
2 -- if -- if that's a true -- is that true? Do you
3 agree with that answer, if that had been the question?

4 A You know, that only happened five minutes
5 ago, that exchange, but I can't remember the question
6 or -- or the frame that it came in.

7 Q All right. Is it your testimony that there
8 is milk that you're aware of that has avoided serving
9 the Class 1 market that participates in the pool?

10 A Oh. I would say yes, from time to time, that
11 happens.

12 Q Okay. Do you have any specific knowledge of
13 that happening in the Western Market with respect to
14 any particular pool handler?

15 A I cannot say directly. It would -- it would,
16 to somewhat extent, depend on the extent of pumping in
17 and pumping out, and if a hundred percent of what was
18 pumped in was pumped out, I would tend to say yes, that
19 that may have happened, but I don't know if that has
20 happened or not.

21 Q Okay. To the extent the question was
22 intended to mean are you aware of anybody that has
23 refused to serve the Class 1 market when asked? Are
24 you aware of any such instance in the Western Market?

25 A When we've been down this path two or three

1 times, I'll give you the same answer, is that we have
2 made inquiries in this market of people with milk
3 supplied --

4 Q I -- I recall your answer.

5 A Okay.

6 A That's fine. We have information on -- on
7 DFA in Utah. What portion of producers in -- in Idaho
8 are DFA producers?

9 A I don't have an exact number, but it would be
10 a lesser percentage than in Utah.

11 Q Well, it was 80 percent in Utah. Would it be
12 under 20 percent in Idaho?

13 A I don't know exactly.

14 Q Do you know how much Idaho milk is pooled by
15 DFA?

16 A Not off the top of my head, I do not.

17 Q Do you have an approximate number?

18 A Between 20 and 80.

19 Q Twenty and 80 producers?

20 A Twenty and 80 percent.

21 Q Percent of Idaho milk?

22 A Yeah.

23 Q Yeah. All right. Finally, -- and finally,
24 with respect to the question of service charges for
25 pooling accommodation, Mike Granke testified in -- in

1 Minneapolis that -- that perhaps it had negotiations
2 with DFA about pooling milk in the Western Market. Do
3 you recall that?

4 A He did.

5 Q Okay. And he testified that -- that Kraft
6 was requested to pay half of the pool draw for the
7 privilege of pooling in the Western Market. Do you
8 recall that?

9 A I don't recall if he said that or not, but he
10 was your client. Actually, if you'd characterize that,
11 I will say that he said that.

12 Q All right. I represent to you that that's
13 what he said.

14 A Okay.

15 Q Are -- are you willing to confirm that that
16 is what DFA requested of Kraft?

17 A I'm not willing to confirm anything about any
18 potential negotiations with Kraft because they usually
19 don't like that.

20 Q Well, Mike made it public. I'm just asking
21 if you will confirm the other side of that negotiation?

22 A I will not go there.

23 Q All right. And finally, both in -- in the
24 Upper Midwest and the Central Market, DFA complained
25 that Idaho milk was being pooled in those markets. Do

1 you recall that?

2 A Yes.

3 Q And you were the witness that -- that
4 complained about that?

5 A We made -- we made comments and presented
6 data and testimony about that, yes.

7 Q You thought Idaho milk shouldn't be pooled
8 there?

9 A We suggested that there was a performance
10 standard that should be met if Idaho milk wanted to be
11 pooled there.

12 Q Hm-hmm. And if -- if your proposals are
13 adopted there, ultimately, --

14 A They would have the option of meeting those
15 performance standards.

16 Q Or -- or -- or they would withdraw to Idaho,
17 and -- and there would be even more milk looking for a
18 pool home in Idaho, correct?

19 A They would have that option.

20 Q Now, that wasn't the question, whether they
21 had the option. The question was, whether there would
22 be more milk even than now looking for a home?

23 A Unless it found a home somewhere else, that
24 could be a result, yes.

25 Q Hm-hmm. And there would be less chance of

1 finding a home in the Western Market under your
2 proposals for the Western Market, correct?

3 A Again, we would offer a performance standard,
4 and if Idaho milk or any other milk chose to meet that
5 performance standard, they would be available, and they
6 would have the option to pool.

7 Q Isn't it true that with net shipments and
8 lower diversion authority, there is less chance to pool
9 and that would apply to milk that backs out of the
10 Upper Midwest and the Central Market and anywhere else?

11 A Yes.

12 MR. VETNE: Thank you.

13 JUDGE CLIFTON: Let's have about a 10-minute
14 break. So, let's come back at 6:31, and then I'll call
15 on you, Mr. Tosi.

16 MR. TOSI: I could just ask this very, very
17 quickly?

18 JUDGE CLIFTON: All right. Mr. Tosi?

19 CROSS EXAMINATION

20 BY MR. TOSI:

21 Q Elvin, this is just a real minor technical
22 question. In response to your -- in response to my
23 question about the 35-percent performance standard, are
24 you -- are you -- do you have any knowledge right now
25 if the Order provides the Market Administrator

1 authority to adjust that number up or down?

2 A Yes. The Market Administrator has the
3 authority to adjust the -- the percentages.

4 Q And may I ask a reason why that you're -- you
5 would rather go through this hearing rather than direct
6 the question to the Market Administrator?

7 A Oh, when we inquired about that, we did not
8 get a favorable response. So, we -- we discussed, you
9 know, percentages and performance levels and were not
10 led to believe that, you know, we could be successful
11 in that direction. So, we thought the hearing was the
12 only option that we had.

13 Q Okay. I understand.

14 MR. TOSI: That's all I have. Thank you very
15 much.

16 MR. HOLLON: Okay.

17 JUDGE CLIFTON: Thank you, Mr. Tosi.

18 Let's come back at 6:35.

19 (Whereupon, a recess was taken.)

20 JUDGE CLIFTON: All right. Let's go back on
21 record. Back on record at 6:37.

22 Is there any other cross examination of Mr.
23 Hollon? Yes? Your name, please?

24 MS. BARROW: My name is Joyce Barrow,
25 J-O-Y-C-E B-A- -- B as in Boy, A-R-R-O-W, and I

1 represent KDK, and I have a question.

2 JUDGE CLIFTON: I'm sorry. There was some --
3 the name?

4 MS. BARROW: KDK, initials like King Dog
5 King.

6 CROSS EXAMINATION

7 BY MS. BARROW:

8 Q I have a question for you on Exhibit 33,
9 Table 4-D.

10 A Yes, ma'am.

11 Q My question is, if I read this right, out of
12 the milk -- sources of milk for the Order, we have
13 Idaho and Utah. They total in the year 2000 89 percent
14 of the milk. In 2001 86 percent of the milk. Where
15 did the other milk come from?

16 A Some of it -- some of the difference would
17 come from milk in California, and there are other
18 states also that are part of the milk supply. The
19 Market Administrator Exhibit lists all of the states
20 and their respective towns. So, the only purpose of
21 this was to try to show the percentage of those two
22 states.

23 Q Well, my question was, if we tighten up the
24 order, and this was California milk, haven't we already
25 tightened up our market, if we end the double dipping?

1 A There would be some -- there would be some
2 positive effect on the blend price, if the California
3 milk were eliminated as well as the proposals that we
4 made would make additional enhancements to the blend
5 price, which would be good for people who supply your
6 plant as well as DFA members.

7 Q That was my question. I just wanted to know
8 if this was all California milk, and by that alone,
9 we'd have at least 10 to 15 percent of our market.

10 A It's not all California milk, but there's a
11 substantial volume, but I think there in Mr. Stevens'
12 hands are those numbers.

13 Q That was all. I just wanted that clarified.

14 A Yes, ma'am.

15 JUDGE CLIFTON: Thank you, Ms. Barrow.

16 Do you have a card for the court reporter,
17 please?

18 MS. BARROW: I gave him one.

19 JUDGE CLIFTON: Very good. Thank you.

20 All right. Any other cross examination
21 questions for Mr. Hollon?

22 (No response)

23 JUDGE CLIFTON: Any redirect examination, Mr.
24 Beshore?

25 MR. BESHORE: Just a couple questions which I

1 know will not trigger any further inquiries.

2 REDIRECT EXAMINATION

3 BY MR. BESHORE:

4 Q Mr. Hollon, you referred in response to a
5 question from Mr. Marshall, I think, to a 200-mile
6 figure for local milk. Did you mean that to represent
7 the average distance that milk travels from farm to
8 market in this Order or anything precise like that?

9 A Mr. Vetne asked that question. I think --

10 Q Mr. Vetne.

11 A -- he asked it once, and then he asked it
12 again, and he said in general, and so I gave him the
13 general definition. I didn't intend in any way for
14 that number to be used in a formula or an equation or
15 defined, and in most markets, local is the milk that
16 regularly supplies a given market. So, the local milk
17 would be the milk that regularly supplies Salt Lake
18 City or regularly supplies Boise or regularly supplies
19 Twin Falls.

20 Q Okay. And there's information already in the
21 record from the Market Administrator that in the
22 hauling costs survey about distances, farm to market,
23 and you're going to be talking about that later on --

24 A That is correct.

25 Q -- in some detail with respect to some of the

1 other proposals?

2 A That's correct.

3 Q Okay. Now, I know Mr. Marshall asked about
4 this. The economic effect of Order Reform and how you
5 had to look at changes in Class Price Formulas, Class 1
6 movers, etc., as well as changes in utilization. Do
7 you recall that?

8 A That's right. He mentioned those factors.

9 Q Okay. Now, would it be your view that that
10 includes positive changes and negative changes as well
11 as positive changes?

12 A That's an economic judgment or statistical
13 judgment, but nonetheless you would include all. You
14 would include positive ones and negative ones.

15 Q Okay. And with Federal Order Reform, were
16 there substantial negative impacts on producer prices
17 in the changes to Class Price Formulas, the Class 3
18 price formula in particular?

19 A That is correct. The Class 3 price, when
20 compared to pre-reform/post-reform, the reform decision
21 formulas generated anywhere from -- there's different
22 measures, but 30 to 50 cents of lower values to
23 producer blend prices.

24 Q Okay. Now, one -- one final -- final
25 question. Mr. Vetne asked you if you recalled Mr.

1 Reinke of Kraft's testimony at the Order 30 hearing
2 with respect to what DFA allegedly proposed in a
3 negotiating --

4 A That is correct.

5 Q -- session.

6 A He asked those questions and portrayed some
7 comments made by Mr. Reinke.

8 Q Okay. Do you recall Mr. Reinke's testimony
9 in that same hearing with respect to the terms by which
10 Idaho milk under Kraft's control was pooled at that
11 time and presently on Order 30?

12 A Yes.

13 Q And do you recall that Mr. Reinke was asked -
14 - Mr. Reinke testified that there are two ways you can
15 pool milk, you can either perform or you can pay to
16 pool, and that it was much more economical for them to
17 pay to pool their Idaho milk on Order 30 and that
18 that's the way they were working it?

19 A That is correct.

20 Q Okay. Now, is that the kind of performance
21 you're looking for in -- in -- in this Order?

22 A No.

23 MR. BESHORE: Thank you.

24 JUDGE CLIFTON: Thank you, Mr. Beshore.

25 Any recross?

1 (No response)

2 JUDGE CLIFTON: No. You may step down, Mr.
3 Hollon.

4 (Whereupon, the witness was excused.)

5 JUDGE CLIFTON: Mr. Williams? Mr. Vetne?

6 MR. VETNE: If I might, Your Honor? The --
7 the order would like to go as with the two producers
8 first, Mike Roth first.

9 JUDGE CLIFTON: All right. And Mr. Williams
10 is going to defer?

11 MR. VETNE: Two producers, Jon Davis and then
12 Mr. Williams.

13 JUDGE CLIFTON: All right. Very fine.

14

15 Welcome. If you'll please be seated? Would
16 you please state your full name and spell all your
17 names, please?

18 MR. ROTH: My name is Mike Roth, M-I-K-E
19 R-O-T-H.

20 JUDGE CLIFTON: Mr. Vetne, are there any
21 exhibits associated with this witness?

22 MR. VETNE: There are none, Your Honor.

23 JUDGE CLIFTON: All right. Thank you.

24 Mr. Roth, would you raise your right hand,
25 please?

1 Whereupon,

2

MIKE ROTH

3 having been first duly sworn, was called as a witness
4 herein and was examined and testified as follows:

5

JUDGE CLIFTON: Thank you.

6

Mr. Vetne?

7

8 MR. VETNE: Mr. Roth has a short statement
that he has in handwriting that he would like to give.

9

MR. ROTH: And a couple of comments, also.

10

DIRECT TESTIMONY

11

12 MR. ROTH: I'll just tell you a little bit
about myself. I am a -- been in the dairy business 32
13 years full time. Our farm's been in our family for 50
14 years. We milk 5,000 cows. We've got -- I'm in
15 partnership with -- I've actually got eight brothers
16 and sisters involved in the dairy operation. So, like
17 many of the Utah dairymen, we are a family farm,
18 consider ourselves a family farm, also.

19

20 My name is Mike Roth. I'm a dairy producer
and owner of Si-Ellen Farms in Jerome, Idaho. Our farm
21 supplies milk to Glanbia and at times pool our milk. I
22 believe the producers like myself should be able to
23 continue to pool for these reasons.

24

25 If I'm not able to pool my milk and do not
have the option to share in the blend price, it could

1 create a situation, I believe, where a farmer would be
2 tempted to move his or her milk to a company like DFA
3 who at times pays a higher milk price. This could be
4 unhealthy for consumers and farmers because it would
5 put the supply of milk in fewer hands, potentially
6 creating a monopoly, higher prices for consumers and
7 fewer choices for farmers.

8 In 2002, our farm is projected to spend a
9 \$180,000 in state and national programs to promote
10 dairy products, including fluid milk. Producers like
11 myself should not be penalized, discriminated against
12 or forced to join DFA or other organizations that would
13 pool our milk, allowing me to share in the blend price.

14 DFA's cause is no more noble than mine or
15 other Idaho producers. Low milk prices are not caused
16 by farmers like myself having the opportunity to pool
17 their milk. Low prices are the result of complicated
18 economic and political factors. DFA's sheer size and
19 political clout is not reason enough to change the
20 rules.

21 I would urge the Department of Agriculture to
22 allow all farmers the same opportunity to prosper. Our
23 Grade A farm is ready and willing and able to supply
24 milk to a distribution plant as needed.

25 Comments. I think that the one glaring thing

1 -- this is the first hearing I've ever been to, but
2 something that has really jumped out at me was how can
3 Utah producers have it both ways? If you don't want
4 milk pooled into your area, how can you enjoy the
5 profits from DFA while they're doing what you're asking
6 us not to do, pooling milk when it suits them best? By
7 returning profits to you, I mean your co-op, and they
8 will have retains and dividends and that's a fact.

9 Order Reform, I believe, was intended to help
10 all dairymen in the Order, not just Utah dairymen. If
11 Utah dairymen are exiting the dairy business, I think
12 it has more to do with what they're doing on their
13 farms, not what I'm doing on my farm.

14 The emotional testimony that the Utah
15 dairymen gave in my opinion makes a great story line.
16 They were organized and it came across, but the fact of
17 the matter is many dairies -- I've been in this for a
18 long time. Many dairies go out of business for
19 economic reasons, but a lot of those economic reasons
20 are sometimes not related to milk price but more
21 related to catastrophic events, divorces, deaths in the
22 family, break-ups in partnerships. So, I don't -- I
23 don't believe -- we face the same struggles in Idaho
24 that dairymen in Utah face. Feed prices, cost
25 controls, getting the best price for our milk. It's no

1 different there than it is here.

2 I think when the reformers looked at
3 reforming the Order, they wanted to put more equality
4 into it, and they -- I would -- I would venture to say
5 they probably knew that Class 1 utilization would go
6 down. I'm sure they studied it and had to have known
7 that that would taken place, and it did take place, and
8 I would just urge the Department of Agriculture to
9 consider my testimony.

10 DIRECT EXAMINATION

11 BY MR. VETNE:

12 Q Mr. Roth, how long have you been a supplier
13 of milk to Glanbia?

14 A It'll be seven years in October.

15 Q And that includes Glanbia's predecessors --

16 A No.

17 Q -- at the same plant?

18 A I started with Glanbia and have been there
19 ever since.

20 Q And who were you shipping to prior to that?

21 A I was shipping to an independent processor in
22 the state of Washington.

23 Q Okay. Class 1 processor?

24 A Hm-hmm.

25 Q Okay.

1 JUDGE CLIFTON: That was a yes?

2 MR. ROTH: Yes.

3 BY MR. VETNE:

4 Q Prior to Federal Order Reform, was your milk
5 supply -- milk of your farm pooled in the Southwest
6 Idaho, Eastern Oregon Order, if you recall?

7 A How many -- that was in 2000?

8 Q 1999-1998.

9 A I believe we started in 1999. I mean, I -- I
10 would -- that's not factual. I'd have to --

11 Q All right.

12 A I -- I don't have an exact date on that.

13 Q To what -- to what processor does your milk
14 go to serve Class 1 needs?

15 A To Falconhurst.

16 Q Do you know how frequently the milk goes to
17 Falconhurst?

18 A No, I don't.

19 Q Your milk?

20 A No, I don't.

21 Q And -- and who -- does the bulk tank unit
22 handler, in this case Glanbia, arrange for those
23 movements?

24 A Right. Yes.

25 Q Are there producers shipping to Glanbia who

1 are your peers and neighbors whose milk is not pooled?

2 A Yes.

3 Q And is there a portion of your supply that is
4 not pooled?

5 A Yes.

6 Q And are there other Grade A producers located
7 in your production area whose milk is not pooled
8 anywhere?

9 A I believe so.

10 Q Okay. And does the inability of -- of
11 producers in your production area to find a pool home
12 for all their milk create discontent among producers?

13 A Yes, I think so.

14 MR. VETNE: Thank you.

15 JUDGE CLIFTON: Thank you, Mr. Vetne.

16 Additional questions for Mr. Roth? Mr.
17 Beshore?

18 CROSS EXAMINATION

19 BY MR. BESHORE:

20 Q Good evening, Mr. Roth.

21 A Hello.

22 Q To what handler in the state of Washington
23 were you delivering before?

24 A Well, I -- my farm was located in Washington
25 at that time, but it was Anderson Dairy.

1 Q I see. Okay.

2 A It wasn't shipped from Idaho to Washington.

3 Q So, did -- your family relocated its dairy
4 from the state of Washington to --

5 A Yes.

6 Q What -- where in Washington is Anderson
7 Dairy?

8 A Battleground, Washington.

9 Q Is that in the Seattle area?

10 A It's in the Vancouver, Washington, area.

11 Q Okay.

12 A Southwest Washington.

13 Q Okay. And you -- when you moved to Idaho,
14 was -- did you -- did you have arrangements to supply
15 Glanbia before you made the investment in facilities in
16 Idaho?

17 A No. We -- we purchased the facility, the
18 land, and then made the arrangements with them and then
19 built the facility.

20 Q How large a -- how many cows were you milking
21 in Washington before you moved to Idaho?

22 A About a thousand.

23 Q A thousand? And when you began operating in
24 Idaho in 1995, --

25 A Hm-hmm.

1 Q -- did you start at a thousand or did you
2 make an additional investment?

3 A We purchased cattle constantly. We started
4 with a thousand and then just kept adding them.

5 Q Okay. And you've been shipping to Glanbia
6 the entire period of time?

7 A Yes.

8 Q Okay. Were -- were -- was Glanbia a -- a
9 pool plant on the Federal Order in 1995 when you began
10 supplying milk?

11 A I have no idea.

12 Q Okay. That wasn't a factor in your
13 arrangements at that time?

14 A No.

15 Q Okay. Do you -- do you know whether the
16 entire volume of milk you produce on a monthly basis is
17 pooled by Glanbia at the present time?

18 A No, it's not. I don't believe it is.

19 Q You don't believe it is? How many -- how
20 many checks -- do you get multiple checks from Glanbia,
21 like one for the pooled milk and one for the non-pooled
22 milk or how does that work?

23 A No. We get two checks a month -- three
24 checks a month, but I don't think it's segregated out
25 on the pooled milk.

1 Q Okay. Are you paid on a cheese yield
2 formula?

3 A Yes.

4 Q Okay.

5 A But I -- I could tell on the check what the
6 pooled milk price was.

7 Q Okay. Is that -- is it identified then how
8 much of your milk was pooled and what the price was for
9 that amount?

10 A Yes.

11 Q Okay. But you're -- you don't know what
12 portion of your production is pooled?

13 A It depends on -- on the route sales of the --
14 of Falconhurst.

15 Q Okay. Do you know how many producers are
16 attached -- how many -- how many producers supply
17 Glanbia? Do you know?

18 A I think just under 200, I believe.

19 Q Do you know how many of those --

20 A No, I don't.

21 Q -- producers also supply Falconhurst?

22 A No, I don't.

23 Q Okay. Do you know what Falconhurst's needs
24 are for -- requirements are for Class 1 milk?

25 A Requirements as far as?

1 Q The volume of milk?

2 A The volume of milk?

3 Q Right.

4 A I think somewhere near 5, -- 500,000 pounds a
5 month.

6 Q 500,000 a month? How -- what's the
7 production from --

8 A But that's not -- that -- that -- I do not
9 know that, you know.

10 Q That's your best --

11 A That's my best guess. Yeah.

12 Q Okay. What -- what's the monthly production
13 from your 5,000-cow dairy at present?

14 A Approximately 10 million pounds.

15 Q I think you said that DFA sometimes pays a
16 higher price than you receive from -- from Glanbia, is
17 that correct?

18 A Yes.

19 Q And are there other times when it -- when
20 your price is higher at Glanbia than at DFA's price?

21 A I -- I got that information off of a sheet
22 that was passed around by all the -- by a processor,
23 and it had the comparative prices on -- on the sheet
24 for the year. That's where I got that information.

25 Q Okay. And you noted that DFA's price was --

1 pay price was higher at some points?

2 A That's right.

3 Q Okay. Were there times when it was not
4 higher? Did you notice?

5 A Well, it was -- it was -- yeah. It went up
6 and down.

7 Q Okay. Now, I'm just interested. You're from
8 the state of Washington or you were, your family
9 originally, --

10 A Right.

11 Q -- and you relocated to Idaho. One of the
12 other marketing options in Idaho is Northwestern
13 Dairymens Association, which was also an option in the
14 state of Washington. Is that presently -- of course,
15 that's an option for being pooled. Is that an option
16 that's available to you at the present time, if --

17 A It is --

18 Q -- you -- if you want to be pooled?

19 A Right. It is at the present. When we came,
20 their presence here wasn't as significant as it is now,
21 and that's an option for -- for us.

22 Q Okay. And it's a pool option?

23 A Right.

24 Q If you wish to be pooled?

25 A We're satisfied with where we are right now.

1 MR. BESHORE: Thank you very much.

2 JUDGE CLIFTON: Thank you, Mr. Beshore.

3 Mr. English?

4 MR. ENGLISH: My name is Charles English. I
5 represent Meadow Gold Dairies.

6 CROSS EXAMINATION

7 BY MR. ENGLISH:

8 Q Sir, when you -- in answer to a question from
9 Mr. Beshore, you said that the amount of milk that in
10 your check is pooled depends on Falconhurst's route
11 disposition, correct?

12 A Right. Yes.

13 Q So, is it a true statement that if
14 Falconhurst's route disposition is higher, you'd be
15 able to pool more milk, correct?

16 A I think that's the way that works. Yeah.

17 MR. ENGLISH: Thank you.

18 JUDGE CLIFTON: Thank you, Mr. English.

19 Yes?

20 MR. RADMALL: Greg Radmall, Utah Dairymens
21 Association.

22 CROSS EXAMINATION

23 BY MR. RADMALL:

24 Q Couple questions, Mr. Roth, and I appreciate
25 you taking time to come here. I think sometimes that

1 in these proceedings and others, we lose the fact that
2 this is really about producers and about consumers and
3 their relationships and sometimes it gets filtered
4 between the two. So, we appreciate you being here.

5 I'd like to ask, what were some of the
6 factors that entered in in your decision to locate in
7 Jerome when you moved from Washington?

8 A Oh, just we came from an area of intense
9 rainfall. We wanted to expand. We have a large
10 family. We needed -- we needed -- we felt like we
11 needed more land to milk more cattle, to accommodate
12 the family members, opportunity for less expensive
13 feed.

14 Q Okay. Did you ever consider -- thank you.
15 Did you ever consider Utah as a location?

16 A No, I never.

17 Q And why? Why wouldn't you? Why didn't you
18 consider Utah?

19 A It never -- it just never crossed my mind,
20 never even thought about it. You know, I really didn't
21 even think about it.

22 Q Okay. Did the location of a processing plant
23 center into any of your decision?

24 A Not really. I mean, we -- like I said, we
25 wanted more land, more -- more feed.

1 Q Okay.

2 A The question you're getting at is did --
3 because there was a cheese processing plant in Jerome,
4 did that enter into it? That certainly crossed our
5 mind.

6 Q So, how far are you from the Glanbia plant?

7 A Probably 15 miles.

8 Q Fifteen miles.

9 A Fifteen to 20 miles.

10 Q So, you enjoy pretty low transportation
11 costs, I would suggest -- I would imagine anyway?

12 A Compared to some of the charts I've seen,
13 yes.

14 Q Just -- just for your information, there's
15 only one dairy located in Salt Lake County, and I think
16 the closest dairy farm from the Meadow Gold plant here,
17 for instance, is probably 30 miles, be the closest, and
18 many of those are dwindling away to housing, and so a
19 lot of Utah producers don't enjoy that 15 miles. Oft
20 time, you know, from here to the Delta area, it'd be a
21 130 or so. So, that's a factor that enters in.

22 You talked about -- about that sometimes your
23 -- your production is pooled but probably most of the
24 time, it isn't, and my understanding is a part of the -
25 - the purpose of the Federal Order is to ensure orderly

1 production and processing and sales of milk.

2 What kind of effect would you think it would
3 have when -- when a lot of milk moves in and out of the
4 pool on those that are in the pool all the time?

5 A Well, I don't think -- ask DFA. I mean,
6 they're -- they're doing -- I -- I don't know that much
7 about it, but I think they probably know more about
8 that than I do.

9 Q Well, now that would certainly be a good
10 question for them, and my understanding is that one of
11 the functions that DFA provides for the whole Order is
12 balancing that fluid need, and --

13 A Along with -- along with NDA and --

14 Q Sure.

15 A -- other co-ops.

16 Q So, --

17 A I think the proprietary plants do their --
18 their best at helping to do that, also.

19 Q Right. We certainly live in a wonderful
20 nation where we can go from a thousand cows to 5,000
21 cows and produce a lot more milk, but ultimately, the -
22 - as we demonstrated through this discussion today, the
23 Class 1 usage is somewhat limited in our areas, and the
24 pooling is based on that.

25 A Well, I think the reformers, like I said,

1 needed to equal that out with other dairymen in this
2 area. We're only 200 miles away, 220 miles away. I
3 think some of that 180,000 in promotion money that I
4 spend certainly needs some -- we need to get some
5 benefit out of the fluid market. I mean, I'm spending
6 -- where's my fluid dollars going? It's helping the
7 Utah dairymen sell more fluid milk. It's helping all
8 of us. It's not -- you know, --

9 Q That --

10 A -- it's not just -- I mean, I understand that
11 a market has been built up over the years that people
12 have supplied milk to. That's -- that's probably an
13 important factor, but I still think that the promotion
14 dollars we spend help -- help that situation.

15 Q That's true, and I think we're talking about
16 two different issues here, but I'd like to ask you this
17 question. When you decided to move and to expand, was
18 your decision based on your desire and intent to serve
19 the fluid market or was it based on the accessibility
20 and opportunity in the cheese market?

21 A It was -- it was based on the opportunity to
22 make a living for our family.

23 Q And --

24 A Whatever opportunity was presented to us,
25 whether it be fluid or cheese.

1 Q But did you actively seek out processors that
2 would serve the -- the market fluid?

3 A I seek out opportunities wherever I can,
4 wherever -- wherever it benefits our family.

5 MR. RADMALL: Okay. All right. Thank you
6 very much.

7 JUDGE CLIFTON: Thank you, Mr. Radmall.

8 Additional cross examination? Mr. Beshore?

9 MR. BESHORE: Just one question.

10 CROSS EXAMINATION

11 BY MR. BESHORE:

12 Q We're not -- it's beyond the scope of what
13 we're doing here to do anything about these -- the use
14 of promotion monies, but just to make a clarification
15 perhaps for the record, are you aware that producers --
16 the promotion programs, national program, everybody's
17 got to pay the 15 cents, producers --

18 A Ten cents, I think it is.

19 Q Ten? Ten national and another nickel.
20 Producers in Florida, for instance, who have 98-
21 percent, 95-percent Class 1 utilization, their
22 promotion money, the portion of it that promotes cheese
23 nationally, you know, goes to cheese, and they have no
24 cheese production or utilization of any kind down
25 there.

1 So, it kind of -- it's a -- it's sort of a
2 national pool on the promotion money, and we're not
3 addressing any proposals related to that here, but I
4 just wondered if you were aware of the way that worked.

5 A No. That's a good point. I hadn't thought
6 about that.

7 MR. BESHORE: Yeah. Okay. Thanks.

8 JUDGE CLIFTON: Thank you, Mr. Beshore.

9 Any additional cross examination questions of
10 Mr. Roth?

11 MR. STEVENS: Judge? I do have one question.
12 I missed the spelling of the farm.

13 MR. ROTH: It's Si-Ellen, S-I - E-L-L-E-N.

14 MR. STEVENS: Thank you.

15 JUDGE CLIFTON: Thank you.

16 Mr. Vetne, any redirect?

17 MR. VETNE: No.

18 JUDGE CLIFTON: All right. Thank you, Mr.
19 Roth. I appreciate your coming here to testify.

20 (Whereupon, the witness was excused.)

21 MR. VETNE: Call John Reitsma.

22 JUDGE CLIFTON: Mr. Reitsma, I believe this
23 is your first testimony in the hearing, is that
24 correct?

25 MR. REITSMA: In this hearing. I've been to

1 other ones.

2 JUDGE CLIFTON: All right. Very fine.

3 Would you state your full name and spell your
4 names again, even though you've done it once as a
5 questioner?

6 MR. REITSMA: My name is John Reitsma,
7 J-O-H-N R-E-I-T-S-M-A.

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

10 Whereupon,

11 JOHN REITSMA

12 having been first duly sworn, was called as a witness
13 herein and was examined and testified as follows:

14 JUDGE CLIFTON: Thank you.

15 DIRECT EXAMINATION

16 BY MR. VETNE:

17 Q Mr. Reitsma, where do you live?

18 A I live in Twin Falls, Idaho.

19 Q And do you operate a farm at that location?

20 A I operate five dairies in partnership with
21 four different partners.

22 Q You have a few comments you would like to
23 give?

24 A I'd like to give a little history on DFA and
25 their prior co-ops. I've been involved in this market

1 for the last -- I started in the dairy business in '84
2 in Idaho with 80 cows. The first year, I shipped to
3 Kraft. The second year, WDCI came around and signed
4 all of us up. They had all the milk in Jerome and
5 promised us the world. We could ship any milk we
6 wanted. Six months later, they stepped on us. They
7 changed the rules. They put us in a little co-op, the
8 Lake Meade Co-Op. They came back on their word.

9 Anyway, that following year, we started our
10 own little co-op, Quality Milk Producers. We came into
11 the Salt Lake area and sold our own milk here on a
12 label count called Mountain Meadow, and maybe some of
13 these old-timers still remember it. Anderson was the
14 co-op of that.

15 Anyway, we got pushed around by Meadow Gold
16 and WDCI at the time. They -- anyway, the company
17 ended up going broke. I -- we still own as dairy
18 farmers still about 25 percent of it. They sued WDCI
19 and Meadow Gold at the time, and we won. We won the
20 battle and lost the war. We won and got a dollar as a
21 -- as a compensation. So, that did not help.

22 Then later on, we started shipping to Jerome
23 Cheese. We -- we got into this market through Meadow
24 Gold. We still ship them some milk. DFA came around
25 and basically bought our markets and put us back on the

1 street. That was the end of our pooling for awhile.

2 In the meantime, I had another dairy and
3 shipped to Jerome Cheese. So, we are definitely
4 familiar. We've been pooling our milk, and it seems
5 like the big guy in this case cornered our market,
6 bought the market with a lot of goodwill. What I seen,
7 they still got a lot of goodwill on the books.

8 I call that basically pushing the little guy
9 out. We couldn't afford to buy it and put us on the
10 street or we had to join them. We did not join them,
11 and we're still here, and we're tired of pooling our
12 milk. So, I am therefore against all the changes
13 because that eliminates us from this market.

14 Last year, we got 10.60, they got 11.20.
15 That's like a five-percent bigger share of what we got.
16 I would like to some time make five percent. So, I
17 don't think they have anything to complain about.

18 That's all I wanted to say.

19 Q Mr. Reitsma, is -- is all of your milk
20 currently pooled?

21 A Yes.

22 Q And it's pooled by association with what
23 distributor?

24 A Jerome Cheese.

25 Q Pardon?

1 A Jerome Cheese, DAVISCO, whatever.

2 Q Okay. That's -- that's the -- that's the
3 manufacturer?

4 A Hm-hmm.

5 Q DAVISCO, Jerome Cheese, and Jerome Cheese
6 supplies some of your milk to a distributing plant, a
7 bottling plant?

8 A Yeah.

9 Q Okay. In the past -- let me see. In the
10 past, you have supplied some of your milk to Meadow
11 Gold, and you've supplied your milk to the Quality Milk
12 Producers which in turn served the Salt Lake City
13 market with bottled milk?

14 A Yes.

15 Q Is all of your milk ready, willing and able
16 to be shipped to a distributor plant if a distributing
17 plant needs it?

18 A If they needed it tomorrow, I'll ship them a
19 half a million pounds.

20 Q Okay. And the reason it's not shipped to the
21 distributor that you shipped to last before Jerome
22 Cheese is because somebody acquired that market and it
23 was no longer available to you, correct?

24 A That is true.

25 Q It wasn't because you didn't want to ship

1 your milk there, is that correct?

2 A That's correct.

3 Q It wasn't because you don't intend to make
4 your milk available for Class 1, correct?

5 A That it was not my intention.

6 Q It's because the market was locked up by
7 another supplier, correct?

8 A That's true.

9 Q Okay. Do you think that it -- that in your
10 production area caused these difficulties when some
11 producers are unable to have pool access and other
12 producers are able to?

13 A Well, just like the guy said, every little
14 bit helps.

15 Q Okay. Is it important for you -- first of
16 all, you're an independent producer?

17 A Yeah.

18 Q Is it important to you to maintain the
19 freedom to choose whether to be an independent producer
20 or if you want to join a cooperative which cooperative
21 you choose?

22 A That's very important to me.

23 Q Okay. Are you concerned that the proposals
24 advanced by DFA would interfere with your freedom of
25 choice to belong or not to belong to a cooperative?

1 A Right now, on the pay scale, we've been
2 pretty equal. There's about six entities in our area.
3 We're all within averages of 15 cents, I think it was,
4 last year. Some months, they're higher, some months,
5 they're not. I like to keep my independence.

6 Q Okay. By "entities", you mean cooperative
7 buyers of milk and proprietary buyers of milk?

8 A Proprietary, yeah.

9 Q And the proposals, if adopted, would shift
10 the playing field a little bit against independent-
11 serving proprietors and in favor of some of the
12 cooperatives that have easier access to pool?

13 A Well, possibly could, but knowing the history
14 of this co-op and the prior, what they always promised
15 never been delivered. So, I'm pretty leery about it.
16 If we wouldn't be able to pool our milk and maybe drop
17 20 to 30 cents, I would almost think that this co-op
18 would lower our price, too, and just stay there because
19 the history tells me that's what they're going to do.

20 Q Oh, you -- you -- based on your experience,
21 you believe that if you were disqualified from the
22 pool, that DFA would lower the distribution of pay
23 price to their own members?

24 A That's what their -- that's what their
25 practice has been across this country.

1 Q Okay. So, even DFA pooled members would
2 suffer as a result of --

3 A I -- I honestly --

4 Q -- the --

5 A -- believe that. That's my belief.

6 MR. VETNE: Thank you. That's all I have.

7 JUDGE CLIFTON: Thank you, Mr. Vetne.

8 Mr. English?

9 CROSS EXAMINATION

10 BY MR. ENGLISH:

11 Q Mr. Reitsma, I have some clarification
12 questions for the record.

13 When you were referring to Meadow Gold, this
14 -- these events occurred in the '80s, is that correct?

15 A Yes.

16 Q Okay. Do you know who the owner of Meadow
17 Gold was at that time? The Meadow Gold plants?

18 A I know who the -- who ran the show at the
19 time when they bought the plant in Pocatello and here.

20 Q Are you aware that Meadow Gold was owned by a
21 company called Borden, Inc., in --

22 A Yes.

23 Q -- the '80s, correct?

24 A Yes.

25 Q Okay. Are you aware that subsequent to the

1 time that you had the difficulties that you have
2 alleged occurred with respect to Meadow Gold and others
3 in the '80s, that subsequent to that time, Borden,
4 Inc., sold its assets to other parties?

5 A They sold, I believe, to KKR.

6 Q Okay. And you're aware that the assets that
7 KKR had were then subsequently sold to other parties?

8 A Yes, I'm aware of that.

9 Q Okay. And that the plants that are known as
10 Meadow Gold today are owned by a different entity than
11 was the entity that you sued as a result of the events
12 you alleged from the '80s, correct?

13 A Yes, yes.

14 MR. ENGLISH: Okay. That's all I have.

15 Thank you.

16 JUDGE CLIFTON: Thank you, Mr. English.

17 Other questions for Mr. Reitsma? Mr.

18 Beshore?

19 CROSS EXAMINATION

20 BY MR. BESHORE:

21 Q Mr. Reitsma, how many cows do you milk at
22 your five dairies?

23 A About 9,000.

24 Q 9,000. Are -- they're all in the Twin Falls
25 area?

1 A Yes.

2 Q How far are you from the Jerome plant?

3 A Between four and 25 miles.

4 Q Okay. The plants that are -- the farms that
5 are four miles from the plant, how much per
6 hundredweight does it cost you to haul the milk to the
7 plant or do you pay any hauling to get your milk --

8 A Yes, I do.

9 Q Okay. How much does it cost you to haul it
10 that four miles?

11 A They charge me the same on every farm.

12 Q And how much is that?

13 A 20 cents.

14 Q 20 cents a hundredweight. Now, it costs you
15 a little bit more to ship your milk down to Salt Lake
16 City from Twin Falls?

17 A The differential would make up for that.

18 Q Hm-hmm. The -- do -- would you indicate
19 what, if any, bottling plant your milk goes to in order
20 to be pooled, if it's pooled?

21 A It goes through the Stover plant, I guess, in
22 Burley.

23 Q The Stoker plant?

24 A Stover.

25 Q Stover plant?

1 A Is it Stover? I don't even know. Stover.

2 Q Where is it located?

3 A Burley, Burley, Idaho.

4 Q Burley, Idaho? Okay. Do you know how --
5 what the needs are of that plant for -- for milk?

6 A No, I don't.

7 Q Okay. How often does your milk go there?

8 A Mine qualifies, I think, he does it -- I'm
9 pretty sure once a month. I don't know how many days,
10 but they do it different, couple, two-three days in a
11 row. I don't know.

12 Q How far is that plant from your farms?

13 A Probably 50 miles.

14 Q Okay. Do you know whether when milk is taken
15 over to that plant from your farms, it's brought back
16 to the cheese plant?

17 A I hear that's what they do with some of it.

18 Q Are you paid for all your production on a
19 cheese yield formula?

20 A Yes and no. On -- on the -- on the days that
21 we can qualify for the pool, we do get a different
22 check.

23 Q Okay. So, do you get a different check for
24 part of your milk every month?

25 A Yeah.

1 Q Okay. So, you get what? Three checks a
2 month?

3 A Three checks.

4 Q Okay. The -- the other six -- the six buyers
5 in your area that you mentioned, could -- could you
6 identify those?

7 A It's Dairy Gold. I forgot what -- the
8 Northwest Dairy Farms, Glanbia, Jerome Cheese, Kraft,
9 and Magic Valley Milk Quality Milk Producers.

10 Q Okay. And DFA, also, I assume?

11 A DFA, too. Yeah. Well, DFA and Dairy Gold.
12 I'm sorry. That's the sixth one.

13 Q Well, they're -- DFA and Dairy Gold are
14 different cooperatives.

15 A Dairy Gold, and then you have Jerome Cheese
16 and Glanbia. You got Kraft and Magic Valley Quality
17 Milk Producers.

18 Q Okay. And you say their -- their pay prices
19 are within about 15 cents of each other on an annual?

20 A The pay price last year, that's what it was.

21 Q Okay. Some of them pool their milk and some
22 of them don't?

23 A Yeah.

24 Q Right? Do you have a contract with Jerome
25 Cheese?

1 A No.

2 Q As a producer?

3 A If I call home tonight and I said don't ship
4 no more milk to Jerome Cheese, it is over with. That's
5 the way I like to do business.

6 Q They don't expect to get the -- how much do
7 you ship them a month from your 9,000 cows
8 approximately?

9 A Oh, about 15 million pounds maybe.

10 Q Okay. Now, your testimony is that Mr. Davis
11 and his company do not have any expectation of
12 continuing to receive that 15 million pounds from you?

13 A It's an unusual understanding. I need them
14 and they need me.

15 Q Okay.

16 A If I get treated right, I will stay where I'm
17 at.

18 Q You testified, I believe, that you would sell
19 your milk to a Class 1 handler --

20 A If it's called for.

21 Q If it's called for. Okay. Do -- have you
22 made the arrangements with Stoker where --

23 A No.

24 Q Where your milk --

25 A No, I don't.

1 Q Okay. So, Jerome --

2 A Cheese does that.

3 Q -- Cheese makes those arrangements? Okay.
4 Have -- have you ever dairied anywhere else, other than
5 Twin Falls, Idaho, since 1984?

6 A I -- no, I was not. I -- I was raised on a
7 farm in Holland, and I traveled the world a little bit,
8 learned a lot, went to California and saved some money
9 and started in Idaho in the dairy business.

10 Q Okay. You weren't dairying in California --

11 A No.

12 Q -- before you moved up to Idaho?

13 A I just bought and sold cattle.

14 Q Okay. Now, -- but you've been -- that's been
15 your occupation since 1984?

16 A Yeah. I was born and raised on a dairy farm.

17 Q You haven't worked anywhere else outside of
18 Idaho since that time?

19 A No.

20 Q Okay. How do you have knowledge of all of
21 DFA's activities throughout the country that you are
22 able to make the statement that you know how they treat
23 dairy farmers everywhere from coast to coast?

24 A I've got some good friends from New Mexico to
25 Indiana. This is a pretty small community, and a lot

1 of -- I would say the bigger guys maybe come out of
2 Chino, California. I lived there for 15 years. You
3 can't ask me a state, and I know somebody who dairies
4 there. I keep in pretty close contact with New Mexico.
5 I know some guys out there. Those guys had their
6 problem that was pretty well straightened out now. I
7 know some big guys in Indiana, Nebraska, Iowa. Know
8 some pretty good people in Florida. So, -- and we all
9 talk.

10 Q And that's the source of whatever --

11 A That's my source of income. Yeah.

12 MR. BESHORE: Yeah. Okay. Thank you.

13 JUDGE CLIFTON: Any additional cross
14 examination for Mr. Reitsma?

15 Mr. Reitsma -- oh, Mr. Tosi? Well, before --
16 yes?

17 CROSS EXAMINATION

18 BY MR. STRATFORD:

19 Q Mr. Reitsma, --

20 MR. STRATFORD: Do I need to identify myself?

21 JUDGE CLIFTON: Again, if you would, please.

22 MR. STRATFORD: My name is Ronald Stratford,
23 and I'm a dairy producer from here in Utah.

24 BY MR. STRATFORD:

25 Q I believe you came and asked me a question.

1 I feel it proper that I ask --

2 A That's fine.

3 Q I have only one question. You have indicated
4 a time or two that you enjoy your independence and you
5 like to dairy that way. Do you believe that that
6 should come at a cost?

7 A I -- I don't think it's -- it should, and I
8 will fight for it not to.

9 Q Well, --

10 A My -- I have belonged to this co-op before,
11 you know.

12 Q Hm-hmm.

13 A And when -- and I don't know. You probably
14 had to be in business then, too. You know the history
15 of this whole -- we should all belong to WDCI at time,
16 if we got a -- if we wouldn't have been treated right.

17 Q Well, I -- I don't know that it's appropriate
18 -- well, we can argue back and forth, but I don't know
19 that we all need to belong to the same organization.

20 But the question being -- I guess the
21 question is that there is an opportunity for you there.
22 You choose not to do it because you want your
23 independence, and I'm submitting that maybe there is a
24 cost for that independence.

25 A What -- what opportunity are you trying to

1 tell me I got?

2 Q You have an opportunity to get on the pool if
3 you would -- if you want to --

4 A To join --

5 Q -- join the co-op.

6 A -- DFA?

7 Q Yes.

8 A But basically, DFA does the same thing as the
9 Jerome Cheese does. They ship all the milk to Glanbia
10 and doing the same thing. None of that milk usually
11 leaves Idaho.

12 Q I'm sure that's true.

13 A So, --

14 MR. STRATFORD: That's -- that's all I have.

15 MR. REITSMA: Thank you.

16 JUDGE CLIFTON: Thank you, Mr. Stratford.

17 Mr. Tosi?

18 CROSS EXAMINATION

19 BY MR. TOSI:

20 Q Thank you, Mr. Reitsma, for being here today.

21 A few questions. Are -- are you of the
22 opinion that because that you as a producer stands
23 ready, willing and able to supply the Class 1 market,
24 that that should be the criteria upon which pooling
25 standards should be established for the Western Order?

1 A That is one of the criteria. The reason why
2 the pooling was put into place is orderly marketing
3 milk, that there is always a supply of Class 1 milk.

4 Nowadays, with transportation and all that, I
5 don't think it's near as important as it used to be 65
6 years ago. Therefore, maybe I should be on record and
7 basically I would love it that the whole system would
8 be gone. It would make it a lot easier. We wouldn't
9 have these meetings and all this money being wasted,
10 not productive, by bickering one farmer against the
11 other, and there we go again. I just -- just -- it's
12 amazing.

13 Q So, I think what you said is that one
14 consideration for pooling would be being ready, willing
15 and able. What -- would there be others that we should
16 consider at the Department for pooling?

17 A Should we consider?

18 Q Other criteria, other than standing ready,
19 willing and able to supply the Class 1 market.

20 A I -- I don't -- you know, I -- I don't really
21 get the question, but I don't -- I really don't see the
22 reason of the whole pooling system being there, but
23 that's a whole other issue. We could probably get rid
24 of that in the Farm Bill and that's -- that's
25 impossible because of the political arena. But, yeah,

1 that's the only reason. Not that much of a reason, is
2 it?

3 Q Oh, it's your reason, sir, and I respect
4 that.

5 A That's my opinion.

6 Q So, DFA also has other proposals, other than
7 proposals to what you described as tightening pooling
8 standards here. Do you have a position on any of
9 those?

10 A I am with my companies. Whatever they want,
11 I -- I'll support them.

12 MR. TOSI: Okay. Thank you, sir. Appreciate
13 it.

14 JUDGE CLIFTON: Any other cross examination
15 of Mr. Reitsma?

16 (No response)

17 JUDGE CLIFTON: Mr. Vetne, before Mr. Reitsma
18 leaves, there may be some spellings that the court
19 reporter may need.

20 COURT REPORTER: I got them.

21 JUDGE CLIFTON: Did you get them? Terrific.
22 Any further questions, Mr. Vetne?

23 MR. VETNE: No, Your Honor.

24 JUDGE CLIFTON: All right. Thank you, Mr.
25 Reitsma. You may step down.

1 (Whereupon, the witness was excused.)

2 MR. VETNE: With -- with the indulgence of
3 the hearing officer and the Department, I'd like to
4 call Jon Davis. He has a five-page double-spaced 14-
5 point statement to read.

6 JUDGE CLIFTON: I -- I would like to finish
7 him tonight, if we could. Let me see if anyone has a
8 strenuous objection. Oh, my goodness. It's almost
9 7:30. It's 7:27. I presume he would be done before
10 8:00, Mr. Vetne?

11 MR. VETNE: I presume so.

12 JUDGE CLIFTON: Does anyone have any
13 strenuous objection to our completing Mr. Davis tonight
14 before we break?

15 MR. ENGLISH: How about Mr. Williams, too?

16 JUDGE CLIFTON: Mr. Williams, --

17 MR. ENGLISH: No.

18 JUDGE CLIFTON: -- too, because he's about
19 two minutes. All right. I see no strenuous objection.

20 MR. ENGLISH: Well, we don't know until we
21 hear the statements how long cross examination will go.
22 I think you're willing to do it today, though? I don't
23 know how long we'll go and how tired people are
24 getting.

25 JUDGE CLIFTON: All right. Well, let's try

1 to do it and we'll try to finish it all by 8.

2 MR. VETNE: Okay.

3 JUDGE CLIFTON: All right.

4 MR. VETNE: Prior to Mr. Davis presenting his
5 testimony, I'm going to do a short part of my -- of a
6 list of official notice that's simply to be placed in
7 the context of -- before his testimony. There are two
8 documents.

9 One is a USDA AMS periodic -- unpredictably
10 periodic publication called "Sources of Milk for
11 Federal Order Markets by State and County". It was
12 published for the year 2000. It was published in May
13 of 1990 for the year 1989, and there were two
14 publications in between with the same title, I believe,
15 for 1994 and 1997. I would like those four documents
16 officially noticed so that we may refer to them and
17 rely on them in the record.

18 And one other document --

19 JUDGE CLIFTON: I take official notice of
20 those documents.

21 MR. VETNE: Okay. And the other document is
22 the Final Decision of the Secretary of Agriculture
23 creating a market in the Southwest Idaho and Eastern
24 Oregon Marketing Area. I have a copy here, and the
25 publication reference is 46 Federal Register 21944,

1 April 14, 1981.

2 JUDGE CLIFTON: I take official notice of
3 that final decision.

4 MR. VETNE: Thank you.

5 Mr. Davis, you have a prepared statement?

6 JUDGE CLIFTON: Let me mark that as an
7 exhibit, if I may. I believe our next number is 35.
8 All right. I'm going to ask the court reporter to mark
9 the testimony of Jon Davis as Exhibit 35.

10 (The document referred to was
11 marked for identification as
12 Exhibit Number 35.)

13 JUDGE CLIFTON: And I need to swear him in.

14 MR. VETNE: Oh, really? Okay.

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

17 Whereupon,

18 JON DAVIS
19 having been first duly sworn, was called as a witness
20 herein and was examined and testified as follows:

21 JUDGE CLIFTON: Thank you.

22 And please give the full spelling of his name
23 on the record for me, Mr. Vetne.

24 Does anyone wish to Voir Dire the witness
25 with regard to the statement, Exhibit 35, before I ask

1 if there are any objections to it being made part of
2 the evidence in the case?

3 MR. VETNE: Okay. Or does anybody else
4 desperately need a copy? I have a few extra.

5 (No response)

6 MR. VETNE: Okay.

7 JUDGE CLIFTON: There being no one who wishes
8 to Voir Dire the witness, is there any objection to my
9 receiving Exhibit 35 into evidence?

10 (No response)

11 JUDGE CLIFTON: There is none. I hereby
12 receive Exhibit 35.

13 (The document referred to,
14 having been previously marked
15 for identification as
16 Exhibit Number 35, was
17 received in evidence.)

18 JUDGE CLIFTON: Mr. Vetne?

19 DIRECT EXAMINATION

20 BY MR. VETNE:

21 Q Mr. Davis, you have a prepared statement?

22 A Yes, I do.

23 Q Okay. Can you please spell your full first
24 and last name?

25 A Jon, J-O-N, Davis, D-A-V-I-S.

1 Q Okay. Can you give the briefest sketch of
2 your educational and professional background?

3 A I've worked in the -- our business is a
4 family business, third generation. I currently work in
5 it with my three brothers and my father, and I've
6 worked in it, I'm 32 years old, and I've worked in it
7 for 17 years, and --

8 Q Seventeen years? Has that been in -- in
9 Idaho or has it also included enterprises in Minnesota?

10 A Our business started in Minnesota, and until
11 eight years ago or nine years ago, I -- I worked in
12 Minnesota.

13 Q Okay. Please read your statement, please.

14 A Davisco Foods International is a third
15 generation family-owned pool processor. Founded in
16 1943, the company operates cheese plants in Le Sueur,
17 Minnesota, and Jerome, Idaho. We process whey in both
18 of these factories and in other facilities in South
19 Dakota. We produce a 185 million pounds of cheese per
20 year and make a variety of whey and whey protein
21 products.

22 Jerome Cheese is located in the middle of one
23 of the fastest-growing milk production regions in the
24 country as a result of new farms and farm expansion.
25 Conversion of farms from Grade B to Grade A is almost

1 complete in this area.

2 It is important, we feel, that equal
3 opportunity pooling should apply to all Grade A milk
4 produced in this area. Pooling opportunities have been
5 limited since the inception of regulation in this area
6 for reasons which are unique to Southern Idaho and Utah
7 markets. There are few fluid milk plants and most
8 distributing plants either have their own supplier or
9 are committed to buy milk from a single supplier.

10 The Federal Order Reform process further
11 limited pooling of Grade A milk willing and available
12 to serve the small Class 1 market by adopting
13 performance requirements that could not accommodate the
14 milk supply.

15 A recent report by USDA, entitled "Producer
16 Milk Marketed Under Federal Milk Orders by State of
17 Origin", revealed that only 36 percent of Idaho's Grade
18 A milk production was pooled in the Federal Order
19 System during 2000 and explains that this was so in
20 significant part because the fluid milk market may not
21 be large enough to accommodate all the producer milk
22 that would like to be associated with the Order, given
23 the Order's pooling standard.

24 By contrast, 90 to 92 percent of Grade A milk
25 produced in Utah, Washington and Oregon was pooled, and

1 in Minnesota and Wisconsin, pooled milk represented 87
2 percent and 91 percent of Grade A production,
3 respectively.

4 Some of Idaho's milk unable to associate with
5 a local pool is associated with the Upper Midwest and
6 the Central Market. Although DFA complained of this
7 fact in prior hearings in Minneapolis and Kansas City,
8 its proposals for this hearing would dramatically
9 reduce local pooling opportunity for Idaho milk,
10 increasing the pressure to find alternative markets in
11 which to associate Idaho's milk supply.

12 We might very reluctantly agree with DFA that
13 there's a potential problem if distant milk can
14 associate with the pool and not reasonably serve local
15 plants, if the milk is needed. However, apart from
16 DFA's double-pooled California milk, this does not
17 appear to be a problem in the Western Market.

18 The Western Market blend price is not higher
19 than prices in surrounding markets. Distant producers
20 are not going to struggle to gain paper pooling status
21 in the Western Market only to receive a lower blend
22 price. In any event, a problem of this kind develops.
23 Where it's revealed in the record, it is better to
24 address it by reducing producer blend prices at
25 locations distant from the primary market, reflecting

1 lower location value to the market in which the milk
2 was pooled rather than allowing pooling provisions to
3 be abused as market barriers.

4 We have made every effort to permit our
5 producer patrons to participate in the local Federal
6 Order pool like many of their neighbors. Since 1995,
7 we have operated a bulk tank unit. In Idaho, BTUs
8 perform the same function as supply plants in Order 30,
9 shipping qualifying milk directly from farms to
10 distributing plants by divert transfer and allowing the
11 supply plant to pool the rest of its supply for
12 manufacturing purposes.

13 We qualify our BTU by supplying milk to the
14 Stoker Wholesale, a small distributing plant located
15 in, I got to get it right, it's Declo, Idaho. Declo,
16 Idaho.

17 JUDGE CLIFTON: How is that spelled?

18 MR. DAVIS: Oh, God. I didn't mean to cause
19 a delay. D-E-C-L-O.

20 JUDGE CLIFTON: And we should strike Burley?

21 MR. DAVIS: I believe so. Hold it. I'm
22 sorry. Mr. Stoker tells me it's Burley. I've always
23 been going to Declo. Okay. Keep it as it is, I'm
24 sorry, and I'll keep going and make up the time.

25 Prior to Federal Order Reform, all of our

1 Grade A milk could be pooled by maximizing shipments to
2 Stoker and further maximizing allowable diversions. We
3 are now able to pool less than half of the milk
4 produced by 20 to 25 of our producer patrons. Most of
5 our 67 Grade A patrons are now eligible to be pooled.

6 If DFA's proposals are adopted, our pooling
7 opportunity will be limited to less than five percent
8 of our milk supply. Our milk is and always has been
9 available for shipment to distributing plants, if it is
10 needed, but apart from the small volume we ship to
11 Stoker, no distributing plant or fluid milk supplier
12 has ever asked for our milk.

13 Proposals 3, 5 and 7 would directly adversely
14 and greatly affect Jerome Cheese and our Grade A
15 producer patrons. They are part of an anti-competitive
16 package designed to enlist USDA's help in building
17 barriers to market entry and participation, even by
18 dairy farmers located inside of the Western Market
19 Milkshed.

20 Our producer patrons whose local milk is
21 available but not needed by Class 1 distributing plants
22 should have the same opportunity to pool as cooperative
23 member producers located in Southern Idaho whose milk
24 is delivered to manufacturing facilities day in and day
25 out because it is not needed for Class 1 use.

1 The record of this hearing does demonstrate
2 that there is a problem with disorderly marketing in
3 the Western Market justifying government intervention.
4 That problem is exemplified by the fact that we have
5 had to drop two-thirds of our producers from the pool
6 after January 1st, 2000, and by the fact that so much
7 Idaho milk is unable to secure entry to any federal
8 market.

9 On the basis of this record, that problem
10 should be addressed by increasing allowable diversions
11 to 95 percent, I would even go to 99 percent, or
12 suspending diversion limits all together.

13 DFA, several Utah producer witnesses, and
14 Utah trade associations testified to the effect that
15 they seek a level playing field in pooling provisions.
16 This is exactly the same objective that drives our
17 opposition to Proposals 3, 5 and 7. It would create
18 and has created disorder and producer discontent for
19 some Idaho producers to have access to Order 135 pool
20 qualifications while others do not.

21 A level playing field can be achieved if all
22 Idaho producers are treated the same. As an
23 alternative to the DFA proposals, we would suggest that
24 Western Orders exclude all Idaho-produced milk from
25 pool participation, somewhat like NDA wants for good

1 reason, to treat California milk. By this means, this
2 -- the market would at least not be composed of haves
3 and have nots, and the playing field, though a bit
4 lower, would be level.

5 For all the reasons stated by Jeff Williams,
6 next, whose testimony we endorse, the Secretary should
7 reject Proposals 3, 5 and 7 as contrary to Federal
8 Order Pooling Policy, contrary to Principles of
9 Producer Equity and contrary to law.

10 Finally, we cannot support at this time
11 Meadow Gold's Proposals 11 to 13 because they would
12 regulate prices in one type of handler-to-handler
13 transactions while leaving other similar transactions,
14 bulk transfers, package milk transfers, custom
15 bottling, tolling arrangements, pooling fees and the
16 like untouched.

17 It is also our understanding, because our
18 lawyer told us so, that price regulation of handler-to-
19 handler milk are not expressly authorized by the Act.
20 We expect to review this issue after the record is
21 developed and address it in our post-hearing brief.

22 BY MR. VETNE:

23 Q Does that conclude your prepared statement?

24 A It concludes my prepared statement. I could
25 have said the same thing in about a third of the time

1 in my own words and you'd have understood it better.

2 Q Because it would not have been written by a
3 lawyer?

4 A Because it's straightforward and simple.

5 Q Okay. Three times -- let's see. On Page 4
6 -- look at Page 4. The first full paragraph.

7 A Yep.

8 Q Your spoken testimony referred to Proposals
9 3, 5 and 7. Your written testimony refers to Proposals
10 5 through 7. Is 5 through 7 the correct as prepared?

11 A No. It should have been 3, 5 and 7.

12 Q 3, 5 and 7? You have no objection to
13 Proposal --

14 A 3 and 5 through 7. I'm sorry.

15 Q 3 and 5 through 7?

16 A I was catching the time up I lost when I
17 skewed up Declo.

18 Q Okay. And the same thing at the bottom of
19 Page 4 and on the last page of your testimony. It's 3
20 and 5 through 7?

21 A I defer to you, what you heard.

22 MR. VETNE: Thank you. The witness is
23 available.

24 JUDGE CLIFTON: Mr. English?

25

1 CROSS EXAMINATION

2 BY MR. ENGLISH:

3 Q Mr. Davis, my interest is in the last
4 paragraph of your testimony and maybe related
5 materials. But I'd like to focus for a moment on a
6 clause in your first sentence of that last paragraph
7 that says, "At this time". You say, "Finally, we
8 cannot support at this time the proposals from Meadow
9 Gold, 11 through 13."

10 At what time do you think you could support
11 Proposals 11 through 13?

12 MR. VETNE: Your Honor, the statement of the
13 witness speaks for itself. It talks about after this
14 hearing is over and looking at --

15 MR. ENGLISH: I'd like him to answer my
16 question. I was courteous enough not to interrupt Mr.
17 Vetne as he cross examined him.

18 MR. VETNE: You never had an objection.

19 MR. ENGLISH: Well, I don't -- you never
20 asked an objectionable question? Yeah. Well, I'll
21 wait for another five minutes.

22 MR. DAVIS: I would tell you that as things
23 change in the future, anything is possible.

24 BY MR. ENGLISH:

25 Q Okay. Well, what kinds -- what kinds of

1 things do you think would change that could lead to you
2 being able to support Proposals 11 through 13?

3 A If we ever buy Meadow Gold.

4 Q Okay. That's fine. What other circumstances
5 do you foresee in which your position could change on
6 Proposals 11 through 13?

7 A If -- if I had time to reflect, I'm sure
8 there's others, --

9 Q Okay.

10 A -- but I would have to have that time to
11 reflect.

12 Q Okay. You referenced your objection to 11
13 through 13 on the grounds that it would, as you have
14 stated in your lawyer's opinion, regulate prices from
15 one type handler to another.

16 Assuming for a moment that that is not an
17 objectionable -- I understand you think it's
18 objectionable, but assuming for a moment it's not
19 objectionable, do you have any other reasons for this
20 record as to why Proposals 11 through 13 should not be
21 adopted?

22 A Well, I would tell you that -- you want me to
23 recite Proposals 11 through 13, I couldn't, but
24 conceptually what -- what our arrangements are with --
25 with our bottlers, certainly in the spirit of the

1 hearing based on the four hours I sat and listened to
2 the DFA witness, it's pretty much telling -- nothing to
3 do with what you're doing with your business. That's
4 kind of what I feel.

5 What our arrangement with our bottler is, is
6 kind of our business, and I say that based on the -- I
7 mean, usually I like talking and we're pretty open
8 people, and based on today's environment, I mean, it's
9 like don't tell anybody anything because it's none of
10 their business even though it's tough for these folks
11 to make a decision when they don't know much.

12 Q Okay.

13 A So, I'll just act in that spirit.

14 Q Okay. Well, that's fine. I was going to ask
15 that question in another moment. The question I had
16 asked, however, wasn't a factual question about any
17 business. It was, do you have other objections to
18 Proposals 11 through 13, other than as stated in the
19 final paragraph of your testimony?

20 A Not at this time.

21 Q Okay. A few moments ago, Mr. Reitsma
22 testified and in that testimony, he stated that he had
23 heard that his milk picked up at his farm and taken to
24 Stoker was at least at times taken from Stoker to the
25 cheese plant. Did you hear that testimony?

1 A You know, I didn't.

2 Q Okay. Would you agree?

3 A I certainly believe that that happened.

4 Q Okay. Would you agree with me that that is a
5 true statement? That occurs?

6 A That -- can you repeat it one more time?

7 Q That milk that is picked up from Mr.
8 Reitsma's farm is at least on occasion delivered to
9 Stoker and then hauled from Stoker to your plant?

10 A The milk that we -- that is regulated through
11 our -- through Jerome Cheese is all done so in
12 accordance with the Order rules.

13 Q I understand. But the fact of the question
14 I'm asking you is, do you agree with Mr. Reitsma's
15 testimony that at -- on occasion, the milk goes to Mr.
16 -- goes from Mr. Reitsma's farm to Stoker and is then
17 hauled to your cheese plant? That's not -- under the
18 Order as presently written, there is certainly nothing
19 that prescribes that. There's nothing morally wrong
20 about it. Would you agree --

21 A It's certainly --

22 Q -- with me that that occurs?

23 A It's certainly possible that that could
24 happen under the Order regulations.

25 Q Would you agree that it does happen?

1 A I would agree that it's certainly possible it
2 could happen. There's -- I mean, we -- we live a long
3 life every year. It certainly could happen.

4 Q You are the responsible handler on that milk?

5 A Me personally?

6 Q Jerome Cheese is --

7 A Yes.

8 Q -- for reporting purposes --

9 A Yes.

10 Q -- the responsible handler?

11 A Yes, it is.

12 Q And you are the general manager of Jerome
13 Cheese?

14 A No. I think my title is general manager of
15 the Cheese Division.

16 Q Okay. Cheese Division.

17 A I don't think we have a general manager of
18 Jerome Cheese.

19 Q All right. Are you -- are you involved with
20 producer relations and producer movements of milk?

21 A Only when it's positive.

22 Q Are you aware of the movements of milk from
23 the farms, the member -- the patrons of proprietary
24 bulk tank handler unit that is known as Jerome Cheese
25 and where that milk moves from the farm to which plant?

1 A Sure.

2 Q Okay. Are you aware of times when milk moves
3 from the farms from whom you purchase your milk to
4 Stoker and then is hauled back to the cheese plant --

5 A Yes.

6 Q -- in Jerome?

7 A Yes.

8 Q Yes?

9 A Yeah. I've answered that already.

10 Q Well, you said it was possible. Now, you're
11 saying you are aware that it occurs, correct?

12 A Yeah.

13 Q Thank you.

14 A And if I said positive, I misspoke. I
15 apologize.

16 Q Okay. We could have saved five minutes.

17 A I realize I've got to be on my toes when I'm
18 answering your questions.

19 Q And that is by way of saying in your own
20 statement on Page 3, "By maximizing shipments to Stoker
21 and further maximizing allowable diversions", correct?
22 That -- by doing that, that permits you effectively to
23 pool more milk, correct?

24 A Yes.

25 Q Thank you.

1 About how far on average is it from the farms
2 that you purchase milk to your cheese plant?

3 A Within 40 miles.

4 Q And about how far on average is it from those
5 farms to Stoker?

6 A Within, I -- I think within 40 miles.

7 Q And how far is it from Stoker to your plant?

8 A About 40 miles.

9 Q Thank you.

10 On the bottom of Page 3 and the top of Page
11 4, you ask questions or you made the statement that "no
12 distributing plant of fluid milk supply has ever asked
13 for your milk", but it is also true, is it not, that
14 you have never gone to Meadow Gold and offered to sell
15 your milk, correct?

16 A Not true. Under the present ownership, we
17 have not, but in the past, we have.

18 Q Okay. So, under present ownership, you have
19 not offered the milk, correct?

20 A Right.

21 Q Okay.

22 A And that's based on experience of other
23 handlers that have done that and actually other
24 handlers that had that market, and when the DFA
25 conglomerate occurred, they got pushed out. So, it's

1 pretty simple for me to understand that if the people
2 that were supplying milk got pushed out because they
3 wouldn't join DFA, I don't know why they'd let me put
4 my milk in there and pool my milk.

5 Q But for the record, you've never gone and
6 asked and never talked to the people at Meadow Gold who
7 presently own the plant, correct?

8 A Say that again.

9 Q You've never gone to the -- to -- to Meadow
10 Gold, given the current ownership, --

11 A No.

12 Q -- as I discussed with Mr. Reitsma about the
13 ownership?

14 A For those obvious reasons.

15 Q In the middle of Page 4, at the bottom, in
16 the middle paragraph, you state, "On the basis of this
17 record, you would increase allowable diversions to 95
18 percent or suspend diversion limits all together." Is
19 that a proposal you're making?

20 A No. I -- I -- you know, --

21 Q Okay.

22 A -- just a general statement that I -- I find
23 it ironic that DFA needs to create handcuffs for guys
24 like us and Glanbia to be able to be competitive in the
25 milkshed. Without those handcuffs, they've proven

1 nationwide that they're not able to be competitive.
2 So, they create the unlevel playing field, and as I
3 said before at various functions, they make Michael
4 Jordan shoot a 12-foot hoop and they get to shoot at
5 the 8-foot hoop.

6 Q But you are, in answer to my question and
7 since your counsel certainly asked for it, yes or no,
8 you're not asking for that? You're not making a
9 proposal, correct?

10 A Not at this time.

11 Q Now, you -- you stated a few moments ago that
12 you've never read Proposals 11 through 13?

13 A You know, I have, --

14 Q Okay.

15 A -- and then I called John and said, "Will you
16 tell me what I need to know on them?" I hope he has.

17 Q Oh, well, --

18 A That's what he's paid for.

19 Q -- let me read Proposal 13 to you for a
20 moment and see whether you've gotten your money's
21 worth.

22 A It'll take me a long time to determine that.

23 Q Proposal 13 provide -- would provide that in
24 Section .73 of the Order, in Part A, except as provided
25 in Paragraph B, "each handler shall make payment to

1 each producer", a handler making a payment to a
2 producer, "including each producer from whom milk moved
3 direct from the farm in a truck under the control of a
4 handler defined under Section 1135.11 from whom milk is
5 received during the month as follows".

6 Let me ask this question first. Do you
7 qualify under this Order pursuant to 1135.11 as a
8 proprietary bulk tank handler?

9 A I believe so.

10 Q Okay.

11 A But I gotta tell you, Chuck, when I read that
12 myself, what you just read, I can read it 10 times and
13 not understand it. I'm not going to understand it when
14 you read it.

15 Q Okay. So, you don't understand the part
16 about handlers making payments to producers?

17 A I understand that I -- I make the check out
18 to the producer.

19 Q You don't understand that Proposal 13 is
20 written so that for that portion of milk that is
21 physically received at Stoker, they would make out the
22 check to the producer?

23 A I -- if you say that it's true, I agree with
24 you, but I don't understand that to be the case.

25 Q All right.

1 A Again, that's why I hired John. I'll make
2 sure the fat gets in the cheese, and he can make sure I
3 know the rules.

4 Q Okay. Do you understand that the nature of
5 Meadow Gold's concern that is -- that Proposals 11
6 through 13 are designed to remedy is that Meadow Gold
7 cannot be assured that other regulated handlers are
8 paying minimum class prices for milk?

9 A Yeah. I understand that to be the case.

10 Q Okay. I believe I now know the answer to the
11 question, but I'm going to ask it anyway. Can you tell
12 me what your pricing arrangements are with Stoker?

13 A We -- any product we sell through our
14 company, and there's a multitude of them, we get as
15 much money for our product as we can, and we do that
16 with our milk we sell to Stoker. We certainly do it
17 with our cheese we sell to various entities and our
18 whey products, and that's the same thing we do with
19 Stoker, get as much as we can on a month-to-month basis
20 that the market will bear.

21 Q Does as much as much can as the market will
22 bear from Stoker mean that you always collect minimum
23 class prices from them for the milk?

24 A The -- what the market will bear is we get as
25 much money as we can from Stoker Wholesale for our

1 milk, and then we are responsible to the pool for the
2 Class 1 price because we're the handler. So that our
3 -- our arrangement, if you want to consider it a circle
4 with us and Stoker in the middle of it, is responsible
5 to the pool for the Class 1 price.

6 Q Okay. I -- I understand, sir, that -- that
7 -- that you're responsible, but, of course, with all
8 the pooling that you do, you actually make a draw,
9 don't you, out of the pool?

10 A Yes. We paid in certainly in -- in a few
11 months, probably five to 10 months that we've been --
12 I've written a check to the pool. Maybe 15.

13 Q But by and large, the reason you make this
14 economic decision is to make a draw out of the pool,
15 correct, sir?

16 A Well, we -- we do it -- everything we do on a
17 milk procurement basis is to try to improve our
18 producers' position in the milkshed.

19 Q Going back to my question -- and if you don't
20 want to answer it, Jon, that's fine, but going back to
21 my question, because you definitely did not answer it,
22 has the market always borne minimum class prices from
23 Stoker for the milk you deliver to them?

24 A Our pool obligation has always been the Class
25 1 price.

1 Q The question I'm asking, Jon, is not the pool
2 obligation that you have been paying the Market
3 Administrator. I'm asking you whether you are always
4 collecting from Stoker the minimum class price on the
5 milk you sell?

6 A I -- I won't tell you my price of my cheese
7 to Kraft, and I won't tell you my price of my milk to
8 Stoker. I have a few competitors in the room,
9 including one that's on my side of the fence in this
10 issue, and it would be pretty stupid to do that.

11 Q Jon, I'm perfectly happy. I just -- I wanted
12 to be able to know whether for the record, the record
13 can have that. So, for the record, you're saying that
14 for reasons, confidential business reasons, you're
15 unable to answer that question, correct?

16 A For competitive reasons.

17 Q Competitive reasons?

18 A Yeah. I mean, everybody that buys milk in
19 Idaho is here, other than Sorrento.

20 Q Again, the -- for those reasons, you're
21 unable to answer the question, correct?

22 A Exactly. And for the record, Chuck, that's
23 the only time I've said that in -- in -- in deference
24 to the earlier witnesses who said it most of the time.

25 Q You've made a couple statements on Page 5. I

1 just want to see if you agree with me. You have
2 rejected Proposals 3 and 5 through 7 for several
3 reasons, but one of the reasons you state is that
4 "contrary to Principles of Producer Equity", correct?

5 A Yeah.

6 Q And you think producer equity is pretty
7 important?

8 A I think a level playing field is pretty
9 important.

10 Q Okay. Do you think handler equity is also
11 pretty important?

12 A I think the Federal Orders were created for
13 producers, and I think most everything that happens in
14 Federal Orders is -- at least the intent is to benefit
15 the majority of the producers and that's where I get to
16 my conclusion about producer equity.

17 Q I understand, but would you also extend that
18 conclusion from your understanding of Federal Orders to
19 handler equity as well?

20 A I would tell you that the handler
21 infrastructure, if that's the word, the handler end of
22 the transaction, is a lot more convoluted. It isn't as
23 straightforward as paying a producer for his
24 hundredweight of milk. There's a lot of arrangements
25 in that handler infrastructure that are -- that it's

1 kind of apples and eggs or apples and oranges. Excuse
2 me.

3 Q Do you --

4 A Got to catch that.

5 Q -- believe that handler equity is an
6 important function of Federal Orders?

7 A I don't think you can consider handler equity
8 across the board, like you can consider producer equity
9 across the board. There's too many nuances of the
10 handler's arrangements that you couldn't just make a
11 blanket statement like I do about producer equity.
12 When it comes down to it, the milk that leaves that
13 outlet valve on that bulk tank gets paid a certain
14 price, and I think the majority of the handler -- the
15 majority of the producers should be able to share in
16 this Grade Class 1 Market that is created, and I don't
17 think it's the same comparison on a handler. There's
18 too many nuances.

19 MR. ENGLISH: Thank you, Jon.

20 MR. DAVIS: Thank you, Chuck.

21 JUDGE CLIFTON: Thank you, Mr. English.

22 Other questions for Mr. Davis? Mr. Beshore?

23 CROSS EXAMINATION

24 BY MR. BESHORE:

25 Q Good evening, Mr. Davis.

1 A Good evening, Mr. Beshore. I should say my
2 father called me today to say hi to you because he
3 didn't want me forgetting. So, I won't be able to say
4 hi to you on the way out.

5 Q Great. Thank you. Say hello back to him.

6 A I will.

7 Q Let me -- let me ask you, first, a little bit
8 -- to elaborate a little bit on the -- on your -- your
9 company -- company history and the operation in Idaho.

10 A As your statement indicates at the top, you
11 -- your family has had a plant in Le Sueur, Minnesota,
12 since 1943, but you -- you moved to Idaho in what year?

13 A Well, actually, I should clarify that. I
14 think you misread it a little bit, Marvin.

15 Q I'm sorry.

16 A Our companies have had a plant since 1943.
17 The first plant we had was in our hometown of St. Peter
18 in 1969.

19 Q St. Peter Creamery?

20 A Yeah.

21 Q Okay.

22 A Have you ever heard of it?

23 Q Yeah.

24 A Okay. And we moved in 1969 to Le Sueur, and
25 then in 1992-93, into Jerome, Idaho.

1 Q Okay.

2 A In addition, in 1986 to South Dakota.

3 Q Okay.

4 A You got them all, unless you want to know
5 about the Turkle plant, you got them all.

6 Q Not -- not right now.

7 A Later.

8 Q Later. The -- how did you -- how did you
9 come to move to Idaho from -- from Minnesota?

10 A Well, I have to paraphrase because I had
11 nothing to do with it, but my father was looking for a
12 place to expand our operation because we had three --
13 four siblings going to get in the business, and we
14 needed more cheese to cover that, and he flew -- he
15 went to a commerce development presentation in Chicago,
16 heard about it, flew out here, saw the cows, talked to
17 the local dairy farmers, John Reitsma being one of
18 them, got a connection and then built a plant. It's
19 been history since -- been a good history since then.

20 Q Did he -- the operations in Minnesota, Le
21 Sueur, were -- were in the -- in the context of Federal
22 Order 68 at that -- over the years, isn't that correct?
23 Again, you weren't personally involved necessarily, but
24 you're aware of that, are you not?

25 A Yeah. Order 68. I remember that.

1 Q Yeah.

2 A You know.

3 Q And you had a -- you had to be involved in
4 all the pool requirements and everything up there if
5 you wanted to be part of the pool?

6 A Back then, I was making start-ups. I didn't
7 have much to do with the pool requirements.

8 Q Okay.

9 A But I would assume somebody did.

10 Q Right. One of the attractions of Idaho was
11 there wasn't as much of that, isn't that correct?

12 A No, not at all. The attraction to Idaho was
13 the fact that the producers were entrepreneurial in
14 thinking, independent, proprietary-types like us, like
15 my father, and you've met him, you know him, and they
16 were growing. So, that's why we went there, and when
17 we got there, there was certain regulations in place
18 that enabled our producers to get a piece of the Class
19 1 pie, so to speak, and we certainly engaged in those
20 activities, and in fact, those activities and those
21 rules and regulations, loopholes some people call them
22 now, were all formed by co-ops back in the late '80s.
23 So, we just followed the rules that the co-ops had
24 made.

25 Q Okay. Well, were you -- was your milk supply

1 originally pooled when you opened up there in 1992-93?

2 A No, because our original intent was to buy
3 some cooperative milk, and we were going to have some
4 working relationships with the co-ops.

5 Q Okay.

6 A And as -- after the -- I think the pricing
7 negotiation conversations changed when we poured the
8 first concrete. They got a little more aggressive from
9 their perspective. So, we had to do something else.

10 Q Okay. And that was buy milk directly from --
11 from your own producers?

12 A Exactly.

13 Q Okay. Part of the entrepreneurial spirit of
14 the producers up there was that they were ready to --
15 they were ready to invest and to expand their
16 operations and dedicate them to your cheese plant,
17 isn't that correct?

18 A Yeah. Certainly.

19 Q Okay. And that has continued -- continued in
20 Southern Idaho to date and continues even now, and
21 you've all grown together, isn't that --

22 A I would tell you that --

23 Q -- fair?

24 A -- I think the growth in Idaho is directly --
25 directly -- has been directly dependent on the fact

1 that there's been two very entrepreneurial proprietary
2 independent cheese companies, Glanbia and Jerome
3 Cheese, willing to grow and invest capital when the
4 milk supply hadn't grown yet, and in -- in -- in turn,
5 the producers, entrepreneurial and independent, grew,
6 also, grew hand-in-hand with us because they saw our
7 growth.

8 Q Right.

9 A And now, I -- I find it ironic that other
10 than dairy farmers -- Dairy Gold, now the other co-ops
11 that were real active, at least more aggressive, are
12 now trying to be because this growth has been there.

13 Q Trying to be aggressive in what -- what
14 respect?

15 A To -- to take the producer base that Glanbia
16 and us have helped develop and -- and have it for their
17 own.

18 Q They're competing for your milk supply in
19 ways that they didn't -- you had it all to yourself for
20 -- for a few years?

21 A I wouldn't -- I wouldn't say that. I think
22 they had it all to themselves. In fact, that's why the
23 Federal Order Rules that were written when they were
24 the only ones there were very vague, you know, talking
25 to them.

1 Q I'm talking about your milk supply, the
2 producer supply in your plant. Okay. You said that
3 DFA and -- has become -- Dairy Gold have become more
4 aggressive in competing for that more recently. So, in
5 the first --

6 A I think I said DFA, but if I didn't, I meant
7 DFA.

8 Q Okay. DFA has become more aggressive
9 recently, so that they were not -- you didn't have --
10 you didn't face that competition for your milk supply
11 in the earlier years through your growth?

12 A I wouldn't say that at all. It was very
13 competitive. We had to get the -- when we first got
14 there, we had to get the milk from somebody, and the
15 co-ops at that time, especially WDCI was one of the
16 main ones, weren't being very responsible to their
17 producers in terms of their returns on their milk
18 check, and we were able to take advantage of that, you
19 know. They were kind of sleeping at the switch.

20 Q Okay.

21 A They weren't being very competitive or
22 forward-thinking with their producers and we were and
23 Glanbia, also, and that's why we were able to procure
24 the milk supply.

25 Q By paying better than the co-ops were with

1 programs, such as the cheese yield?

2 A The cheese yield is like, you know, you can
3 wrap your Christmas presents in any color wrapping you
4 want and that's just a different color.

5 Q Okay.

6 A Actually, the blend price being what it is,
7 when we pool milk, we have to pay the blend price.
8 When the cooperatives pool milk, they don't have to pay
9 the blend price, and historically WDCI didn't pay the
10 blend price and that was -- that gave us the ability to
11 go out compete them, and we certainly write the milk
12 checks, have a cheese yield rationale, but it really
13 doesn't matter how you slice the pie. It's the same
14 pie, and our pie was bigger.

15 Q You pay -- you pay at least blend price on --
16 on all of your milk, pooled or non-pooled, don't you?

17 A We pay the blend price on all our regulated
18 milk.

19 Q And the milk --

20 A And we -- and we pay a different price for
21 unregulated milk. Sometimes it's higher than the blend
22 price, sometimes it's lower. If we could pool all our
23 milk, if you want to let us pool all our milk, we'll
24 pay the regulated price on all of it.

25 Q I'm sure you would, and all the milk -- how

1 much money would your company draw from the pool if
2 that were the case?

3 A I'd be shooting from the hip, and Mr. Vetne
4 told me not to do that. So, I can't tell you off the
5 top of my head.

6 Q Okay. How about per hundredweight?

7 A I'd have to -- I'd have to go back to my
8 computer and look at it.

9 Q Okay. Regardless --

10 A Zero.

11 Q The -- regardless of where the shot's from,
12 it would be a nice shot to the bottom line of Davisco,
13 would it not?

14 A Well, I guess my understanding of minimum
15 pricing, the producer gets the money, and I realize --

16 Q No, no.

17 A -- that in the co-ops, that doesn't happen,
18 but with the proprietaries, that does.

19 Q Now, -- now, here's what I'm -- here's what
20 I'm -- my question, Mr. Davis. Listen to it closely.
21 Okay. If you pooled all your milk, pooled all your
22 milk, okay, and you paid all your producers blend
23 price, --

24 A They would get whatever shot you're talking
25 about. We would.

1 Q All right. Listen to me now and hear me out
2 on this.

3 A I apologize.

4 Q Okay. If you pooled all your milk, had the
5 revenue from the pooled draw coming to your company in
6 order to pass it through to the producers towards that
7 blend price and then paid all your producers that blend
8 price, your company would have a very, very positive
9 effect on -- on its bottom line in that transaction,
10 would it not, compared to what you're paying your
11 producers now without that money from the pool?

12 A No, absolutely not true.

13 Q Well, then tell me how it is that you just
14 testified that you pay more than the blend price to
15 your non-pooled producers, okay, without money from the
16 pool? If you would pay the blend price to those
17 producers with the benefit of the money from the pool,
18 you'd be way ahead, would you not?

19 A I think I said we pay more or less, depending
20 on the month. In fact, I'm quite sure of that. It's
21 getting late, and I'm quite sure of that one.

22 Q Yeah.

23 A And -- and ultimately what happens is our
24 price above or below the Class 3 price because
25 conceptually, we're supposed to be assessed the Class 3

1 price on all of our Class 1 diversion or shipments.
2 So, we should be obligated to the pool for Class 3, and
3 my -- my answer to your question is, and you've jumped
4 to the wrong conclusion, is we pay more than the Class
5 3 price on the aggregate of our milk supply. So, from
6 a conceptual standpoint, the -- the Federal Order blend
7 system being what it is, we should get the draw to get
8 to that Class 3 price or near it. Certainly we have to
9 pay Mr. Daugherty and those folks.

10 Q How much -- how much over the regulated Class
11 3 price do you pay on an average basis?

12 A It would --

13 Q Regulated minimum.

14 A It would depend on the year, but again I'll
15 tell you that it's -- that's proprietary, and based on
16 what I saw earlier, you -- you'll at some point have
17 the ability to get that. It may be five years late.

18 Q Elvin didn't call you for it, isn't that
19 right?

20 A Exactly.

21 Q So, we could call you any month and we can
22 get it on a current basis, is that right?

23 A Well, I just had lunch at a local restaurant
24 with Bob, and everybody told me exactly what we paid.
25 So, I -- you know, we don't hide anything from our

1 producers, and -- and we have nothing to hide. So, we
2 will pretty much share all that information, but with
3 the producers and with certain competing producers.

4 Q Is it -- is it correct that your -- your --
5 as has been published, I don't know, in Cheese Market
6 News and the Cheese Reporter or wherever that your
7 plant at Jerome has a capacity in excess of five
8 million pounds a day?

9 A It depends on who we're talking to.

10 Q Well, now you're talking to the record of
11 this hearing.

12 A It has the capacity of nearing five million
13 pounds. I can't comment on who spoke to Cheese Market
14 News. That's, I guess, what I was going for.

15 Q But -- but for the Secretary of Agriculture,
16 it's your testimony that the -- that the plant has a
17 capacity of nearly five million pounds per day --

18 A Currently.

19 Q -- currently? Do you have expansion plans on
20 the drawing board?

21 A We always have expansion plans on the drawing
22 board.

23 Q Okay. What -- what's -- what's your
24 projected capacity?

25 A I haven't got to a conclusion so we can

1 project.

2 Q Okay.

3 A You know, we're --

4 Q You're unsure.

5 A -- in the mode of looking.

6 Q Okay. Did -- are those expansion plans
7 affected one way or the other by the -- by changes --
8 by any -- anything that happens in this hearing?

9 A Certainly if the Federal Order -- if you
10 folks see fit to make us less competitive in Idaho as
11 cheese-makers, we're going to look at all those things
12 that happened.

13 Q Presently, you're able to pool, I think you
14 said, -- what portion of your milk are you -- are you
15 pooling now? You don't have to give the volume. How
16 about a portion?

17 A Somewhere in the neighborhood of 30 percent.

18 Q And of that -- of that portion, is it -- do
19 you have about the same Class 1 utilization that was
20 depicted on the Market Administrator's exhibit that
21 shows about five percent of bulk tank handler --
22 proprietary bulk tank handler milk?

23 A I didn't look at that.

24 Q Is that about what your Class 1 utilization
25 might be in 30 percent of your milk that's pooled?

1 A You know, I -- I'd have to have a calculator
2 to do the math.

3 Q Okay. Well, --

4 A And I'm not trying to hide anything. It's
5 not --

6 Q Do you know -- okay. Well, do you know about
7 what your sales are to -- about what Stoker's Class 1
8 volume is?

9 A We -- we do -- you know, I would say five
10 percent would be the ball park, Marvin. I'd have to
11 have a calculator, and I don't typically do that on a
12 month-to-month basis.

13 Q Are you still paying your producers on a --
14 on a formula that is based off of the portion of your
15 production that goes to blocks and barrels as the five-
16 year old exhibit testified -- indicated?

17 A We pay our producers based on what we get out
18 of the marketplace and that would depend on those two
19 factors and many more. Marketplace is a lot different
20 today than it was in 1997, which is what I think you
21 have.

22 Q Okay. So, would I take it from that that
23 your -- your -- the market products that you're using
24 are more than just the block and barrel market on the
25 Chicago Mercantile Exchange?

1 A Certainly, and those are absolute prices.

2 Q What other -- what other product markets are
3 you paying off of?

4 A That's proprietary.

5 Q Well, your producers know it, don't they, and
6 everybody else knows it?

7 A Our producers know an aggregate of what
8 happens. I'm certain we have arrangements with cheese
9 customers that are -- are not known to our producers or
10 known to anybody.

11 Q Okay. But producers -- I'm just talking --

12 A And --

13 Q I'm not talking about anything with your
14 customers, Jon.

15 A -- pricing mechanisms are proprietary.

16 Q Well, what -- do your producers know what
17 product markets your -- their price is based on?

18 A They won't know it as they get their check.
19 They'll know it -- a lot of them come in once a month
20 and sit down with me and want to know how I got here,
21 and I walk them through it.

22 Q Okay. But -- so, they don't -- you don't
23 publish that to your producers; they have to come in
24 and -- and get it?

25 A It's on the milk check. So, it's certainly

1 published. How it gets to that number, they have to
2 come in and discuss it with me because it's so dynamic.

3 Q So, you don't have a published formula --
4 what I call published. I mean, a formula that a
5 producer could look at and say, okay, the price of
6 block is such and such, the price of barrel is such and
7 such, the price of whey is such and such, and --

8 A They can generalize on those things and get
9 to -- get to a ball park.

10 Q Yeah.

11 A To get that exact number, they got to come in
12 and they do. Our guys are very up to speed on that.

13 Q What's equal opportunity pooling?

14 A Everybody should have opportunity to have --
15 to be able to pool. I like the old rules where we
16 could pool all our milk, and I guess that's what I
17 would say.

18 Q The ones where the diversion limits were
19 eliminated --

20 A Suspending, I believe, is the term --

21 Q Suspended.

22 A -- the guys in the know use, and I just said
23 it was unlimited.

24 Q Okay. And the suspension meant there was no
25 limit, correct?

1 A We pool it all.

2 Q Okay. That's equal opportunity pooling. Can
3 you put it on your report as pooled?

4 A Yeah.

5 Q No performance required?

6 A I didn't have to do any math.

7 Q And you -- and your producer -- and you
8 didn't have to do anything in terms of supplying the
9 market either; you just put it on your report and it
10 was pooled, correct?

11 A We supplied the market that we had agreements
12 with. So, certainly we supplied -- in fact, the gas
13 station I go to every day, I buy milk that is ours.
14 So, I do supply the market.

15 Q The same market you're supplying now?

16 A Yeah.

17 Q But that -- the supply of that market under
18 your equal opportunity pooling means that you can pool
19 as much milk as you could ever have under your control
20 and put on your report, isn't that correct?

21 A Yeah, yeah.

22 Q Okay. And that's the way you think it ought
23 to work?

24 A I believe so. If -- if we're going to have
25 any Federal Order pool, everybody should be involved.

1 If we're not, let's just throw all the rules out and
2 let's just go compete, which is what I'd like to do,
3 but I -- I don't think the -- especially the
4 cooperatives would want to do that.

5 Q But isn't that what you --

6 A Level playing field.

7 Q -- do -- isn't that --

8 A You don't mind, Marvin, if I finish, do you?

9 Q No.

10 A I don't get to talk much, but I -- I don't
11 think the co-ops would like to go compete on a level
12 playing field. So, they have to find rules that
13 handicap guys like us and Glanbia, and there's a lot of
14 others, good, good folks that do well with the product
15 and make it into something the customer wants.

16 Q Well, on the milk that's not pooled, do you
17 choose not to pool if that's where you are, just where
18 you want to be, out there in the marketplace competing
19 for that milk, isn't that correct?

20 A Repeat that. I'm sorry, Marvin.

21 Q For your milk supply that's not pooled,
22 you're in that free marketplace, you're out there
23 competing for that production and for the production of
24 any other dairy farmer?

25 A We're competing against guys that get a

1 Federal Order draw on that milk that we don't over and
2 above our 30 percent and that's a handicap now, and
3 it's even greater with the proposals.

4 Q Yeah. You understand that you don't have any
5 of the proportionate costs of supply any of those Class
6 1 markets either, correct?

7 A No. We have a cost to make cheese.

8 Q Okay.

9 A Which are certainly in comparison with that
10 right there.

11 Q In your -- your poolings through Stoker by
12 maximizing them, have you been advised by -- I
13 understand you don't personally understand the
14 regulations, but when you say you maximize the
15 allowable diversions, have you been advised by expert
16 consultants how to move milk in order to maximize the
17 greatest amount you could pool and draw?

18 A I just called John Mykrantz at the Federal
19 Order and asked him the best way to do it.

20 Q Okay.

21 A And he answered my question, and we figured
22 it out.

23 Q How many patrons do you have at your Jerome
24 Cheese plant at the present time?

25 A Mid-60s. It varies. You know, John Reitsma

1 has five dairies. Do you count him as five producers
2 or just one?

3 Q Have you had more than that at times in the
4 past?

5 A Yeah. We've been up to a hundred at one
6 point, and then it's dwindled. As a good exhibit that
7 was presented earlier, I know farms have gone out of
8 business certainly.

9 Q Are any of the -- are they all Grade A --

10 A Yes, --

11 Q -- dairy farmers?

12 A -- they've been all Grade A since 1997 or so.

13 Q Okay. On your -- on your checks to
14 producers, do you -- do you still rank them, give them
15 a rank among -- among your farms, how they rank in
16 number of cows milked and average pounds per day and
17 things of that nature?

18 A I can send you that check directly next time,
19 Marvin. Yeah. We do.

20 Q Yeah. Okay. How many -- do you -- for --
21 for producers who -- part of their milk's pooled, do
22 you send them multiple checks a month or how do you
23 work that?

24 A Yeah. We have a check. It's a regulated
25 check and that's what the Federal Order gives to audit

1 and the other check is a separate check.

2 Q Okay. How many pay prices do you have among
3 your patrons?

4 A Just one, but it's -- it's broken up into
5 Federal Order milk and then what you call residual milk
6 or whatever you want to say the difference is on
7 producers that are pooled, and then -- but the
8 aggregate amount is just the same price for everybody.
9 We treat everybody the same.

10 Q Let me see if I understand it. So, pooled
11 and non-pooled producers are -- end up coming out the
12 same?

13 A Exactly.

14 Q Okay. Let me -- let me show you a -- show
15 you a document and ask you if this is, you know, an
16 accurate photocopy of a Davisco producer -- producer
17 check from August 2000.

18 (Pause to review document)

19 MR. DAVIS: What was your question?

20 BY MR. BESHORE:

21 Q Is that -- does that look like -- appear to
22 be an accurate photocopy of a Davisco producer check
23 stub statement for -- for a month?

24 A Yeah. I -- somebody wrote August 2000, but
25 we don't print that. Yeah. Somebody wrote the name

1 out and some of it's missing down here, I believe.

2 Q The information on the bottom is not on that
3 document?

4 A Yeah. I believe so. Let me just check.

5 Q Okay.

6 MR. BESHORE: Could we mark this as the next
7 exhibit?

8 JUDGE CLIFTON: You may. I believe it's 36.
9 What shall we call it?

10 MR. BESHORE: Call it a Davisco Producer
11 Check Stub Statement, Producer Milk Check Statement.

12 MR. DAVIS: Works for me.

13 MR. BESHORE: Okay.

14 JUDGE CLIFTON: All right. I'm asking the
15 court reporter to mark that as Exhibit 36.

16 (The document referred to was
17 marked for identification as
18 Exhibit Number 36.)

19 JUDGE CLIFTON: Do you want the witness to
20 look at one while you're looking at that one?

21 MR. BESHORE: Yes.

22 MR. DAVIS: I got one, Marvin.

23 BY MR. BESHORE:

24 Q Okay. Is -- is this the same information,
25 the same type of paycheck that you would still be

1 providing to your producers today, Jon?

2 A Yes, similar to this.

3 Q Okay. The information in the lower left that
4 shows number of cows milked per day, in this case
5 1,825, that producer was what, ranked seventh out of
6 your 82 producers at the time?

7 A Yeah. Looks like.

8 Q In herd size apparently?

9 A Yep.

10 Q And the milk production 75 pounds per cow per
11 day was 29th out of the 82?

12 A According to the numbers. I mean, we -- we
13 get -- we're taking their cow numbers and plugging them
14 in. So, some guys hedge high and some guys hedge low,
15 depending on what effect they're looking for.

16 Q Okay. And the -- was this a pooled -- was
17 this producer pooled?

18 A I have no idea.

19 Q Okay. That wouldn't really show on this
20 statement, is that correct?

21 A No, not on this one.

22 Q This is the final check for the month of
23 August, August 2000, for this producer, correct?

24 A Right. It looks -- 8/1 to 8/31. So, that
25 would be the whole month.

1 Q Okay. Now, does this -- the volumes that are
2 shown, total milk pounds, in the middle, 2,202,606,
3 that's the total production for the -- for the month
4 for that producer?

5 A No. This could be just one half of it. This
6 guy could get two checks. So, this -- this would be
7 one of those two checks.

8 Q Okay.

9 A One would be the Federal Order check, one
10 would be the -- whatever you want to call it. I call
11 it the residual check. So, I -- and I can't tell you
12 which one this is because I don't know.

13 Q Well, would the Federal Order -- Federal
14 Order check would look about the same way?

15 A Look about the same.

16 Q Yeah. Okay.

17 A You know, it'd be the difference.

18 MR. BESHORE: If I may have just a minute,
19 Your Honor?

20 JUDGE CLIFTON: All right. Let's go off
21 record.

22 (Pause)

23 JUDGE CLIFTON: Back on record. We're back
24 on record at 8:22.

25 Mr. Beshore?

1 MR. BESHORE: Thank you, Your Honor, and
2 thank you for the -- for the brief break. I have no
3 further questions for Mr. Davis.

4 Thank you, Mr. Davis.

5 MR. DAVIS: Thanks, Marvin.

6 JUDGE CLIFTON: Are you moving the admission
7 of this exhibit at this time?

8 MR. BESHORE: Yes, I am.

9 JUDGE CLIFTON: Is there any objection to the
10 admission into evidence of Exhibit 36?

11 MR. DAVIS: The only thing I would say that
12 would confirm is this doesn't -- I can't tell, and I
13 mean I can't not tell you, I would tell you if I could,
14 you physically can't tell if this is a regulated check
15 or an unregulated check, and I just would like that to
16 be on the record.

17 JUDGE CLIFTON: All right. And you did say
18 that it appears that some of the bottom of it is
19 missing?

20 MR. DAVIS: It looks like down here by this -
21 - where the words are kind of scrambled.

22 JUDGE CLIFTON: Yes.

23 MR. DAVIS: Similar to the letter I saw
24 earlier.

25 JUDGE CLIFTON: All right. Thank you.

1 Mr. Vetne, do you have any objection to
2 Exhibit 36 --

3 MR. VETNE: No.

4 JUDGE CLIFTON: -- being admitted?

5 MR. VETNE: No.

6 JUDGE CLIFTON: Exhibit 36 is hereby admitted
7 into evidence.

8 (The document referred to,
9 having been previously marked
10 for identification as
11 Exhibit Number 36, was
12 received in evidence.)

13 JUDGE CLIFTON: Mr. Marshall?

14 CROSS EXAMINATION

15 BY MR. MARSHALL:

16 Q I promise to be brief, Jon. On Page 5 of
17 your prepared testimony, you make a reference to, and I
18 quote, "that NDA wants for good reason to treat
19 California milk".

20 Can I take that as an endorsement of Proposal
21 Number 10?

22 A If Proposal Number 10 is to not allow double-
23 dipping as --

24 Q It is.

25 A -- the trade has come to conclude, yes, I

1 agree that there shouldn't be double-dipping.

2 Q And would you further support the need to
3 take action with respect to double-dipping on emergency
4 basis?

5 A I would agree.

6 Q Thank you.

7 The other line of inquiry involves some
8 thoughts about the impact of your entrepreneurial
9 efforts on the dairy economy of Idaho. Have you ever
10 run a calculation on the net addition that you and your
11 family have brought to the Idaho dairy industry?

12 A We spent about 280 million. It depends on
13 milk prices. Certainly a couple of years, it was 50 or
14 60 million more than that, but somewhere around \$280
15 million on producer payroll, another 6 to 10 on
16 employee payroll, and I'm told that rolls seven to nine
17 times in the local economy. So, whatever that number
18 is.

19 Q And how many employees do you have there at
20 Jerome Cheese Company?

21 A About 200, and I won't say that in front of
22 Dad because I keep telling him it's only 150, but it's
23 200.

24 Q I understand why you do that. Thank you,
25 Jon.

1 JUDGE CLIFTON: Mr. Davis, I just want to
2 make sure I heard what you said. You said there should
3 be no double-dipping?

4 MR. DAVIS: Yeah. I think that the practice
5 that -- I believe where they take money off the
6 California Order and then take money off of the Federal
7 Orders, I think that shouldn't be allowed.

8 JUDGE CLIFTON: Should not be allowed?

9 MR. DAVIS: Should not be allowed. I think
10 it's kind of, if I can be blunt which is the only way I
11 know, it's kind of hypocritical.

12 JUDGE CLIFTON: Any other cross examination?
13 Mr. English?

14 CROSS EXAMINATION

15 BY MR. ENGLISH:

16 Q John, with respect to Exhibit 36, you
17 indicated that you couldn't tell from looking at it
18 whether this was one of the checks that was for non-
19 pooled milk or for pooled milk, correct?

20 A Yeah. I can't tell from looking. I can't
21 confirm what it is.

22 Q Okay. Well, isn't it true that if it is a
23 check pursuant to the Order under Section 73, you would
24 have to show on this the minimum rate or rates at which
25 the payment -- which payment the producers require

1 pursuant to the Order?

2 A Yeah. And that's on there in the middle,
3 under the Component Value.

4 Q You're saying that is the Federal Order
5 Component Value?

6 A Well, they're all -- if you see MCP, we call
7 it Multiple Component Pricing with our producers.

8 Q Okay. But -- but for this purpose, you're
9 saying that is the Order value?

10 A It should have been in that month, and if
11 it's not, Mr. Burch would have caught it. I certainly
12 can't tell you today if it was.

13 Q Okay. Do you -- do you tend to disclose the
14 producer price differential on your --

15 A Yeah. It's a weighted average differential
16 there, the last number in the middle.

17 Q Okay. So, that -- that would be -- for
18 clarity of the record, that would be the producer price
19 differential?

20 A Yeah. We call it that.

21 Q Okay. So, could one -- if one applied the
22 component values to the pounds and that matched the
23 dollars, would that indicate it was --

24 A If it didn't match the dollars?

25 Q Yes.

1 A Wouldn't be a regulated check.

2 Q And if it did match the dollars?

3 A It would be.

4 Q Fine. So, there's --

5 A That's how you can come to the conclusion,
6 but I don't have a calculator.

7 Q Okay. But for the record, there is a way
8 through a calculator for one to conclude from Exhibit
9 36 which of these two it is, correct?

10 A Yes, or you could not mark off the numbers up
11 there, and you could tell from the pay code.

12 Q Well, of course, I had nothing to do with
13 that.

14 A Okay. I didn't mean you specifically.

15 Q Yeah.

16 A But whoever had this check. If they had left
17 the pay code blank, I could have told you what it was.

18 Q One question that's -- that I don't -- at
19 least I don't have clearly at the moment, and I
20 apologize, but y our -- your plant in Jerome with the
21 whey and the cheese, is that a Grade A facility?

22 A Yeah. Entirely. Every product out of it.
23 I believe we're the only cheese plant in the U.S. that
24 is with every product.

25 Q Okay.

1 A And I could be wrong, and Mr. Marshall would
2 probably tell me, but when we did it, it was the only
3 one, I believe.

4 MR. ENGLISH: Thank you.

5 JUDGE CLIFTON: Any further cross examination
6 of Mr. Davis?

7 (No response)

8 JUDGE CLIFTON: Any redirect?

9 MR. VETNE: Sorry, Jon.

10 MR. DAVIS: That's all right.

11 REDIRECT EXAMINATION

12 BY MR. VETNE:

13 Q Mr. Beshore asked you a series of questions
14 about how you distribute money that you draw from the
15 pool.

16 A Yes.

17 Q Would it be correct to say that if you could
18 not draw from the pool as you now do on one-third of
19 your milk, that all of your patrons would receive, of
20 course, a little bit less correspondingly in their
21 paycheck?

22 A Yes, definitely. We pass it all through.

23 Q And if you could draw on a hundred percent of
24 your milk, all of your patrons would receive more
25 corresponding dollar-for-dollar in the aggregate with

1 what you draw from the pool?

2 A Definitely.

3 Q So, you do not now and do not anticipate in
4 the future using any draw simply to improve your bottom
5 line and not pass it on as additional funds to
6 producers?

7 A No, and I would love to pool all our milk,
8 and when we did, it all went to producer, and it still
9 all goes.

10 MR. VETNE: That's all I have. Thanks.

11 MR. DAVIS: Thank you.

12 JUDGE CLIFTON: Mr. Davis, thank you.

13 MR. DAVIS: Thank you.

14 JUDGE CLIFTON: You may step down.

15 (Whereupon, the witness was excused.)

16 JUDGE CLIFTON: If you would hand your copy
17 of that exhibit to the court reporter?

18 All right. If Mr. Williams is going to be
19 very, very, very, very, very short, we can do him
20 tonight or otherwise I'd like to call it a day.

21 MR. VETNE: Tomorrow, please. Let's call it
22 a day.

23 JUDGE CLIFTON: All right. I appreciate
24 that. Thank you, Mr. Williams.

25 Now, we have to decide what time we want to

1 be back here. It's now 8:30. We can start at 8:30, if
2 you'd like. Is there any objection to our starting at
3 8:30?

4 (No response)

5 JUDGE CLIFTON: All right. See you all back
6 here in 12 hours at 8:30.

7 (Whereupon, at 8:30 p.m., the hearing was
8 adjourned, to reconvene tomorrow morning, Thursday,
9 April 18th, 2002, at 8:30 a.m.)

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25