

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

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

VOLUME XXV

TRANSCRIPT OF PROCEEDINGS

October 28, 2015

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

Wednesday, October 28, 2015  
9:00 a.m.

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

TRANSCRIPT OF PROCEEDINGS  
VOLUME 25

Reported by:  
Myra A. Pish CSR  
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PAMELA ELLIOTT, Marketing Specialist

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9 OF AMERICA, INC., Hanson Bridgett, San Francisco  
LAND O'LAKES, INC.: BY: JOHN VLAHOS, ESQ.

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

12  
13 DEAN FOODS COMPANY: ROB BLAUFUSS

14 HILMAR CHEESE JOHN VETNE  
15 COMPANY: JAMES DeJONG

16 CALIFORNIA PRODUCER Stoel Rives  
17 HANDLERS ASSOCIATION: BY: NICOLE HANCOCK, ESQ  
BAO VU, ESQ.

18 PRODUCERS DAIRY FOODS: VICTOR LAI, ESQ.  
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1 WEDNESDAY, OCTOBER 28, 2015 - - MORNING SESSION

2 JUDGE CLIFTON: We're back on record on October 28, 2015,  
3 and it is 9:00 in the morning. This is this is Day 25 of the  
4 milk hearing. My name is Jill Clifton. I'm the United States  
5 Administrative Law Judge who is taking in the evidence at this  
6 milk hearing. I am a USDA employee. I would like now to take  
7 the appearances of others participating, beginning with other  
8 USDA employees.

9 MR. FRANCIS: Good morning, William Francis, F-R-A-N-C-I-S,  
10 Dairy Marketing Specialist USDA AMS Dairy Programs.

11 MS. MAY: Good morning, Laurel May, USDA AMS Dairy Program.

12 MR. CARMAN: Good day, Clifford Carman, C-A-R-M-A-N,  
13 Assistant to the Deputy Administrator AMS Dairy Programs.

14 MS. ELLIOTT: Hello, I am Pamela Elliott, E-L-L-I-O-T-T, I  
15 am a Marketing Specialist with the USDA AMS Dairy Program.

16 MR. MYKRANTZ: John Mykrantz, M-Y-K-R-A-N-T-Z, with the  
17 Pacific Northwest and Arizona Orders as an Agricultural  
18 Economist on detail with Dairy Programs.

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

22 MS. CHILUKURI: Good morning, Rupa Chilukuri, R-U-P-A,  
23 C-H-I-L-U-K-U-R-I, and I'm an Attorney with the Office of the  
24 General Counsel.

25 MR. HILL: Good morning, I'm Brian Hill, B-R-I-A-N,

1 H-I-L-L, and I'm also an Attorney with the Office of the  
2 General Counsel Marketing Regulatory and Food Safety Programs  
3 Division.

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

8 MR. VLAHOS: Good morning, Vlahos, J-O-H-N, V-L-A-H-O-S,  
9 law firm of Hanson Bridgett, H-A-N-S-O-N, B-R-I-D-G-E-T-T,  
10 co-Counsel for the co-op Proponents of Proposal Number 1.

11 MR. HOLLON: Elvin Hollon, E-L-V-I-N, H-O-L-L-O-N,  
12 Dairy Farmers of America, Proposal Number 1.

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

15 MR. ENGLISH: Good morning, my name is Chip English,  
16 C-H-I-P, E-N-G-L-I-S-H, I'm an Attorney with the law firm of  
17 Davis, Wright, Tremaine, with my principle office in  
18 Washington, DC, and I'm here on behalf of Proponents of  
19 Proposal Number 1 the Dairy Institute -- I'm sorry- whoa --  
20 someone did not get enough sleep last night.

21 I'm here to undermine Proposal Number 1, and I'm here  
22 as Counsel for the Dairy Institute of California, which is the  
23 Proponent of Proposal Number 2.

24 Ashley Vulin, V-U-L-I-N, is assisting with production  
25 materials for witnesses today and she will be here later today.

1 She's also with the law firm of Davis, Wright, Tremaine, on  
2 behalf of Proponents of Proposal 2.

3 DR. SCHIEK: Good morning, William Schiek, that's  
4 S-C-H-I-E-K, with the Dairy Institute of California. I'm the  
5 Economist for the Institute, and I'm here in support of  
6 Proposal Number 2.

7 MS. KALDOR: Rachel Kaldor, R-A-C-H-E-L, K-A-L-D-O-R,  
8 Executive Director of Dairy Institute -- that's what happens  
9 when your counsel wakes up at 1:30 and starts working, that's  
10 all I have to say.

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

13 MR. DeJONG: James DeJong, D-E, J-O-N-G, Dairy Policy  
14 Economic Analyst for Hilmar Cheese, dairy farmer-owned  
15 manufacturer of cheese, whey, and milk powders.

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

18 MR. ZOLIN: Alan Zolin, A-L-A-N, Z-O-L-I-N, Consultant  
19 representing Hilmar Cheese Company, and seems to be always last  
20 for the Proponents of Proposal Number 2.

21 MS. HANCOCK: Nicole Hancock, H-A-N-C-O-C-K, with Stoel  
22 Rives, S-T-O-E-L, R-I-V-E-S, representing the California  
23 Producer Handlers Association and Ponderosa Dairy.

24 MR. VU: Good morning, Bao Vu, B -- as in Boy -- A-O, last  
25 is Vu, V -- as in Victor -- U, of the law firm Stoel Rives, and



1 I also represent the California Producer Handlers Association  
2 and Ponderosa Dairy. Thanks.

3 MR. LAI: Good morning, Victor Lai with Producers Dairy  
4 Foods, spelled V-I-C-T-O-R, L-A-I. Thank you.

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

7 JUDGE CLIFTON: Is there anyone else who has not yet come  
8 to the podium who would like to testify today? If you would  
9 come forward, sir. Go to the podium and tell us who you are.

10 MR. GIACOMAZZI: I'm Dino Giacomazzi, D-I-N-O,  
11 G-I-A-C-O-M-A-Z-Z-I, Giacomazzi Dairy, Hanford, California, in  
12 support of Proposal 1.

13 JUDGE CLIFTON: All right. And when would you prefer to  
14 testify today?

15 MR. GIACOMAZZI: As soon as possible.

16 JUDGE CLIFTON: As soon as possible? All right. When --  
17 what I'll ask you to do right now is take your seat where you  
18 were. We'll go through our preliminary announcements and  
19 matters, and then I will determine if we can call you first.  
20 Thank you.

21 Is there anyone else who has not yet come to the podium  
22 who would like to testify today? All right. I see no one yet.  
23 Let us now then go onto announcements and preliminary matters,  
24 beginning with those from the USDA.

25 MS. MAY: Good morning, Laurel May with USDA. Welcome to

1 today's session of the hearing. We're happy to see all of you  
2 here and grateful for those of you who are speaking to us and  
3 helping us understand better what the needs of the California  
4 dairy industry are.

5           Anybody that would like to, is welcome to testify in  
6 this hearing and anybody who would like to question any of the  
7 witnesses may do so. The session is being recorded, or, sorry,  
8 not recorded, it is being transmitted via live audio feed, and  
9 the link for that is a You Tube link, and you can get to that  
10 [www.ams.usda.gov/live](http://www.ams.usda.gov/live).

11           The court reporter taking official transcripts of this  
12 hearing and those are available approximately two weeks after  
13 the end of each hearing week. You can access those at the AMS  
14 dairy website.

15           Copies of some of the exhibits that have already been  
16 presented are available in the back of the room on that table.  
17 And there are refreshments that you are welcome to enjoy in the  
18 back of the room, also.

19           Yesterday, at the end of the day, Mr. Blaufuss had  
20 begun reading his testimony into the record, and I believe  
21 today we were going to have him return, although,  
22 Mr. Giacomazzi indicated to me that he would like to go early  
23 if he can.

24           JUDGE CLIFTON: Thank you, Ms. May. Mr. English?

25           MR. ENGLISH: Good morning again, your Honor. My name is

1 Chip English. And let me start by saying that absolutely we  
2 will move with our schedule after Mr. Giacomazzi, so we're  
3 happy to do that. And so that will be first, unless someone  
4 else has a different view, but that is certainly our view.

5           When he is complete, and I guess depending a little bit  
6 how long that goes, Mr. Blaufuss will return to the stand. We  
7 still have sort of our own hanging chad, Mr. Ahlem, who was  
8 available earlier in the week and was unable to get on because  
9 he graciously allowed us to complete some witnesses. My  
10 understanding is that he had to re-report for the potential  
11 jury duty this morning, and I have not gotten not an update, so  
12 I don't know whether or if we'll see him. But if we do, I  
13 think it would be late morning. And subject to other dairy  
14 farmers, he would be then, next on our list to get him on the  
15 stand, especially since he's been delayed.

16           After that, last night, due to a miscommunication for  
17 which I take responsibility, I indicated that we would have a  
18 policy history witness. And after the hearing concluded, I was  
19 able to confirm that, yes, that is going to happen. That is  
20 going to be Mr. John Vetne. And I communicated that to  
21 Mr. Beshore at 6:45 last night, and also managed, on a  
22 procedural basis only, to communicate that to USDA at 7:30 last  
23 night. So I apologize that I was not able to do that on the  
24 record last night and I take responsibility.

25           Assuming that we get past those witnesses, the next

1 witness would be Dr. Schiek returning to the stand, Part 2, on  
2 pooling.

3           And if that gets done and we're ready for another  
4 witness, Mr. Zolin would return for his Part 3, which would be  
5 on plant definitions. So I think it's fair to say that once we  
6 get done with Mr. Vetne, Mr. Ahlem, and Mr. Blaufuss, that  
7 we're moving out of opening statements and we're moving down  
8 into Topic 2. And I realize we have obviously had some  
9 bleeding over from some witnesses who were testifying only once  
10 and coming in, but we're trying to follow the topic schedule.  
11 And so we're trying to get through Topic 2 next. And so, for  
12 instance, Ms. Taylor, who I now expect to testify tomorrow,  
13 would be covering that, and there may be some coverage of  
14 opening statement, but basically that would be her testimony on  
15 Topic 2.

16           Later this week, Mr. Blaufuss will testify a second  
17 time, and that will be on Topic 2. At that point, I believe we  
18 will have completed, or we intend to complete, Topics 1 and 2.  
19 Mr. Zolin will go later on 9(d). That's correct. So Mr. Zolin  
20 advises me that Mr. Ahlem has been excused from jury duty so  
21 he'll be here in about an hour or so. So we're updating this  
22 on the fly as we go.

23           Anyway, what I was trying to get at here is that we  
24 expect, and intend, this week, to complete Topic 2. Then we  
25 have had our one witness on Topic 3 and 4. Topic 5 we had

1 Mr. Zolin on uniform provisions, and of course we had the  
2 witnesses last week on ESL, which covers Topic 5.

3 It is our anticipation and expectation that we would  
4 start on Topic 6, which is class prices, next Monday.

5 And so that's my preview. And I think that's about as  
6 complete a preview as I can give for the rest of this -- yes,  
7 Mr. Beshore?

8 MR. BESHORE: Marvin Beshore. The 9(d) proprietary bulk  
9 tank handler would look to come in 2, I assume. I wasn't sure  
10 when that was lined up.

11 MR. ENGLISH: Thank you, Mr. Beshore. I think, we're not  
12 going to start talking about quota issues really until next  
13 week after pricing. And 9(d) really is linked to quota issues.  
14 I know it is sort of a plant issue, but it is more of a quota  
15 issue. We wouldn't have it but for the quota. So I think and  
16 intend that -- we may change our mind -- but I think and intend  
17 that we would be bringing it when we talk about quota.

18 So that's -- and then I think it's fair to say that  
19 once we get into pricing, we expect that to take at least three  
20 days next week. So that's my preview that gets us, I think,  
21 through the next eight days.

22 JUDGE CLIFTON: Are there any other preliminary matters? I  
23 see none. The docket number as known in the Hearing Clerk's  
24 office in the United States Department of Agriculture is, in  
25 brackets, [A0] docket number 15-0071.

1 I would like now to call Mr. Giacomazzi to the witness  
2 stand. I'm delighted that this worked out. Thank you for  
3 yielding to him so that he can spend a minimum of time here for  
4 maximum effect.

5 Now, when I swear you in, Mr. Giacomazzi, it will be in  
6 a seated position. And after you are sworn in, you can test a  
7 little bit how close you need to be to the mic. You will be  
8 able to hear whether your voice is being projected. Do you  
9 have any writing that you want to have marked as an exhibit and  
10 made part of a written record?

11 MR. GIACOMAZZI: I do not.

12 JUDGE CLIFTON: All right. I'll swear you in now. Would  
13 you raise your right hand?

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

16 MR. GIACOMAZZI: I do.

17 JUDGE CLIFTON: Please state and spell your name.

18 MR. GIACOMAZZI: Dino Giacomazzi, D-I-N-O,  
19 G-I-A-C-O-M-A-Z-Z-I.

20 JUDGE CLIFTON: And if you don't mind my asking, what  
21 heritage does that name come from?

22 MR. GIACOMAZZI: Swiss-Italian.

23 JUDGE CLIFTON: Okay. And say -- pronounce it for me one  
24 more time.

25 MR. GIACOMAZZI: Giacomazzi.

1 JUDGE CLIFTON: Giacomazzi. Thank you. All right.

2 Now, what we would normally like is to know about you  
3 and your connection with the dairy industry, and you may  
4 proceed in any manner you wish.

5 MR. GIACOMAZZI: Okay. That's what I hope to do.

6 JUDGE CLIFTON: Good.

7 MR. GIACOMAZZI: All right. So since I have been sworn in  
8 and I'm required to tell the truth, I will start by informing  
9 you that I do not have an e-mail server in my basement, I use  
10 G-Mail. So -- so as I said, I'm Dino Giacomazzi. I'm a fourth  
11 generation dairy farmer in Kings County in the town of Hanford.  
12 My family has been farming and milking cows in the same  
13 location, everyday continuously, since 1893. We're going to  
14 celebrate our 123rd anniversary in the dairy business in  
15 California this coming January. Incidentally, the barn that we  
16 milk cows in today is an old flat barn, and it was built in  
17 1937, which is the same year my father was born. And also  
18 historically interesting, the same year that the Golden Gate  
19 bridge opened, so we have been -- a lot of history in  
20 California, a lot of history in Kings County.

21 I apologize if my phone vibrates. I'm trying to keep  
22 track of where I'm at on my phone here while talking to you.

23 So my family's heritage and history in California is  
24 very long. I do have fifth generation dairy farmers in the  
25 works. They are two boys, eight years old and three years old.

1 And so my reason for coming before you today and providing some  
2 information about my relationship with the dairy industry is to  
3 ensure that those two little boys have the opportunity to  
4 participate as dairy farmers, the same as I did, as my father  
5 did, his father did, and his father before him did at this  
6 property in Hanford.

7 So I want to also let you know that I have a  
8 grandmother who turned 102 years old on July 23rd of this year,  
9 and -- feel free to applaud -- and I kind of also want to  
10 dedicate my travel here to her. It is very important to me  
11 that my grandmother is able to continue out her life living on  
12 the dairy farm. Since my grandmother was born on a dairy farm  
13 102 years ago in Tulare County just down the road to another  
14 Italian family called the Curdy family, and her father was  
15 involved originally in the -- in the development of Dairyman's  
16 Cooperative Creamery, which is now has joined with Land O'Lakes  
17 Creamery, and so we are Land O'Lakes shippers.

18 My cousins in the Tulare area have been with Dairyman's  
19 and Land O'Lakes since the beginning. And I would -- I would  
20 suggest that part of the reason that I'm here is to ensure that  
21 my mother, my wife, and my grandmother can continue living  
22 their lives on the dairy farm in a time when dairy farming has  
23 become increasingly more challenging due to many factors,  
24 primarily due to economics.

25 And so I would like to then tell you a little bit about



1 myself and my journey from being a dairy farmer's kid to not  
2 being on the farm for 13 years, and then returning to the farm  
3 under circumstances that are, you know, certainly not ideal,  
4 but ultimately turned out for the best.

5           So I was raised on the farm, grew up working there,  
6 went to school. Did FFA, 4H, you know, the whole bit. Went  
7 off to Ag College at COS and then Cal Poly Dairy Science  
8 Degree. Came back to the farm after Cal Poly to an environment  
9 where my grandfather and my father were both in charge and  
10 weren't, let's just say they weren't the best of friends, and  
11 didn't quite see eye to eye on almost everything. And I became  
12 mixed up in their, you know, lifelong battles with each other,  
13 and decided that's not how I wanted to live my life, fighting  
14 with my father and my grandfather, so I left the dairy.

15           I moved back to San Luis Obispo, where I became  
16 involved in the music business because I had a dairy science  
17 degree which didn't really provide me any skills for survival  
18 in the real world. So over a 13-year period I became fairly  
19 successful in the music industry as a concert producer and a  
20 manager of tours for rock bands. And at the ripe old age of  
21 30, I decided I was too old for that industry and I moved to  
22 San Francisco and started a software company.

23           And I did software in San Francisco during the dot.com  
24 boom and bust from 1998 to 2002, during sort of the first  
25 Internet bubble. It was a very exciting time. But something I

1 learned through my experience of building software and being  
2 involved in the music business, two industries that are very  
3 trend-oriented, you know. Music tastes change on a weekly,  
4 monthly basis. And in the beginning stages of the Internet,  
5 there were never really any standards established. There was  
6 all this competing technology and there were constant battles  
7 for supremacy for which, you know, technology is going to be  
8 adopted to build web applications and to build web sites. And  
9 so we would find ourselves in these situations where my  
10 partners and I, who had this web development company, we would  
11 be halfway through a project, working on using, utilizing a  
12 certain technology that would become obsolete in the middle of  
13 the development cycle. So we had to learn very quickly that in  
14 order for us to survive in this industry, we had to be looking  
15 way out into the future, months into the future in terms of,  
16 you know, technology. Things were changing so fast. Really,  
17 we were trying to project and predict what people were going to  
18 be using a year from now before we started a project so we  
19 didn't waste our time being obsolete.

20           And so this sort of requirement for survival in  
21 software in San Francisco in the early 2000's sort of informed  
22 my habits of how I thought about business and how I thought  
23 about doing things. And in the middle of this, you know,  
24 endeavor, my father came down with lymphoma and was going  
25 through treatments of chemo and needed some surgeries. And my

1 family asked if I would come back to the farm and watch over  
2 things while my father was going through treatments. And I  
3 agreed to do that. I figured since I was doing software and  
4 everything was Internet-based, it didn't really matter where I  
5 was.

6 So I came home for awhile and I got stuck there. So  
7 almost 15 years later, 14 some years later, I'm still there.  
8 Happily there. Fortunately, met my wife, had my children  
9 there. Unfortunately, buried my father there in 2011. So when  
10 I came back to the farm very shortly after 2011, September of  
11 2011, I actually came to the farm in October of 2011 to start  
12 in 2011, 2001. So 9-11, 2001 happened, September 11th, in the  
13 middle of October that year, I came home to the farm and  
14 started my dairy experience at the beginning of what I called  
15 the beginning of the big change. Everything started changing  
16 from that point forward for agriculture, and for dairy in  
17 particular.

18 Prior to that time, markets were, you know, reasonably  
19 stable. They weren't great, you know, agriculture had a pretty  
20 tough time in the '80's. But for the most part, people were  
21 supportive of agriculture and had an attitude about farmers  
22 that farmers were like them. Most people had a connection to a  
23 farmer, even back then. And this sort of 9-11 event to me,  
24 sort of symbolizes the beginning of the change in attitudes of  
25 American consumers and world consumers about agriculture and

1 how their food is made, which has led us to have to deal with a  
2 lot challenges. And when I came back from the -- from -- when  
3 I came back to the farm from doing software, I had this  
4 mentality that I had to be looking into the future to see what  
5 changes were going to be occurring and try to meet them before  
6 we get there.

7           And so I saw all these consumer trends, these consumer  
8 changes happening in trends. Consumers were interested in  
9 environmental issues, and in California we started undergoing  
10 some pretty serious regulations regarding groundwater  
11 management. And so we immediately, you know, before the  
12 regulations came to us, started updating our facilities and  
13 started changing the way we operate in order to be compliant  
14 and make sure that we were farming in the most environmentally  
15 beneficial manner.

16           Later on, there were environmental air regulations that  
17 were coming down the road regarding dust and particulate  
18 matter. And so my family and I, we sort of pioneered a  
19 technology for farming that allowed us to put our crops in  
20 using different technology and different ideas that reduced our  
21 passes in the field by 85 percent, reducing our dust emissions,  
22 our diesel emissions, our uses of diesel by 85 percent to get  
23 the same or better yield in our crops. Which I'm proud to say  
24 that this technology had led us, had allowed us opportunity to  
25 receive some pretty interesting awards for this work that we

1 did, including Sustainable Agriculture Champion in 2010 by the  
2 US EPA. And in 2012, we received the Leopold Conservation  
3 Award, which is sort of like the, I don't know, the Noble Prize  
4 for farmers in a way. Not that, it's hard to describe this  
5 thing without sounding like a prick, but it's just -- it's --  
6 sorry. It's -- anyway. It is pretty important. I'm very  
7 proud that we got it. And this came out of this mindset of  
8 looking for change versus, you know, resisting change.

9           And most, a lot of farmers tend to resist change. Most  
10 people tend to resist change. So I took it a change-oriented  
11 approach towards farming and agriculture. And I promise I will  
12 get to some point at some point here. But what -- so one of  
13 the other things I did when I got back was to get involved in  
14 as many organizations as I could to better understand the  
15 trends in the industry, to know what's coming down the road, so  
16 I wouldn't get caught behind the curve on any particular, you  
17 know, outside element that would impact the way we do business.  
18 I wanted to make sure if animal welfare issues were coming down  
19 the road, that we were going to be ahead of it.

20           And very early when I got back on the farm, I made sure  
21 we were animal welfare compliant. We were one of the first  
22 certified dairies in California for Farmers Assuring  
23 Responsible Management, the FARM Program. And so as I  
24 continued these trends and changes in environmental and animal  
25 welfare and human resources areas, all along we started

1 encountering deeper and deeper struggles from an economic  
2 perspective.

3 I will tell you that in the 120 some odd years of my  
4 family's participation in the dairy industry and agriculture,  
5 the first year we ever had a relationship with a bank, other  
6 than depositing checks and writing checks, was in 2008. And we  
7 established this relationship with the bank because I had  
8 anticipated the market change in 2009, and figured that we  
9 weren't going to be able to cash flow our way through that deep  
10 of a loss situation, and we became, you know, acquainted with  
11 Farm Credit West, which we are now deeply acquainted with. Not  
12 only in dairy, but also in the almond business, which I will  
13 talk about a little while later.

14 So since 2008 we have -- prior to 2008, we had never  
15 had a single dollar of debt, with the exception of several  
16 small land purchases that had some short-term mortgages on it.  
17 But from operating perspective, we had never incurred operating  
18 debt until 2008 -- until 2009, I would say. We established the  
19 relationship in '08, and in '09 started borrowing money. And  
20 we, since then we have continued to borrow and pay back, and  
21 borrow and pay back, and borrow and pay back. But it is  
22 becoming, in each cycle it it seems that we go through with the  
23 pricing, with the milk market going up and down in this state  
24 and in this country, we seem to borrow more, pay back less over  
25 time. So we are digging ourselves into somewhat of a hole, and

1 which has caused me to spend some -- I would say a significant  
2 amount of time thinking about milk pricing in California.

3           Going back to the McKinsey Report and looking at those  
4 hearings, and looking at what CMAB had done to help come up  
5 with some new ways of pricing milk in California, which we  
6 didn't really execute, to recently, a few years ago I was, I  
7 don't know if I would say fortunate, but I was asked to be on  
8 the Dairy Futures Task Force by Secretary Ross. And what I  
9 suppose I learned with my experience in, on that task force  
10 with many other people, including many people in this room  
11 today, was that milk pricing in California has become a  
12 political quagmire, I guess I would describe it as. And we  
13 seem to be at a bit of a stalemate from a political  
14 perspective, to make any change in milk pricing in California.  
15 And since I am a change-oriented person, I like progress and I  
16 like things to move forward for the better, originally I will  
17 tell you all that I was very opposed to the idea of California  
18 going to a Federal Order, and and I still think it's not a  
19 great idea.

20           What -- what -- as a Libertarian-oriented, you know,  
21 independent businessman, you know, when has there ever been a  
22 lot of good that's come from giving up local control to the  
23 federal government, right? This is true in almost all cases,  
24 except for one, when you live in California.

25           When you live in a place that's crazier than the

1 federal government from nearly every perspective, whether it be  
2 milk pricing or the California EPA versus the Federal EPA, and  
3 in most cases we would be better off under Federal regulation,  
4 not under California regulation.

5 Now, Federal Labor Laws, we would be better off under  
6 Federal Labor Laws then we would be under California Labor  
7 Laws. So if I lived in Texas, I would probably have a  
8 different attitude about local versus federal regulations, but  
9 I live in California, you know, the most over-regulated,  
10 ridiculously politically charged, unbalanced, you know, state  
11 in the union. And you guys can fact-check me if you want, I'm  
12 sure you can figure out that that is likely true, with the  
13 exception maybe of some Northeast states. But we have got it  
14 pretty tough here.

15 So I was very much a proponent of fixing the California  
16 system when I was on the Dairy Futures Task Force. I really,  
17 really wanted there to be a local fix. And I learned in that  
18 process that that's not going to happen. I think it will never  
19 happen. And that our best opportunity is to move away from a  
20 politically charged, politically motivated, very difficult  
21 situation where, you know, political appointees have to make  
22 economic decisions between people to something that is more, I  
23 don't know how to describe it, more judicial I guess. I kind  
24 of view the Federal system as a more, you know, fair system,  
25 where it's based on facts and you can hear everyone's opinion,



1 and you can uncover the details and really dig into what the  
2 benefits or the, you know, the negative alternatives of a  
3 proposal may be, and really look at it, the truth in the matter  
4 and not, you know, based on who is going to get elected or  
5 which organization is given more money to which side of the  
6 Governor's office. And so I feel like our best opportunity  
7 going forward is with the Federal Order.

8           And so I will tell you some of the struggles that we  
9 have had regarding being in a California Order, besides, you  
10 know, the obvious situation that we get paid less than most  
11 other regions of the country. We have much greater challenges  
12 than a lot of areas of the country, in addition to the fact  
13 that we get paid less with, you know, labor and regulations,  
14 and, you know, global greenhouse gas stuff.

15           And I don't know if you guys know this or have any  
16 relationship with the environmental stuff that's going on, but  
17 it is very likely that dairy cows in California are going to  
18 get regulated under Greenhouse Gas Bills for farting methane  
19 and causing global warming. So, you know, just an additional  
20 challenge that we're going to face. And we're going to  
21 continue facing these types of challenges, including high land  
22 prices, and, you know, shortage of labor, and all kinds of  
23 things. So one of the primary difficulties that we've faced in  
24 terms of managing the risk of being a dairy farmer in  
25 California is sort of our disconnection from the Chicago Board

1 of Trade and our ability to effectively manage our risk through  
2 hedging.

3           And when I first came back to the farm, I went to a  
4 class that was offered by a trading organization that, you  
5 know, every quarter for two years I would go to these four,  
6 five-hour long meetings where they would teach me how to hedge  
7 and I would learn, you know, all of the complexities of the  
8 market. You know, the puts and the calls, and you know, the  
9 trends and all this kind of stuff. And so after a couple years  
10 of this I became confident enough to try to do something. And  
11 I had noticed that in the dairy industry we seem to be on a  
12 three-year cycle of boom and bust. You could almost set your  
13 watch to the cycle, you know, the 2006, 2009, 2012, these are  
14 years that generally ended up being a little bit on the down  
15 side for dairy.

16           So in December of 2011, it looked to me like there was  
17 a good opportunity to hedge for 2012. And so I had done a  
18 bunch of analysis of the market and looked at what my mailbox  
19 price was over the past ten years compared to Class III milk in  
20 Chicago to see, you know, what I could expect in terms of a  
21 return or what my ultimate floor would be in terms of hedging  
22 my milk income by buying puts on Class III milk in Chicago. So  
23 it looked at that time like it was about 85 cents, which was  
24 pretty close to the, I would say ten-year average, and so I  
25 thought, hey, this is great, I will buy these \$15 puts for 20

1 some odd cents per hundredweight, and if Class III in Chicago  
2 was to drop below \$15, minus my 20 something cents, I would  
3 have, like I said \$14.70 floor for milk, you know, for this  
4 coming year. And I, and my break even at the time was just  
5 around \$15. And so I thought, you know, I could at least  
6 minimize my losses throughout this period by investing some  
7 \$50,000 in the Chicago Board of Trade.

8 So that was December of 2011, when the difference  
9 between my mailbox price and, which is very close to, you know,  
10 generally, overbase price in California, after you add in my  
11 quota, and you take out all the stuff that Land O'Lakes robs us  
12 for, and everybody else. But, so we were pretty close, you  
13 know, in this differential we were pretty much right on the  
14 average money in December of 2011 when I executed these hedge  
15 strategies.

16 By February 1st of 2012, the difference between Chicago  
17 Class 4b, Chicago Class III and California Class 4b, was \$2.50  
18 below, so I should also mention my prices are, were 85 cents  
19 below Class III, and went from 85 cents to \$2.50 below within a  
20 period of a month. So my price in California was in the \$13  
21 range, and my puts in Chicago were at the \$15 range, but the  
22 Chicago Board of Trade never dropped below \$15 at the time, so  
23 we never received any benefit from executing those puts on  
24 Class III.

25 So the next time around I thought I would learn my

1 lesson, and -- and so from that point forward I started hedging  
2 a combination of Class III and Class IV, kind of in a  
3 proportion to what the California pool contributions are. So  
4 40 some odd percent Class, well -- 60 some percent Class III  
5 and 40 some percent Class IV, sort of based on what the  
6 California pool, you know, how a California pool -- how the  
7 California pool contributes to my paycheck from the formulas  
8 perspective. And over the next couple of years, and the next  
9 couple of downturns in the market, we have never received any  
10 payments back from Class III. We have received some benefit  
11 from Class IV. Our Class IV price here seems to track more  
12 closely to our 4a, and Class IV in Chicago tend to track more  
13 closely to one another. Unfortunately, that's a very thinly  
14 traded market and it is often times very difficult to find an  
15 opportunity to buy a put or to do any sort of hedging inside of  
16 Class IV. So I have felt that, you know, one of the biggest  
17 problem with the State of California, one of the problems is  
18 that we can live with volatility, we can live with risk. I  
19 think volatility is actually a good thing for business, I mean,  
20 volatility creates opportunity. And but if you can't manage  
21 your risk in the volatility, then you become a victim, rather  
22 than some, a manager. And I feel in California, we are  
23 basically victims. Whereas in the rest of the country, people  
24 have opportunities to be managers.

25 And I'm not an Economist and I'm just talking to you

1 about these numbers and experience from my recollection, so if  
2 you want to challenge me on the numbers, that's fine, we can do  
3 that, but I won't have a good answer for you. So this is just  
4 my experience with doing hedging, something that I have found  
5 little value in and made things much more difficult.

6 So what I have done instead, rather than investing my  
7 money in the Chicago Board of Trade these days, I'm investing  
8 my money in myself and I'm planting almond trees as a hedge  
9 against milk prices in California, and the dairy industry in  
10 general. So I'm diversifying myself into, I call myself an  
11 indiscriminate milk producer. I will be producing cow milk and  
12 probably almond milk at some point. Which, by the way, tastes  
13 terrible and I don't recommend it. But definitely eat almonds  
14 in any other way you can, particularly on ice cream, it's a  
15 good way to get it.

16 So am I being too much of a promoter here? So anyway,  
17 instead of, instead of hedging in Chicago, we are trying to  
18 diversify our business. Because for the 123 years that we have  
19 been in the dairy business, 100 percent of our income has come  
20 from cow milk. And the almond milk thing is something that's  
21 you know, hopefully not almond milk, but almonds in general  
22 seem to be something of value on the land that we live on.

23 So we are intentionally becoming more dependent as a  
24 dairy farm on imported feed as a result, where before we were,  
25 we were growing most of our feed ourselves. Now we are having

1 to import feed from other sources. So we're putting the dairy  
2 farm a little bit at risk, but it's completely necessary  
3 because we have determined through, over the last 15 years,  
4 that dairy income alone is completely unsustainable for us in  
5 the State of California. So we have moved towards  
6 diversification.

7 So I have two other things on my list. One is  
8 questions and one is heavy drinking, so I don't know if I  
9 should just sum it up and say thank you for allowing me to come  
10 here today to talk to you. I do support Proposal 1, the  
11 proposal by the co-ops. That is, in my opinion, the best  
12 opportunity for dairy producers in California.

13 After all, without the dairy producers in California,  
14 we do not have a dairy industry in California. And if we want  
15 to continue having a thriving and vibrant and, you know,  
16 economically beneficial industry in California, I think it's  
17 important to keep the producers healthy. And at this point, we  
18 are not very healthy. And I would suggest that this is fairly  
19 well demonstrated, if you look at the cooperatives in Tulare  
20 County, where I come from, and what their processing capacity  
21 is versus what their current through-put is. We have -- we  
22 have seen milk supplies to our co-ops drop between 7 and 10  
23 percent year over year, and quite a bit down from what their  
24 capacities are. So, you know, coming out of a year like 2014  
25 which was the, in our experience, the most profitable year that

1 we had ever had, it was -- it barely got us back to even.  
2 Right? And it didn't provide much opportunity for us to invest  
3 in growing the herd, or, I mean, or improving the facility for  
4 the animals. We were mostly paying back debt and investing in  
5 diversification. So I don't know that, you know, and I see it  
6 everyday. I mean, you all, many people from the countryside, I  
7 mean, I'm living out on the farm. We have seen small dairies,  
8 you know, 100 cow dairies, 500 cow dairies go out of business  
9 and get leveled and plant trees or some other crop on it over  
10 the years. But now we're seeing 5,000, 10,000, cow dairies  
11 getting leveled, you know, when the best opportunity you have  
12 for a 20 or 30 million dollar facility is to grind up the  
13 concrete into road base and recycle the metal, and plant trees  
14 on it, when that's the best opportunity that you have for an  
15 investment like that, that really causes me to question, you  
16 know, the system that we're operating under. And I think it is  
17 certainly time for, I think we are beyond the trend in terms of  
18 change being necessary for this industry in California to  
19 survive.

20           And with that, I just want to give a shout-out to my  
21 friends online who are listening to me. And thank you to you  
22 for giving me the opportunity to talk to you today. And I'm  
23 open for any questions you might have.

24           JUDGE CLIFTON: Mr. Giacomazzi, your testimony is  
25 spellbinding. Very different from what we have had, and very

1 helpful in that respect. I would hate to follow you, the rest  
2 of you who are speaking today.

3 I would like to now invite questions. Mr. Beshore?

4 CROSS-EXAMINATION

5 BY MR. BESHORE:

6 Q. Marvin Beshore.

7 Thanks for coming down from Hanford today,  
8 Mr. Giacomazzi. Just a couple of quick questions. You  
9 mentioned when you were talking about your education, you  
10 mentioned going to COS, or I think if I heard that right.

11 A. Yes.

12 Q. Can you just tell us what that --

13 A. Oh, yeah. COS is the College of Sequoias, it's a  
14 Junior College in Visalia.

15 Q. Very good.

16 A. And Cal Poly San Luis Obispo, by the way, I don't think  
17 I said that. Important distinction. San Luis Obispo.

18 Q. Which is where you graduated subsequently?

19 A. That's where I finished school.

20 Q. Finished school.

21 A. After five years. Yes.

22 Q. Okay. I may have missed this, but can you just tell us  
23 a little bit about your, you know, your family, your dairy  
24 operation today in terms of size, the number of cows?

25 A. Yeah, I did not mention that. I apologize. So today



1 we milk around 950 cows, and we farm right at 1,000 acres, 400  
2 of which now is planted to almond trees that we have planted in  
3 the last two years. So we have put 40 percent of our property  
4 into almonds.

5 Q. And the rest of the acreage is used for?

6 A. Corn, wheat, alfalfa, feed for the cows.

7 Q. Okay. And then just one final question. You mentioned  
8 the Leopold Award that you received.

9 A. Yes, sir.

10 Q. And you know, your conservation practices are really  
11 impressive. Can you just, you said it's the Noble Prize or  
12 whatever, but just for -- for the record and for everyone, just  
13 talk, explain what the Leopold Award is a little bit, and so we  
14 know what that is.

15 A. All right. So the Leopold Conservation Award is an  
16 award that is given annually by the Sand County Foundation,  
17 which is a non-profit organization in Madison, Wisconsin, that  
18 was established to protect a property that was owned by Aldo  
19 Leopold, who was a conservationist in kind of a university  
20 conservationist who taught farmers that it's possible to  
21 co-exist, agriculture and wild life can co-exist. And taught  
22 people how to farm and to generate habitat for wildlife. And  
23 they give this award away annually, I think nine states. And  
24 they try to honor people who are doing things that are  
25 environmentally beneficial, ecologically beneficial. They get

1 many, many applicants every year, particularly from California,  
2 because there's a lot of people in California doing some pretty  
3 amazing things in terms of conservation. And they have these  
4 committees that choose the recipients. And I was the recipient  
5 for 2012.

6 Q. So Leopold is one the great names in conservation?

7 A. Yes.

8 Q. And probably not everybody has heard of that, so I  
9 appreciate your --

10 A. Exactly.

11 Q. -- providing that.

12 A. You got to be a little bit of a hippie to know  
13 Aldo Leopold. I'm not a hippie.

14 Q. Thank you very much.

15 A. Conservation is profitable, so this is why we do it.  
16 It is -- when you are looking at environmental solutions, like  
17 any solution, if you want people to adopt them, those solutions  
18 have to be the most profitable option. And it turned out in  
19 the way we farm now, the most profitable way to farm is also  
20 the most environmentally beneficial, so we look to, you know,  
21 marry profitability and other external benefits at the same  
22 time. We have been able to do that in almost every way, except  
23 for in our milk price situation.

24 Q. Great. Thank you.

25 JUDGE CLIFTON: Now, did you call the foundation Sand

1 County?

2 MR. GIACOMAZZI: S-A-N-D, County.

3 JUDGE CLIFTON: Who next has questions for Mr. Giacomazzi?

4 MR. GIACOMAZZI: Oh, come on. All right.

5 JUDGE CLIFTON: Dr. Schiek?

6 CROSS-EXAMINATION

7 BY DR. SCHIEK:

8 Q. William Schiek.

9 Mr. Giacomazzi, I want to just thank you for coming  
10 here today, and commend you on all the things you do to keep  
11 your operation on the forefront. I think you are a very  
12 forward-looking dairyman, and that's something to be commended.

13 So --

14 A. Thank you.

15 Q. I just had one question. We have, you know, we have  
16 had a lot of news stories and things about the drought here in  
17 California. I wonder if you might be able to talk a little bit  
18 about how the drought has impacted your operation. Has it made  
19 it more difficult to get water, increased your cost, those  
20 kinds of things?

21 A. Yes, definitely. The drought in California, both the  
22 man-made drought and the God-made drought, are having pretty  
23 significant impacts on us. Obviously, from a -- I live in a  
24 region where we historically have had very available  
25 groundwater. And our groundwater being depleted at fairly

1 rapid rates because we are dependent on groundwater recharge  
2 from surface conveyance systems. The Kings River, the  
3 St. John's River both feed into the area where I live, and over  
4 the last four years we haven't had much water. We haven't had  
5 much rain and there's been, I would say, an increase in demand  
6 for water to some degree.

7 Right now we have, over the last four years we have had  
8 to replace four wells, each one at the cost of nearly \$400,000  
9 after drilling and putting in a new pump and new pipelines and  
10 things to connect to that water source. So we're drilling  
11 deeper and going bigger. And we are getting less water to  
12 recharge. And if we don't do something about this fairly soon,  
13 we will probably all be out of water. It probably won't be in  
14 my lifetime, but certainly my concern isn't for me anymore, it  
15 is for my children.

16 There has been a law passed in California called the  
17 Sustainable Groundwater Management Act which aims to establish  
18 groundwater sustainability agencies who will be charged with  
19 developing plans to assure groundwater sustainability. And I  
20 was, up until two weeks ago I was the President of my County  
21 Farm Bureau, so I'm fairly involved in that process now. And I  
22 can tell you it is going to take a long time for us to get  
23 there, but, yes, it has made things certainly more expensive.  
24 Growing feed with, growing corn and alfalfa with water that you  
25 have just spend \$400,000 to get to, is a difficult thing to do

1 in a time when it's uncertain whether you are going to have a  
2 year of profitability.

3 Q. Okay. Thank you.

4 JUDGE CLIFTON: You mentioned the McKinsey Report. Would  
5 you describe it for me?

6 MR. GIACOMAZZI: The McKinsey Report was a was a study, I  
7 don't know if it was a study, it was a document that was  
8 commissioned by the California Milk Advisory Board, I think  
9 around 2003, 2004 -- anybody correct me, I don't remember. It  
10 was awhile ago. It was released probably in '06 or '07. And  
11 it was a study of the California milk industry. And then it  
12 suggested some opportunities that the California industry might  
13 implement in order to establish a more, I don't know, a more  
14 appropriate model for milk pricing, you know, it was kind of  
15 looking at the class pricing, class based pricing system versus  
16 some other system such as a Dutch auction, which I'm not sure  
17 if I'm actually correct in this, but I think the world, the  
18 Pontera's Global Dairy Trade Program is based a little bit on  
19 information that was suggested in the McKinsey Report. It was,  
20 yeah -- it was just something that everyone talked about really  
21 ferociously during a time of low milk prices, and then once  
22 milk prices came back up, everybody went home and got fat and  
23 happy again. And then milk prices went down and everyone came  
24 back crying again. And then went back up, and they went back  
25 home. And this trend has been going on now for the entirety of

1 my career in dairy, and it's, the trend has stopped.

2 We are now, from my observations, we are not going to  
3 quit moving towards change. And I would say that 2014 is the  
4 evidence of that. You know, in 2013 we started looking at  
5 changes in the pricing system in California. 2014 we had the  
6 most profitable year that we had seen in my career, but we kept  
7 talking about change, because we knew that that was temporary  
8 and that this industry still remains economically unsustainable  
9 for most producers.

10 JUDGE CLIFTON: Do you have any recommendations regarding  
11 milk pricing from your point of view that would benefit your  
12 operation and deal with this volatility?

13 MR. GIACOMAZZI: Well, my point of view is that, you know,  
14 dairymen should have an opportunity to be profitable. But like  
15 I said before, I don't, I'm not afraid of volatility and I  
16 don't mind volatility in the market, as long as there's an  
17 opportunity to manage it. And we currently have no opportunity  
18 to manage it. So to me, if we could get all of our pricing, if  
19 I could get my price for milk closer to the reality of what is  
20 offered in Chicago, or some other device for hedging that gives  
21 me an actual benefit because -- I will tell you another thing  
22 that this MPP program, this Margin Protection Program offered  
23 by your agency, I believe, is not of much benefit to  
24 California, either.

25 We have an extreme disconnect between the numbers used

1 in the MPP and the actual numbers in California from our milk  
2 income side and from our cost side. I mean, we don't pay the  
3 same for corn as they do in the Midwest. We don't pay the same  
4 for soy bean meal as they do in Southern Illinois. Our alfalfa  
5 costs are different than they are most other places, so it  
6 doesn't really track for us, much as the Chicago Board of Trade  
7 does not track for us in the Class III area. So I would think  
8 that if I had an opportunity to say I'm going to invest  
9 X-amount of dollars in hedging Class III in the future, and my,  
10 but I would hope to have an expected differential between my  
11 price and Chicago. If some way there was some, if there were  
12 some way to hedge the basis, you know, to lock in the basis and  
13 say, California's Class 3, Class 4b price will never drop below  
14 more than, you know, 25 cents of Class III, then that would  
15 probably be great.

16 But I actually think at some point we're going to have  
17 prices here above Class III, because once the dairies  
18 disappear, there's going to be a lot of demand for milk. And I  
19 think that dairies are disappearing. And at some point, to  
20 keep processing facilities open in this state, they are going  
21 to have to pay to get it here. I would hope that it doesn't  
22 come to that.

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

24 MR. FRANCIS: Will Francis from USDA. Mr. Giacomazzi, just  
25 wanted to thank you very much for taking the time out of your

1 busy schedule to come and give us your thoughts on this issue.

2 So, thank you very much.

3 MR. GIACOMAZZI: Thank you.

4 JUDGE CLIFTON: Last chance. Any more questions for  
5 Mr. Giacomazzi? I thank you very much. It is a pleasure to  
6 meet you. And if you have more than one business card, if you  
7 could give one to Laurel May, who is right here in the front  
8 row.

9 Come back to the stand, if you would, Mr. Giacomazzi.  
10 Would you just read into the record your business contact  
11 information?

12 MR. GIACOMAZZI: Okay. Dino Giacomazzi, D-I-N-O  
13 G-I-A-C-O-M-A-Z-Z-I, Giacomazzi Dairy, Hanford,  
14 9550 6th Avenue, Hanford, California, 93230.

15 Want my phone number and e-mail, too?

16 JUDGE CLIFTON: Yes, please, if they are business.

17 MR. GIACOMAZZI: Yes. (559) 381-8125. And  
18 Dino@Giacomazzi.US is my e-mail.

19 JUDGE CLIFTON: Thank you very much.

20 I think our next witness will be Mr. Blaufuss. Do you  
21 want a five-minute break?

22 MR. ENGLISH: We're ready to go.

23 JUDGE CLIFTON: Okay. Very good.

24 MR. ENGLISH: Chip English. No, your Honor, I think we're  
25 ready to go, and we're going to take a break when Mr. Ahlem



1 gets here, so we're prepared to get started.

2 JUDGE CLIFTON: We're getting out our Exhibits 109 and 110.

3 MR. ENGLISH: That will be correct, your Honor.

4 JUDGE CLIFTON: Mr. Blaufuss, you remain sworn. Please  
5 again state and spell you name.

6 MR. BLAUFUSS: Rob Blaufuss, B-L-A-U-F-U-S-S.

7 DIRECT EXAMINATION

8 BY MR. ENGLISH:

9 Q. Before you resume your statement on Exhibit 109,  
10 Page 6. At the end of the day I interrupted you a little bit  
11 to talk about Exhibit 110, regardless. And Mr. Vlahos has  
12 helpfully pointed out that the figures might need a little more  
13 explanation. So why don't we do that now. So what Mr. Vlahos  
14 pointed out, if you look at Figure 1 you have identified, it's  
15 called the Alta Dena map, and you say Alta Dena Data, and you  
16 have a P for plant, but it's not Mr. Vlahos' eyesight, there  
17 does not appear to be a P for plant; is that correct?

18 A. Yes, that's correct.

19 Q. Okay.

20 A. These were, Figures 1 and 2 were pulled at a different  
21 timeframe than Figure 3.

22 Q. So if you go to Figure 3, maybe that will help us a  
23 little bit. Figure 3 is Heartland Map, and you have actually  
24 got sort of the, you have got orange for producer and blue for  
25 the plant, correct?

1 A. Correct.

2 Q. And even though there is not a P, there is a blue dot  
3 if you look Southeast of Los Angeles, correct?

4 A. Correct.

5 Q. Is that City of Industry?

6 A. It is.

7 Q. And your Honor, just to be very clear, because I'm not  
8 sure the record was clear yesterday, the name is City of  
9 Industry, it is not City of Industry, sort of like industry  
10 city, it is City of Industry is the name of the location. So  
11 that's -- that's the blue dot that is Southeast of Los Angeles,  
12 and that's the Heartland map, correct?

13 A. Correct.

14 Q. Now, will that also help us locate Alta Dena?

15 A. That is correct. Alta Dena is also located in the City  
16 of Industry. And actually, our internal nomenclature is  
17 COI North and COI South. So if you want to figure out where  
18 Alta Dena is, just draw a dot a little bit north of where that  
19 Heartland Farms dot is.

20 Q. Okay. And now Figure 2 is, of course, of the Bay Area,  
21 so that's not, is not going to link up to Figure 3. Where is  
22 the plant on Figure 2?

23 A. I'll admit my California geography isn't great. The  
24 plant itself is located in Hayward.

25 MR. VLAHOS: Mr. English? Can I help out just for one

1 second?

2 MR. ENGLISH: Since I'm from one of those Northeastern  
3 states mentioned by the witness, yes.

4 MR. VLAHOS: To help out, the city of Hayward is just a  
5 little bit south of the city of Berkeley and south of the city  
6 of Oakland, so it is in the Bay Area, but south of Oakland and  
7 Berkeley.

8 MR. ENGLISH: Thank you, Mr. Vlahos.

9 BY MR. ENGLISH:

10 Q. So with those clarifications, and again, I thank you,  
11 Mr. Vlahos, for pointing that out. Would you then, return to  
12 Exhibit 109 and complete your statement, starting on the middle  
13 of page 6?

14 A. For the month of September 2014, a Class II facility  
15 located in Nashville, Tennessee, would have remained in the  
16 pool in order to draw from the pool a location adjusted value  
17 of 85 cents per hundredweight. The monthly pool or depool  
18 decisions for plants in this hypothetical example for  
19 January 2014 through September 2015, can be found in Table 1.

20 Dean purchases a significant amount of bulk condensed  
21 skim milk, which is ultimately used in our facilities around  
22 the country. While at one time we were sourcing a portion of  
23 our condensed skim from California sources, we have  
24 increasingly moved away from it, as transportation costs  
25 escalated. It is our experience that bulk spot loads of

1 condensed skim moving from California into the Federal Orders  
2 has not disrupted markets to any noticeable degree in recent  
3 years as a result of a price gap between CA and FO regulated  
4 minimum prices. If the co-ops truly felt that there was  
5 disorderly marketing occurring in the state and inefficient  
6 movements of Class 2 and 3 milk were happening as a result of  
7 the state's pricing architecture, why, in recent years, have  
8 they only petitioned for hearings on adjusting the Class 4b  
9 price? There has been absolutely no attempt to address the  
10 issues ostensibly causing disorderly marketing for Class 1, 2,  
11 3, and 4a milk for reference by the proponents of Proposal 1 in  
12 their case-in-chief. While differences in pricing systems have  
13 the potential to lead to disorderly marketing, it is not itself  
14 indicative of disorderly marketing.

15 Over the past decade, there have been instances where  
16 unregulated milk, be it raw or packaged products moving into  
17 California from neighboring states has caused disruptions in  
18 the California Class 1 market. Interstate commerce laws do not  
19 allow for California to regulate the milk being moved into the  
20 state from neighboring states. Speaking specifically from a  
21 Class 1 standpoint, such movements of milk is able to occur  
22 when the out-of-state price of milk (typically the local  
23 statistical uniform price) is cheaper than the Class 1 price in  
24 California. Competitive pressures from both out-of-state bulk  
25 milk and packaged fluid milk were significantly reduced by

1 Federal statute, CDFA, and Federal Order regulation changes  
2 which occurred in the mid to late 2000's.

3 In two separate hearings in the mid-2000's, CDFA dealt  
4 with a disparity between California Class 1 price and uniform  
5 prices being paid in neighboring states. At the time, the wide  
6 disparity in prices had led to a loss in Class 1 sales for  
7 processors that produced, processed, and sold California milk.  
8 These hearings resulted in a reduction to California Class 1  
9 prices which reduced the economic benefit to import milk into  
10 California. Other significant regulatory changes occurred in  
11 2006 when the USDA, and then the U.S. Congress, set limits for  
12 entities seeking producer-handler status, and in 2009, when  
13 USDA began fully regulating producer-handlers whose Class 1  
14 route dispositions were in excess of 3 million pounds a month,  
15 including sales into California. These Federal Order  
16 regulation changes impacted a competitor in Arizona who was  
17 increasing his California Class 1 sales. In the years  
18 following the Federal Order 124/131, decision and adoption of  
19 the Milk Regulatory Equity Act, fluid milk sales moving into  
20 California from Arizona declined compared to levels experienced  
21 in the early 2000's. Dean has not seen a noticeable change in  
22 milk import levels in the California market over the past year.  
23 While competition for fluid milk sales in the state remains  
24 highly competitive, our market intelligence on the California  
25 market does not point to any major changes in out-of-state

1 competition, which would indicate disorderly marketing. The  
2 main source of increased competition for fluid milk sales over  
3 the past year has not come from out-of-state plants, but  
4 rather, in-state producer-handlers.

5 While the proponents of Proposal 1 may try to bury the  
6 lead, make no mistake about it, this hearing is occurring  
7 because of a dissatisfaction over the disparity between the  
8 California Class 4b price and the Federal Order Class III  
9 price. Producers are focused on increased revenue and in this  
10 case, revenue derived from cheese and whey. The Class III  
11 price and its relationship to the California Class 4b price,  
12 however, is not in and of itself indicative of disorderly  
13 marketing.

14 The California State Order has served both producers  
15 and processors well throughout the years. Dean is not of the  
16 belief that the State Order is so beyond repair as to require  
17 the forming of a new Federal Order in California. CDFA has  
18 typically been responsive in addressing issues that have arisen  
19 which impact the orderly and efficient marketing of milk in the  
20 state. When disorderly marketing conditions have occurred,  
21 CDFA made appropriate adjustments to regulatory language to  
22 address it.

23 Speaking as a Class 1 processor, Proposal 1, as it is  
24 written, makes me exceedingly uneasy about having access to an  
25 adequate milk supply long-term. As outlined by the evidence I

1 have presented here, I do not share Mr. Hollon's view that,  
2 "The FMMO proposed by the Cooperatives would not only promote  
3 and enhance orderly marketing conditions, but would also  
4 address long-standing conditions of disorderly marketing."  
5 There are several key requirements that are uniformly found in  
6 all other Federal Orders which seek to ensure orderly marketing  
7 conditions. By simply repackaging California regulatory  
8 language into a Federal Order, the co-ops have failed to  
9 account for those FMMO provisions. In order to provide for the  
10 orderly marketing of milk in a Federal Order construct,  
11 provisions such as shipping percentages and repooling  
12 restrictions were put in place to ensure that supply plants  
13 meet basic performance standards in order to have access to the  
14 additional value generated by the market-wide pool, and  
15 especially the Class 1 proceeds. A market-wide pool -- a  
16 market-wide Federal Order pool sans performance requirements  
17 like the one proponents of Proposal 1 have proposed, could lead  
18 to disorderly marketing in California.

19 Q. Chip English.

20 If you would look back at page 8, in the first full  
21 paragraph, the second paragraph, if you include the carry over,  
22 in the last sentence you substituted, I believe, the word  
23 "indicative" for "definitive" and I actually think indicative  
24 may be more correct. It is the last sentence that reads, "The  
25 Class III price and its relationship to the California 4b

1 price, however, is not in and of itself," and I think you said  
2 indicative. Page 8. Would you like the record copy to be  
3 corrected to read as you read it, "indicative?"

4 A. Yes.

5 JUDGE CLIFTON: All right. Ms. Elliott? She's already got  
6 a thumb's up, she's right with it. That's on page 8, roughly  
7 in the middle of the page, fifth line down of the first full  
8 paragraph, we're striking "definitive" and inserting  
9 "indicative".

10 And I have got two other little --

11 MR. ENGLISH: Then why don't you go ahead, your Honor.

12 JUDGE CLIFTON: Well, if you are going to do them, I like  
13 that better.

14 MR. ENGLISH: Well, I would if I knew what they were.

15 JUDGE CLIFTON: Last line on page 8, which to words do you  
16 want us to strike?

17 MR. BLAUFUSS: In that sentence, two words would be "rely  
18 on".

19 JUDGE CLIFTON: All right. Do you see that, Ms. Elliott?

20 MS. ELLIOTT: Yes.

21 JUDGE CLIFTON: So we're striking two words in the last  
22 line, "rely on". And the only other little change I think you  
23 probably want to make, Mr. Blaufuss, is on page 7, five lines  
24 up from the bottom, you read that "Whose Class 1 route  
25 dispositions were in excess of 3 million pounds a month." So I



1 assume you would like us to insert the word "of"?

2 MR. BLAUFUSS: Yes.

3 JUDGE CLIFTON: So that is just before 3 million pounds.

4 All right. Thank you, Ms. Elliott. Were there any others,

5 Mr. Blaufuss? That's all I saw.

6 MR. BLAUFUSS: I think you hit on the ones that I knew of  
7 it.

8 JUDGE CLIFTON: All right. Great. Mr. English?

9 MR. ENGLISH: Thank you, your Honor.

10 So as we have with past witnesses, we have end notes  
11 for references rather than footnotes, and we're not asking the  
12 court reporter to put those in the transcript, they are in the  
13 exhibit. But I thought that I would point out that Exhibit 109  
14 on page 9 has four such end notes.

15 BY MR. BLAUFUSS:

16 Q. So let's look first at Exhibit 110, Mr. Blaufuss. And  
17 even though I have gone through a little bit of Figures 1  
18 through 3, why don't you describe what they show and what the  
19 difference size circles mean, and just walk us through what is  
20 shown on Figure 1.

21 A. Okay. So Figure 1, if we're looking at the Alta Dena  
22 map, what this will show is where our milk supplies are located  
23 for this individual facility. And then the size of the circles  
24 as you can see from the, we'll call it the table, or the key on  
25 the top corner shows the amount of pounds that we generally

1 receive in that given month from those areas. So the larger  
2 the circle, the more volume.

3 Q. And so you have provided the plant zip code, which  
4 would give somebody a more precise way of locating the plant if  
5 they wanted to, and then you have categorized this as a supply  
6 that's within 100 miles. 54 percent of the Alta Dena milk  
7 comes from within a 100 miles, correct?

8 A. Correct.

9 Q. And then the remaining supply, the total supply  
10 certainly comes within 250 miles, correct?

11 A. Correct.

12 Q. Okay. And if you look to the next two figures, that  
13 would provide the same information, correct?

14 A. That is correct.

15 Q. And I note for the Bay Area, 99 percent of your milk  
16 comes within 100; is that correct?

17 A. Yes.

18 Q. And finally, if we look to Figure 3, we would have sort  
19 of the same information for Alta Dena, a small portion comes  
20 under 100 miles, and ultimately everything is within 250 miles,  
21 correct?

22 A. That's correct. And I will add, I stated this I think  
23 in my testimony, or at least in questioning, these maps are  
24 reflective of June 2015. I still believe in talking to our  
25 milk supply personnel who handle this, this is still

1 reflective. It is not to say things can't change and  
2 circumstances arise, so there can be some loads that perhaps  
3 aren't perfectly shown on the map, but typically this is our  
4 milk supply base that we rely on these facilities.

5 Q. Now, in your testimony I think you said that you don't  
6 regularly receive milk from out-of-state, bulk milk from  
7 out-of-state, correct?

8 A. Correct.

9 Q. Would it be more accurate to say that it would be very  
10 unusual for you to receive milk from out-of-state?

11 A. That's correct. Our preference in our California  
12 facilities, we have invested a lot of capital in the State of  
13 California, and our preference is to source local, produce  
14 local, and sell local.

15 Q. And turning back to your testimony, and byway of  
16 example, on page 5, in the bottom long paragraph, you say,  
17 "what the proponents of Proposal 1 fail to mention is the  
18 current Federal Order language allows all Class 2, 3, and 4  
19 plants to depool from the respective Orders when there are  
20 economic incentives to do so." Would it be fair to say, for  
21 purposes of this, that handlers elect not to pool milk?

22 A. Yes, I believe that would be the nomenclature that  
23 would be preferred.

24 Q. By USDA?

25 A. By USDA.

1 Q. Okay. And so to the extent I have used the phrase  
2 depool, I'm part of that problem. So the phrase that you think  
3 USDA would prefer to use is elect not to pool?

4 A. Depool just kind of flows off the tongue a lot better.

5 Q. Okay. So that takes us then, to Table 1 of  
6 Exhibit 110. And I know you have mentioned in your testimony,  
7 but let's look at it in greater detail. So what have you done  
8 here, and what's -- what are the columns? Just walk us through  
9 for the record.

10 A. Certainly. So Column A is just the month. So I look  
11 to the last, from January 2014 through September 2015. So, in  
12 looking at, you know, these individual months what these  
13 decisions would have been had there been a Class II stand-alone  
14 plant in these locations, so, you know, in the proponents  
15 initial, I believe it was their initial write-up, they  
16 specifically called out these three cities and how they can  
17 source California condensed skim into those cities and still  
18 pay freight, and still be at or below cost in those areas. But  
19 it just ignored the fact that there's plants in Federal Order  
20 structure II, III, and IV, like you said, Mr. English, those  
21 plants can elect not to pool.

22 Q. And are you aware of stand-alone Class II operations in  
23 those areas?

24 A. I don't believe -- I don't know if they are in  
25 individual cities, and that would be reflective of the exact

1 location differentials. I believe there's a Class II facility  
2 north of Denver perhaps, and there may be ones in Nebraska,  
3 which would still be Federal Order 32, though I don't know that  
4 for sure.

5 Q. Okay. So it might affect the numbers modestly because  
6 the blend would have been adjusted for the location?

7 A. Correct.

8 Q. But ultimately when you look at the numbers you are  
9 looking at for September 2014, you are looking at a number that  
10 is significant enough that you believe that milk could have,  
11 and likely was, depooled in those months, in that month for  
12 those two Orders?

13 A. At least a portion of it that could get out of the pool  
14 would have elected to do so.

15 Q. And that's because if you look at Column D, for  
16 instance, for plants in or around Denver --

17 A. Column D, it doesn't matter where the plant's located.

18 Q. Okay. I'm sorry.

19 A. You are going to have a 70 cent differential in the  
20 same base price for Class II.

21 Q. Okay. And so what you would look at is the Class II  
22 price relative to the blend, correct?

23 A. Correct. So the plant decision is going to be to look  
24 at it, what am I going to have to pay in, what's my minimum  
25 price for each of the class that I'm producing? And compare

1 that to what they would receive out of the pool, which would be  
2 the blend price at location. And so they are going to look at  
3 it and say, if my Class II, in this case, price is higher than  
4 what the blend would be, I'm going to elect to not pool that  
5 plant.

6 Q. Okay. And so what's true in September 2014 for Denver  
7 is also true in September 2014 in and around Kansas City,  
8 correct?

9 A. Correct.

10 Q. Now, Nashville is different, so you did include  
11 Nashville. And what's the conclusion as to Nashville?

12 A. Yeah, I didn't want to not include Nashville, and then  
13 I would suspect Mr. Beshore would ask the question why I  
14 cherry-picked the data, trying to read ahead on the tea leaves  
15 on that one, so I was sure to include it for full disclosure.  
16 But since they are such a high Class I utilization in the  
17 Southeast, you would have to have a pretty dramatic movement in  
18 milk price between Class II and Class I in a given month to  
19 ever elect not to pool that milk.

20 Q. And of course also, the California condensed would have  
21 to move a greater distance to get to Nashville, correct?

22 A. Correct.

23 Q. On page 4 of your testimony, in the carry over  
24 paragraph on page 3, you discuss the idea that, "it would be  
25 critical that Federal Order language provide a Market

1 Administrator the discretion to make changes to shipping  
2 percentages without requiring the administrative process of a  
3 Federal Order hearing." In order to be able to make changes,  
4 you would have to have shipping percentages in the first place,  
5 correct?

6 A. That's correct, which is why I include the line, you  
7 know, we want to have the Market Administrator have the  
8 discretion to change it without having to go through a Federal  
9 Order. Because absent that in the State of California, the  
10 only thing you are relying on is a call provision. And I think  
11 in our point of view, we would rather let the market sort it  
12 out, which is what we have done in taking our commercial  
13 options. But if they don't have that option, I can tell you,  
14 we are in the situation, and let's just say for the record, for  
15 hypothetical, California is in Federal Order, I can tell you we  
16 would be submitting paperwork to the MA to adjust the shipping  
17 percentages for the next month.

18 Q. But to the extent that California does have call  
19 provisions that haven't been used recently, those are also not  
20 part of any proposed Federal Order in Proposal 1, correct?  
21 There's no call provisions built into Proposal 1 that you know  
22 of?

23 A. I believe that could be correct.

24 Q. Okay. And just for clarity, this is, your testimony  
25 Exhibit 109 says Part 1. And you have been here for most of

1 the hearing, I think you might have not been here for the short  
2 week after Columbus Day.

3 A. Yeah, I took that short week off to make sure my son  
4 recognized my face.

5 Q. But, for instance, when I discussed earlier today  
6 testimony with respect to Topic 2, and, for instance 7(a) and  
7 requirements for 7(c) and Section 13, you will be appearing  
8 likely later this week on Part 2, correct?

9 A. I believe that's the plan.

10 Q. And somebody from Dean Foods will be here later to  
11 discuss in greater detail the issue of producer-handlers,  
12 correct?

13 A. Yes, I think we'll actually both be discussing that  
14 issue in greater detail.

15 Q. Okay. And there's probably some other issues like  
16 transportation and fortification that will be another part,  
17 correct?

18 A. Correct.

19 Q. Your Honor, at this time, I would move admission of  
20 Exhibit 109 and 110. And following that, I would sit down and  
21 the witness would be available for cross-examination unless  
22 we're ready for a break for the court reporter?

23 JUDGE CLIFTON: Yes, we are ready for a break, but I don't  
24 want anybody to move. The first part of our break will be  
25 remaining seated. Is there anyone who would like to question



1 Mr. Blaufuss with regard to Exhibit 109 before determining  
2 whether you have any objection? There is no one. Is there any  
3 objection to the admission into evidence of Exhibit 109? There  
4 is none. Exhibit 109 is admitted into evidence.

5 (Thereafter, Exhibit Number 109 was  
6 received into evidence.)

7 JUDGE CLIFTON: Is there anyone who would like to question  
8 Mr. Blaufuss regarding Exhibit 110? None. Are there any  
9 objections to the admission into evidence of Exhibit 110?  
10 There are none. Exhibit 110 is admitted into evidence.

11 (Thereafter, Exhibit Number 110, was  
12 received into evidence.)

13 MR. ENGLISH: Am I instructed to sit down?

14 JUDGE CLIFTON: You are. We go off record at 10:36.  
15 (Whereupon, a break was taken.)

16 JUDGE CLIFTON: We're back on record at 10:52.

17 Mr. English, how would you like to proceed?

18 MR. ENGLISH: Thank you, your Honor. Chip English.

19 Your Honor, conveniently, as the break was about to  
20 start, Mr. Ahlem arrived. And, therefore, it seems to me it's  
21 a perfect time for Mr. Blaufuss to accede the witness chair and  
22 me to accede the lectern to Mr. Ahlem and Mr. Vetne. So  
23 Mr. Blaufuss will be back later.

24 JUDGE CLIFTON: Thank you.

25 MR. VETNE: John Vetne representing Hilmar Cheese.

1 JUDGE CLIFTON: Is there any written statement that will  
2 accompany Mr. Ahlem's testimony?

3 MR. VETNE: There is nothing for distribution. He has  
4 notes for himself.

5 JUDGE CLIFTON: All right. Very fine. Mr. Ahlem, is this  
6 the first time you have testified in this proceeding?

7 MR. AHLEM: Yes.

8 JUDGE CLIFTON: I'll swear you are in. If would raise your  
9 right hand, please.

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

12 MR. AHLEM: Yes.

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

15 MR. AHLEM: James Ahlem, J-A-M-E-S, A-H-L-E-M.

16 JUDGE CLIFTON: Thank you. I think everyone can hear you  
17 loud and clear; is that correct? Good. All right. Thank you.  
18 Mr. Vetne, you may proceed.

19 MR. VETNE: Yes, thank you.

20 DIRECT EXAMINATION

21 BY MR. VETNE:

22 Q. Mr. Ahlem, you're appearing here in somewhat unique  
23 capacity. You are a dairy farmer; is that correct?

24 A. Yes.

25 Q. Okay. And you also have a role with Hilmar Cheese

1 Company; is that correct?

2 A. Yes.

3 Q. You have an ownership interest in the company?

4 A. Yes, I do.

5 Q. And you serve on the Board of Directors?

6 A. Yes.

7 Q. And you are Chairman of the Board of Directors?

8 A. Yes, currently I'm Chairman.

9 Q. And you have made some notes for yourself to read which  
10 describes some of your personal history and the history of  
11 Hilmar cheese; is that correct?

12 A. Yes.

13 Q. Proceed, please.

14 A. Thank you. Like I said, my name is Jim Ahlem, and  
15 along with my wife Carol, we operate James Ahlem Dairy and  
16 Jade Jerseys, milking a total of about 2,600 Jerseys in Hilmar,  
17 California. We also are in a partnership with my two sons in  
18 Foothill Farms, milking 2,400 Jerseys in Denair, California.  
19 I'm a founding owner of Hilmar Cheese Company and currently  
20 serve as Chairman of the Board. I also serve as Treasurer on  
21 the California Milk Advisory Board. Over the years, I have had  
22 the opportunity to serve on many other boards, including  
23 National Dairy Board for six years, the last two as Vice-Chair  
24 of DMI; National All-Jersey for 15 years, five as President;  
25 and many other local state organizations.

1 JUDGE CLIFTON: Slow down please. Thank you.

2 MR. AHLEM: Okay. I will.

3 Community-wise, I was a Hilmar volunteer firefighter  
4 for 27 years, a 4H leader, involved in church leadership, and  
5 many other activities that most parents do as their kids grow  
6 up.

7 I was born and raised in Hilmar with two brothers and  
8 two sisters, and all but one sister are still in the dairy  
9 business. I live on the home farm that was settled by my  
10 grandparents in 1902. I attended Hilmar schools, Oregon State  
11 University, Modesto Junior College, and graduated from CSU  
12 Fresno with a BS degree in Animal Science.

13 Carol and I were married in 1974, and we're still  
14 having a blast. After school, we came home to Hilmar and I  
15 farmed for my brothers for about three years. I started my own  
16 dairy in November, in 1978 on a facility rented from my uncle  
17 that was across the street from the home farm. I started with  
18 125 cows and one employee who did the milking, and I did the  
19 feeding, the farming, and everything else. Milk prices at that  
20 time were not great and interest rates were as high as 18  
21 percent, so with those conditions, we decided to start a  
22 family. Two boys in 15 months were a good start, and a  
23 beautiful daughter a couple of years later. We stayed on the  
24 rental dairy for about six years and moved back to the home  
25 farm when the dairy herd had grown to about 500 cows.

1           About two years before that is when the dream of Hilmar  
2 Cheese began. I would like to step back a little bit and share  
3 some things about my father. He started his dairy in the early  
4 1930's and built one of the first Grade A milk barns in the  
5 area, about 1935. As a side light, I still use that barn  
6 today, that's where I milk my hospital cows. Dad was a thinker  
7 and a risk taker and innovator. So in the late 1950's, his  
8 brother and a couple of neighbors set up a bottling plant in  
9 Hayward, California, and began selling fluid milk through a  
10 cash-and-carry store at that plant. They expanded with a  
11 second plant in nearby San Leandro. That was not an easy  
12 business, but away to get a little more money for their quality  
13 product marketed under the All-Jersey milk label. And in late  
14 1960's, when pooling was created, it basically put them out of  
15 business in just a couple years. Regulatory environment was  
16 not good for us then.

17           Back to Hilmar Cheese. In the early '80's,  
18 Dr. Tony Ernstrom did research on cheese yield from high  
19 protein milk from Jersey cows, and discovered that milk from  
20 Jerseys and other high-component breeds, had significantly  
21 higher yields. Out of 100 pounds of Jersey milk, you would get  
22 12 to 13 pounds of cheese, compared to 9 to 10 pounds from  
23 conventional milk. With this information and much work and  
24 support from National All-Jersey, we were able to go to our  
25 co-ops that we knew were making cheese with our milk and

1 request a premium for our high-yielding milk. This was  
2 something new to them and they agreed to a small amount, which  
3 was a start. But when we continued to ask for closer to full  
4 value, we were told if we wanted more money for our milk, to  
5 build our own plant.

6 We are thankful for that advice everyday. A group of  
7 about six or seven of us began to do some legwork to see if we  
8 could make this happen. It was at that time we hired  
9 John Jeter to consult and run some numbers on building a plant.  
10 At that time, about 45 percent of cheese consumed in California  
11 came from out-of-state and we had a customer that agreed to  
12 take all our production and pay us in 15 days -- and this was  
13 all done on a handshake.

14 We put some good numbers together and invited producers  
15 with high-component milk in the area to join us, and we formed  
16 a group of 13 to begin financing efforts. We talked to many  
17 banks, and the only way to make it work was to sign continuing  
18 guarantees. We put everything we owned on the line for this  
19 endeavor.

20 For my wife and I, who are really still just getting  
21 started at 32 years of age, with two children of four and five  
22 years old, and my wife pregnant with our third, it was an  
23 unbelievable risk, even though for us it was an easy decision.  
24 We were surrounded by people who were successful, but  
25 like-minded, and who we had immense trust. We set the company

1 up as a private corporation because it was important that it  
2 remain in the hands of the owners with high-component milk  
3 because of the way we were going to pay for milk. We paid off  
4 a cheese yield formula that basically pays you for how much  
5 cheese your milk makes subject to a regulated minimum prices,  
6 which gave high-component milk good premiums. We started  
7 production in 1984 and exceeded our five-year projections in  
8 about 18 months due to a large processor that failed and left  
9 many dairy producers without a home for their milk. We were  
10 able to help as many as we could, which put us way ahead of  
11 schedule.

12 We continued to look for ways to get more value out of  
13 our milk supply, and started investing in research. We had a  
14 whey stream that was, at that time, a disposal problem and  
15 needed to be dealt with because of all the environmental  
16 regulations for disposal. The solution was a start investing  
17 to process whey and extract protein and lactose. We built a  
18 protein plant in about 1991. Since that time, we have invested  
19 hundreds of millions of dollars refining those processes, and  
20 millions more in research and development to find new ways to  
21 use the high value products that we are producing. We take  
22 tremendous pride in our R and D efforts and feel we are one of  
23 the leaders in the industry in this area.

24 Over the years we have had tremendous growth of about  
25 20 percent per year. We also spend a tremendous amount of

1 effort planning and implementing our vision, and developing a  
2 culture that benefits our employees, our owners, and our  
3 producers.

4 Our board meets twice monthly, and the second and third  
5 generation owners are invited to attend both meetings. We feel  
6 very strongly that they need to be able to see how we govern  
7 and be able to learn our culture and participate in our ongoing  
8 discussions. We have several G-2's -- by G-2's I mean second  
9 generation owners, I'm sorry -- several G-2's that are on the  
10 board, as some of the founding owners have passed away. There  
11 is an interview process that the G-2's interested in serving on  
12 the board go through before being appointed. We work extremely  
13 hard on succession planning throughout the business, including  
14 ownership.

15 We are continuing to grow with our powder facility, due  
16 to begin production in December. This is a new area for us and  
17 this investment is an area that will help us to be able to  
18 diversify and give us flexibility to take advantage of changing  
19 markets.

20 I would like to comment about our producers, as we both  
21 need each other. I'm very protective of our shippers, in part,  
22 because I am one of them. I do generate a lot of my income  
23 from my dairy. Owners get paid the exact same way that all  
24 producers are paid. They work extremely hard to produce the  
25 kind and quality of milk that enables us to get the best value



1 and the highest return for that milk. We have a unique payment  
2 system called a Market Basket Price that takes into account  
3 different markets and products and prices they generate, to  
4 give the best returns. We strive to educate our producers to  
5 what kind of milk generates those best returns. Many of them  
6 understand these signals and reap benefits from these premiums.  
7 Hilmar has paid some of the highest premiums in the state,  
8 year-after-year.

9           In closing, I have tremendous concern with Proposal 1.  
10 I fully understand the negative impact on our company. It  
11 could possibly have a negative affect on our producers who  
12 lower premium. Many of them have made huge investments to  
13 produce milk that generates premiums that pay them fairly for  
14 their milk. As an owner of Hilmar Cheese, we took unbelievable  
15 risks in very difficult times to start this company and have  
16 been very successful. I feel we have, over the years,  
17 benefitted all dairy farmers in the state, by not only driving  
18 higher premiums, but the investment we have made to drive  
19 innovation. I sometimes wonder if other processors or co-ops  
20 had made the same type of investment in technology and research  
21 and development that we have, where would our industry be  
22 today? We built this company to generate a profit and returns  
23 that allow to us reinvest in value-added ideas and equipment  
24 that have potential returns to the entire industry.

25           If this proposal is adopted, we will still grow, and we

1 will invest, but it will make it extremely difficult to do so  
2 in California.

3 Q. Thank you, Mr. Ahlem. In your last sentence you are  
4 referring to Proposal Number 1?

5 A. Yes.

6 JUDGE CLIFTON: I do need some spellings.

7 MR. VETNE: Okay. Pay attention, Mr. Ahlem, because I'm  
8 not sure I can help her.

9 JUDGE CLIFTON: When you first started, Mr. Ahlem, and you  
10 were talking about your background, you talked about the  
11 companies that you were associated with, you and your family.  
12 I would like you to go over those entities again, please. I  
13 think there were three different companies that you have.

14 MR. AHLEM: There's some different boards that I served on.

15 JUDGE CLIFTON: Well, okay, let's start with J Jerseys.

16 MR. AHLEM: Oh, Jade, J-A-D-E.

17 JUDGE CLIFTON: Jade. J-A-D-E, Jade Jerseys.

18 MR. AHLEM: That is a second dairy we have.

19 JUDGE CLIFTON: It is a what?

20 MR. AHLEM: That's a second small dairy we have on a lease  
21 facility, that my wife and I own.

22 MR. VETNE: Second small dairy farm.

23 JUDGE CLIFTON: All right. What's the name of the first  
24 one?

25 MR. AHLEM: James Ahlem Dairy.

1 JUDGE CLIFTON: Your name, James Ahlem Dairy, and then Jade  
2 Jerseys. And talk to me about Foothill Farms.

3 MR. AHLEM: Foothill Farms is a partnership with my two  
4 sons, we're minority. We only own about ten percent of that  
5 operation.

6 JUDGE CLIFTON: And the place in California where it's  
7 located.

8 MR. AHLEM: D-E-N-A-I-R.

9 JUDGE CLIFTON: All right. I have to say, I absolutely  
10 love the sentence that "we were married in 1974 and are still  
11 having a blast."

12 MR. AHLEM: 41 years.

13 JUDGE CLIFTON: Then, another spelling, John Jeter.

14 MR. AHLEM: Yes. J-E-T-E-R.

15 JUDGE CLIFTON: Okay.

16 MR. VETNE: What, Mr. Ahlem, what role did Mr. Jeter play  
17 in Hilmar Cheese?

18 MR. AHLEM: Eventually, John was our first employee, was  
19 our CEO, until September of this year.

20 MR. VETNE: Thank you.

21 JUDGE CLIFTON: Tony Ernstrom?

22 MR. AHLEM: Yes.

23 JUDGE CLIFTON: Do you know how he spells his name?

24 MR. AHLEM: I spell it E-R-N-S-T-R-O-M. There may be  
25 someone else here that knows if that is the correct spelling.

1 JUDGE CLIFTON: And then there's a kind of cow, and I don't  
2 know this cow, I wrote down "Hosta"?

3 MR. VETNE: I think he said hospital cow.

4 MR. AHLEM: Oh, hospital cows. My sick cows. I currently  
5 still milk them in the original, my father's original milk  
6 barn.

7 JUDGE CLIFTON: Oh, okay. So that's the farm that, the  
8 barn that was built in 1935?

9 MR. AHLEM: Yes.

10 JUDGE CLIFTON: All right. Okay. Then, thank you.

11 Thank you, Mr. Vetne.

12 BY MR. VETNE:

13 Q. Okay. I was going to ask you about hospital cows.  
14 Those are -- those are cows that you have taken out of  
15 commercial production and isolated separate from the herd, and  
16 treat them until they return to health or you decide what to do  
17 with the problem; is that correct?

18 A. Yes, we keep those cows separate and any antibiotics we  
19 have given them is until the withdrawal period is complete  
20 before we reintroduce them into the herd.

21 Q. Okay. And I wanted to ask you about your Market Basket  
22 payment system to which you referred. Is it correct that  
23 Hilmar essentially looks at the finished products it makes,  
24 combination, cheese, whey products, other things, and measures  
25 the return that the plant gets for the sale of those products,

1 and takes that revenue and moves it into the producer milk  
2 check in relation to that return that you find in the  
3 marketplace?

4 A. Yes. And that's also in relationship to the components  
5 of the milk that was used to make that product from the  
6 individual producers.

7 Q. Okay. And would it be correct to say that that Market  
8 Basket of products can vary from time to time? Cheese, whey,  
9 the various products that you make?

10 A. Yes.

11 Q. Okay. And in turn, producer revenue would vary along  
12 with that, correct?

13 A. Yes or premiums.

14 Q. Okay. And if -- if a regulated system imputes to  
15 Hilmar Cheese a product in a regulated Market Basket, that is  
16 not in your commercial Market Basket, how does that affect your  
17 ability to translate your Market Basket revenues to your  
18 producers?

19 A. What do you mean by the regulatory imputes?

20 Q. If the regulatory system, for example, imputes to you  
21 certain revenue from sale of dry whey, which that's not in your  
22 basket of products, correct?

23 A. Uh-huh.

24 Q. But if the system imputes to you that revenue and  
25 requires that it be transferred to producers in some form, will

1 that adversely affect your ability to take the products that  
2 you make and translate to the producers?

3 A. Yes. Yes. If we don't make a product, we're not  
4 generating any revenue off of it to put into our formula to  
5 reward our producers for that type of product.

6 Q. Okay. You refer to --

7 JUDGE CLIFTON: Mr. English?

8 MR. ENGLISH: Well, I think Mr. Vetne asked a predicate  
9 question about whether or not they manufacture dry whey, and I  
10 heard, uh-huh. And so I think maybe it would help if the  
11 record was clear as to what the "uh-huh" meant. So I don't  
12 know if you want to fix that or not.

13 MR. VETNE: I do. Sometimes -- sometimes I get distracted,  
14 and I'm not good at multi-tasking, so I didn't hear the  
15 "uh-huh".

16 BY MR. VETNE:

17 Q. So you do not make dry whey; is that correct?

18 A. No, we don't.

19 Q. Okay. And you don't have any current plans to make dry  
20 whey; is that correct?

21 A. No.

22 Q. Okay. Have you ever made dry whey?

23 A. No.

24 Q. Okay.

25 JUDGE CLIFTON: Well, when you extract from the whey stream

1 what you extract, those were two things, right, protein and  
2 lactose?

3 MR. AHLEM: Yes.

4 JUDGE CLIFTON: So in what form is the protein when you  
5 extract it? What do you do with it, I guess?

6 MR. AHLEM: It is liquid and we dry it to different  
7 concentrations. We have a process over the years, we add  
8 further value to those proteins.

9 BY MR. VETNE:

10 Q. Let me ask some questions and maybe we'll clarify that.  
11 You do not take the whey stream that comes out of cheese  
12 production and simply dehydrate it until it turns into a  
13 powder, dry whey?

14 A. No.

15 Q. Okay. You take the whey and -- and separate the  
16 proteins from the lactose, and you make a protein-concentrated  
17 product and a lactose?

18 A. Yes.

19 Q. Thank you. You mentioned a large processor that failed  
20 in 1984. What kind of processor was that? A fluid  
21 manufacturing?

22 A. Yeah, I think they were fluid. That's way back when.  
23 I don't remember the name, but someone here may.

24 Q. Okay. So let me see if I got, just understand the  
25 context. There was a plant buyer of milk that had a producer

1 milk supply, and that buyer failed, and there was milk  
2 available to Hilmar to process into cheese?

3 A. Yes. That was a real critical point, because when that  
4 company did fail, they were calling up their shippers and  
5 saying, "We're not picking your milk up tomorrow." So it was  
6 really a dire thing that needed to be addressed in the whole  
7 industry, not just us stepped up.

8 Q. Okay. You talked a little bit about your Board, you  
9 Board activities. The high bar that you, the company, creates  
10 for membership on the Board. Were you on the Board when the  
11 decision was made by Hilmar to invest in a cheese plant in  
12 Dalhart, Texas?

13 A. Yes.

14 Q. Okay. Can you describe a little bit about the process  
15 and considerations that went into that decision to invest in  
16 capacity in Texas rather than someplace else?

17 A. Yes. We had been looking to grow. Like I said, we  
18 were on, we have always been on a pretty steep growth mode, and  
19 we -- we were looking all the time. And we looked in  
20 California, we looked in Utah, Idaho, and then this group from  
21 Texas came to us and wanted us to build a plant. They had some  
22 farmers out there that thought the dairy industry would be good  
23 for them. They recruited us, they had dairy, a lot of open  
24 space for dairies. And working through with them we decided  
25 that it would put us closer to our markets at that time, and



1 still does, but this was probably the most logical place to go.  
2 And we did look at California, but with unstable regulatory  
3 environment that, it was nice to go someplace where we were  
4 wanted, is what that boiled down to.

5 Texas worked well with us for economic development,  
6 some funds came in from there, and then we decided to build a  
7 plant out there. There was, we kind of felt it was a last  
8 frontier for dairy start ups. A lot of ground, fairly good  
9 water, and just, there was a lot of opportunity there, so we  
10 decided to make our investment in Dalhart, Texas.

11 Q. Okay. And were you similarly involved in corporate  
12 decision making as a member of the Board of Directors in the  
13 investment of a powder facility in California a few miles down  
14 the road from your Hilmar plant?

15 A. Yes.

16 Q. You were involved in that? You've described that plant  
17 as a powder facility. Find a little bit more. It is not, it  
18 is not whey powder, right?

19 A. No, no.

20 Q. And it's not nonfat dry milk, NFDM, that is produced in  
21 substantial quantities in the U.S., is it?

22 A. No.

23 Q. It is -- it is designed and was planned to produce  
24 something called skim milk powder, correct?

25 A. Originally it was for whole milk powders.

1 Q. Whole milk powder.

2 A. Yes. And then we made a little more investment so we  
3 could do either with it.

4 Q. You can go either way?

5 A. Yes.

6 Q. Okay. And the market for that is, is where?

7 A. It's international. A lot of it is exported.

8 Q. Okay. This is forward looking in your part. It hasn't  
9 started operations yet?

10 A. No, it is due to start up in December of this year.

11 Q. Okay. And you hope to be able to produce product there  
12 that you can market profitability to international buyers,  
13 correct?

14 A. Yes.

15 Q. Okay. And at least in part, the success, failure, or  
16 something in between of that facility, would be heavily  
17 influenced by regulated prices for milk, whether they are set  
18 by the State of California or USDA; is that correct?

19 A. Yes, that could be.

20 Q. Okay. Is there anything else you want to add before I  
21 sit down and --

22 A. No, just maybe a little more about the powder plant.  
23 As I said, it was originally designed as a whole milk powder  
24 plant, because when we first started looking at it, the whole  
25 milk powder market was very good. And then, even through the

1 planning process, that changed and skim milk, and it is --  
2 neither one of them are very good of them right now, but we  
3 don't have a short vision, we have a long vision, so that it  
4 also gives us just the flexibility to process milk close to our  
5 plant in Hilmar. And three years ago if you told me we were  
6 going to invest and build a plant in Hilmar, I would have told  
7 you you were crazy but --

8 Q. Thank you very much. Okay. Are you willing to receive  
9 some questions by people other than me?

10 A. Sure.

11 JUDGE CLIFTON: Mr. Ahlem, thank you so much for coming  
12 back. I know we wanted to get to you Monday, I believe it was,  
13 and failed to. We very much appreciate your being here.

14 Is there anything you want to add to your testimony  
15 before I invite questions from others?

16 MR. AHLEM: No.

17 JUDGE CLIFTON: All right. Who will begin the questioning  
18 of Mr. Ahlem? Mr. Beshore?

19 CROSS-EXAMINATION

20 BY MR. BESHORE:

21 Q. Good morning, Mr. Ahlem. I represent the Cooperatives  
22 that have brought Proposal 1 to the hearing, LOL, and CDI, and  
23 DFA. Just a couple of questions. What -- what -- of the milk  
24 that you purchase and process at Hilmar, what portion of it is  
25 Jersey milk today?

1 A. Oh, it's probably around -- around 15, 20 percent.  
2 That's all the milk, Jersey milk there is in our area. We  
3 pretty much have it all. There just isn't that many Jerseys.

4 Q. You started out, it was basically, were all the  
5 founders Jersey --

6 A. All the founders, yes. To be an owner at Hilmar  
7 Cheese, you have to have Jersey cows.

8 Q. Okay. So all the current shareholders are Jersey  
9 dairymen?

10 A. Yeah.

11 Q. Okay. Are you still affiliated with National  
12 All-Jersey? If I heard you right, you were on the board, or  
13 had been on the board for 15 years or so?

14 A. Yeah, I went off about five years ago. I retired from  
15 that board.

16 Q. Okay. Were there other Hilmar producers or involved  
17 with National All-Jersey?

18 A. There's a Hilmar producer there is, yes.  
19 Mike Wickstrom is on the National All-Jersey board.

20 Q. Okay. You are aware that Mr. Metzger testified earlier  
21 in the hearing?

22 A. Yes.

23 Q. Okay. And the National All-Jersey supports a Federal  
24 Order of some terms in California?

25 A. That's what I understand.

1 Q. Okay. Since Jersey milk and Hilmar has got that  
2 commitment to the relationship with Jersey milk and Jersey  
3 producers, the California system has never been particularly  
4 designed to favor protein pricing, as Mr. Metzger testified;  
5 isn't that correct?

6 A. Yes, that's correct.

7 Q. So in that respect, a Federal system that did provide  
8 pricing incentives for protein milk would be a positive for  
9 Jersey producers, wouldn't it? Would it not?

10 A. Yes.

11 Q. Can you tell me what products are in the Market Basket  
12 price?

13 A. No, I can't tell you. Most everything we do make, I  
14 would not be able to list them. I don't get into that part of  
15 the business.

16 Q. Okay. So when a producer, when a Hilmar producer gets  
17 the Market Basket price, does it list out, like, you know, two,  
18 or three, or four, or five, or six different components or  
19 different categories of prices?

20 A. It is listed as a Market Basket premium. The  
21 calculations are proprietary.

22 Q. Okay. So it is a blended premium?

23 A. Yes.

24 Q. Of the elements that are in the Market Basket?

25 A. Uh-huh.

1 Q. That's a yes?

2 A. Yes, sorry.

3 Q. Thank you. I'm sorry. Okay. And so in the California  
4 system, Hilmar producers get, setting aside quota, get an  
5 overbase price.

6 A. Correct.

7 Q. Correct? Which is, itself, a blended price of all the  
8 uses in the market?

9 A. To my understanding, yes.

10 Q. And that includes Class 1, which Hilmar doesn't itself  
11 process, but that's part of the overbase price, the Class 1  
12 values, correct?

13 A. Yes.

14 Q. And the Class 2 values, and Class 3 values, and the  
15 Class 4, all values in the California system, correct?

16 A. That's my understanding.

17 Q. Okay. When did you, maybe you testified about this to  
18 Mr. Vetne and I apologize if I missed it, but when was the  
19 Dalhart move made? When was it?

20 A. It was probably about six years ago, six, seven years.  
21 I can't keep track of time anymore, it goes too fast.

22 Q. And one of the motivating elements there was the  
23 unstable regulatory environment in California?

24 A. Yes.

25 Q. Okay. Thank you. I don't have any other questions.

1 JUDGE CLIFTON: Who next has questions for Mr. Ahlem?  
2 Mr. Vlahos?

3 CROSS-EXAMINATION

4 BY MR. VLAHOS:

5 Q. John Vlahos.

6 Good morning. This is just to complete the record.  
7 You mentioned the processor who went out of business and you  
8 couldn't recall the name?

9 A. No.

10 Q. Would this refresh your -- does it sound like it was  
11 Knudsen?

12 A. I'm guessing it could have been. That rings a bell.

13 Q. Okay.

14 A. It is been about 1994, probably.

15 Q. Yeah. Okay. It might be interesting for you to note  
16 in the record, that when pooling went into effect in July 1969,  
17 there was a suit to prevent its going into effect that was  
18 sponsored by a Knudsen. It's an odd coincidence.

19 JUDGE CLIFTON: Mr. Vlahos, would you spell Knudsen?

20 MR. VLAHOS: K-N-U-D-S-E-N.

21 JUDGE CLIFTON: Thank you. Who else has questions for  
22 Mr. Ahlem? Mr. DeJong.

23 MR. DeJONG: James DeJong, Hilmar Cheese.

24 CROSS-EXAMINATION

25 BY MR. DeJONG:

1 Q. Just a quick follow up question on something  
2 Mr. Beshore asked you. In regards to the decision to make the  
3 Dalhart plant, you mentioned that an unstable regulatory  
4 environment was part of that decision?

5 A. Yes.

6 Q. Was a primary factor in that unstable regulatory  
7 environment, in fact, the Class 4b price at the time that had a  
8 much higher whey factor and it was making returns very  
9 problematic?

10 A. Yes.

11 Q. I have no further questions.

12 JUDGE CLIFTON: Does anyone else have questions for  
13 Mr. Ahlem? I see none. Mr. Ahlem, is there anything else you  
14 would like to add?

15 MR. AHLEM: No, I appreciate I would be able to be here.

16 JUDGE CLIFTON: Me, too. I appreciate you being here. I  
17 appreciate so much your enterprise, your energy.  
18 Congratulations on all you have accomplished and I wish you  
19 well.

20 MR. AHLEM: Thank you very much.

21 JUDGE CLIFTON: Mr. Francis?

22 MR. FRANCIS: Sorry. Will Francis, USDA. Sorry, I was  
23 late getting back here.

24 First, I just wanted to thank you very much for  
25 appearing here today. Thank you for doing your civic duty



1 trying to serve on the jury duty, and also, your civic duty for  
2 appearing as a dairy farmer and representative of Hilmar in our  
3 hearing here.

4 I just wanted to explore, and I'm not sure you are the  
5 right person to ask some of the questions to. You have got  
6 experience working in the California system, but also with your  
7 Dalhart, Texas plant, have some experience interacting with the  
8 Federal Order in the Central Order. So can you give us any  
9 comments relative to your interactions in the Federal Order  
10 system?

11 MR. AHLEM: I'm probably not the one to ask that. I don't,  
12 we kind of take a higher level look at the business. I don't  
13 get involved in the pricing issues or the orders or the Federal  
14 Orders, either.

15 MR. FRANCIS: Okay. That's fine. Thank you very much.

16 JUDGE CLIFTON: Do you know who does, Mr. Ahlem?

17 MR. AHLEM: In our company?

18 JUDGE CLIFTON: Yes.

19 MR. AHLEM: We have multiple people that work on that for  
20 us. We have our milk procurement, Al Zolin is one of them, he  
21 does a pretty good job for us.

22 JUDGE CLIFTON: Good. He'll be coming back, so that's good  
23 to know.

24 MR. AHLEM: Good. Good.

25 JUDGE CLIFTON: Thank you so much.

1 MR. ENGLISH: Chip English. Recall Mr. Blaufuss. And I  
2 was complete with direct, so he's available for, I think now  
3 called questions by others, also known as cross-examination.

4 JUDGE CLIFTON: Mr. Blaufuss, you remain sworn. Would you  
5 again state and spell your name?

6 MR. BLAUFUSS: Rob Blaufuss, B-L-A-U-F-U-S-S.

7 JUDGE CLIFTON: Thank you. Who will ask the first  
8 cross-examination questions of Mr. Blaufuss? Ms. Hancock.

9 CROSS-EXAMINATION

10 BY MS. HANCOCK:

11 Q. I just want to shake things up a little bit and change  
12 the order. Nicole Hancock. Good morning.

13 A. Good morning.

14 Q. Prepared statement Exhibit 109. Is it -- was it fair  
15 to say that collectively you have taken the position that in  
16 California, under the California State Order system, that there  
17 is no disorderly market conditions?

18 A. Based on what we feel is disorder, I would definitely  
19 say that we view the producer-handler issue that currently is  
20 allowed to operate in the state as creating issues, and I  
21 believe, I think we would consider it to be disorderly to a  
22 certain level, but we don't view the system as a whole as being  
23 in this extreme state of disorder.

24 Q. And I think -- I think what you described in your  
25 testimony, you actually called it a competitive issue, right?

1 So I'm looking at page 8 of your testimony, and at the top of  
2 the page, which is a carry over from the paragraph on page 7,  
3 the last sentence says, "the main source of increased  
4 competition for fluid milk sales over the past year has not  
5 come from," oh wait, I'm not even in the right section. Hang  
6 on one second. I'm just reading the wrong sentence. "While  
7 competition for fluid milk sales," hold on -- yeah.

8 It is the last sentence, I'm sorry. "The main source  
9 of the increased competition for fluid milk sales over the  
10 last, over the past year, has not come from out-of-state  
11 plants, but rather in-state producer-handlers." Is that what  
12 you are referring to?

13 A. Yes.

14 Q. Okay. So are you saying that that is disorderly market  
15 conditions in California?

16 A. I think there are, regardless if you are in a  
17 California State Order or if you are in a Federal Order, there  
18 is always going to be issues in the system. And I think it  
19 doesn't matter if you are talking to processors, and I would  
20 tend to think there's things in the Federal Order structure  
21 that the co-ops would like to see changed. Now, I don't know  
22 that, but I just believe that to be the case.

23 I think talking about the producer-handlers, and the  
24 through agreements throughout the state, throughout the years,  
25 they have been allowed to have a regulate price advantage in

1 the marketplace, and we feel that that does create some  
2 disorder in the Class 1 space.

3 Q. And are you referring to the exempt quota that they  
4 hold?

5 A. Correct, the exempt quota.

6 Q. And do you know how much exempt quota there is as  
7 compared to the pool?

8 A. I anticipated some questions on this. I believe as of  
9 September, this is August 2015, there was roughly 20 million  
10 pounds of exempt quota, 21 million pounds in Class 1.

11 Q. Do you know what percentage of the pool that  
12 represents?

13 A. I don't have that number in front of me, I don't  
14 believe. Just total pounds.

15 Q. But a small percentage, right? Less than one percent?

16 A. If you are looking at it on a basis of total pounds in  
17 the pool, it is a small percentage. But if you also look at  
18 the exact same exhibit you will see that the total  
19 producer-handler volume in Class 1 is, call it a hundred  
20 million pounds. Of that, roughly 21 percent is exempt. You  
21 compare the actual volume on a percentage basis of how much  
22 milk producer-handlers account for for the California Class 1  
23 space, and I believe the data here for this single month will  
24 show it is north of 20 percent of the Class 1 market. So for  
25 you to compare on the total pounds in the pool, in my opinion,

1 that's a red herring. That's not a comparison that really  
2 matters. Because in our space, producer-handlers are  
3 predominantly Class 1, and that's who we're competing against  
4 in the Class 1 space. So the fact that there may be one  
5 percent, I think is the number I remember hearing or a very  
6 small number in the total pool, to us it doesn't matter. It is  
7 apt to look at how much percent are they of the Class 1 space.

8 Q. And -- and are you saying that the producer-handlers  
9 are 21 percent of the Class 1 or that the exempt quota that  
10 they hold is 21 percent of the Class 1?

11 A. The total pool pounds of the Class 1 product was 452  
12 million pounds in Class 1. The total, I believe I'm reading  
13 this correctly, total producer-handler Class 1 pool utilization  
14 was 100 million pounds. Of that, they enjoyed 20 percent, I  
15 think if you rough math, 21 million pounds of 100 million pound  
16 total is going to equal 21 percent, roughly.

17 Q. Okay. So help me understand what about their -- their  
18 -- is it the exempt quota that you are saying gives them the  
19 price advantage that creates disorderly market conditions in  
20 California?

21 MR. ENGLISH: I object to the characterization. I think he  
22 specifically avoided using the term disorderly marketing  
23 conditions.

24 JUDGE CLIFTON: Yeah, when Mr. Blaufuss began to speak  
25 about this he was very precise, and he mentioned the word

1 disorderly, but not as an overall disorderly marketing  
2 condition in California.

3           When Ms. Hancock asked him on cross-examination about  
4 whether the exempt producer-handlers created disorderly  
5 conditions, he responded in such way as to use the word  
6 disorderly, but not the specific phrase disorderly marketing  
7 conditions in California. So we're walking a tightrope here.  
8 I note your objection, Mr. English, but I'm going to allow  
9 Ms. Hancock to ask the questions the way she wants, and  
10 Mr. Blaufuss to respond accordingly. So would you ask that  
11 last question again, Ms. Hancock?

12           MS. HANCOCK: Well, I want to make sure that the record's  
13 clear on this, because, and actually, I just want to understand  
14 what your position is as well. So let's back up again, and  
15 maybe there is -- do you distinguish between saying that there  
16 is disorder and saying that there is disorderly market  
17 conditions?

18           MR. BLAUFUSS: I'm not sure I'm understanding that  
19 question.

20 BY MS. HANCOCK:

21           Q. Well, I mean, I guess, my original question was do you  
22 think that there are disorderly market conditions? And I  
23 understood your answer to say, yes, the producer-handler  
24 situation does create disorder. And so I guess I tied the two  
25 together. Am I incorrect in tying those two together?

1 A. I'll answer the question, and I'm not sure that I'm  
2 answering the question you are asking, but it is how I'm  
3 interpreting it. I believe we would view the producer-handlers  
4 to be, from time to time, and I think increasingly in the last  
5 year, to be disruptive in the Class 1 space.

6 Q. Do you equate disruptive with disorderly market  
7 conditions?

8 A. Well, if you want to get back to the definition of what  
9 we feel is disorderly marketing conditions. In my purview,  
10 that definition is to one, and foremost 1) being the Class 1  
11 fluid plants are being adequately served; and 2) is there  
12 inefficient movements of milk going on in the marketplace?

13 And so by that definition, no, I don't feel that they  
14 are disorderly. Producer-distributors are not impacting our  
15 ability to get milk and they are not, I guess in my purview,  
16 they are not necessarily causing milk to move outside the state  
17 in and of itself.

18 Q. Okay. So I appreciate that. And even in the objection  
19 because I think we clarified it on the record for what your  
20 position is.

21 So when you say that the producer-handlers create  
22 disruption, do you mean competitive disruption, that they have  
23 displaced sales for your company, Dean Foods?

24 A. Yes. I believe that's a fair representation.

25 Q. Okay. So sales that you would otherwise have if they

1 weren't there?

2 A. I can't say absolutely that we would have had them. I  
3 mean, I, we are definitely of the belief that the regulatory  
4 price advantage that they enjoy helps them to gain additional  
5 sales, compared to fully regulated, similarly situated  
6 handlers.

7 Q. And can you give me any examples of when that has  
8 occurred?

9 A. I think we'll be discussing this in greater detail when  
10 we actually have our full producer-handler discussion.

11 Q. Okay. But you have said in this testimony here, in  
12 Exhibit 109, that there are disruptions that are caused, so  
13 that's what I'm trying to ask about now, is what you are  
14 talking about when you reference the disruption by the  
15 producer-handlers.

16 A. What part of the testimony are we looking at, just so I  
17 can parse out what I'm trying to say in context.

18 Q. Well, the 1) you talked about earlier on in  
19 Exhibit 109, when you say that there was not disorderly market  
20 conditions; and then 2) when you couple that with what you have  
21 said on page 8 about the main source of increased competition  
22 for fluid milk sales over the past year has not come from  
23 out-of-state plants, but rather in-state producer-handlers.

24 So what I'm trying to figure out is what examples do  
25 you have where the producer-handlers have displaced your sales



1 in a way that is disruptive or that your describing in this  
2 testimony?

3 A. Well, like I just stated, once we have the full  
4 discussion on producer-handler, which I believe will happen  
5 next week, we will have specific examples that we will provide  
6 at that time. And I think just, it is probably worth saving  
7 that discussion for when that happens, because I think it will  
8 be much more clearer in the record, than me just -- having  
9 someone who is local and is dealing with the competitive  
10 structure on a day-to-day basis is much better than me trying  
11 to give you a synopsis of it.

12 Q. Okay. So as you sit here today, you don't have  
13 examples to give me?

14 A. I don't have the examples sitting in front of me, but  
15 we will definitely have the discussion when it comes up next  
16 week or whenever it does come up.

17 Q. Thank you.

18 CROSS-EXAMINATION

19 BY MR. BESHORE:

20 Q. Marvin Beshore.

21 Good morning, Mr. Blaufuss.

22 A. Good morning, Mr. Beshore.

23 Q. First, I want to ask, I want to understand, see if I  
24 can understand your duties and responsibilities with Dean so I  
25 know where to go or where not to go in some of these areas. So

1 are you involved in milk purchasing decisions, and Dean's  
2 plants?

3 A. I am not the person physically pulling the trigger on  
4 the transaction, but I'm involved in, I would say more on the  
5 dairy commodity side, but to a certain degree also on the milk  
6 supply side.

7 Q. Okay. So would that involve any decisions regarding,  
8 well, how about in terms of pooling plants and reporting plants  
9 in the Federal Order system?

10 A. I'm generally aware.

11 Q. Okay. Are you involved --

12 A. It's not my decision to make, but really, you know, in  
13 talking pooling or not pooling in our own individual plants and  
14 we're predominantly Class 1, so that's not really a space that  
15 we deal with.

16 Q. Okay. Do you have any non-Class 1 plants, like Class 2  
17 plants, where that is a decision-making process?

18 A. Yes.

19 Q. Okay. Do you -- how many and where are they?

20 A. I believe just one in the Upper Midwest.

21 Q. Okay. Now, with respect to your -- your testimony here  
22 on California, I want to talk about first the, you know, the  
23 current or recent issues with Class 1 supply, which you have,  
24 which you have mentioned. Am I correct that the problem arose  
25 because of mudslides which kept milk from getting out of the

1 Valley down to the -- which blocked one of the roads, as I  
2 understand it, I guess, from Northern locations, between  
3 Northern milk supply locations as shown on some of your figures  
4 here, to your LA plants? City of Industry plants?

5 A. Yeah, I wouldn't agree with that characterization. I  
6 mean, I think supplies definitely played a role, but this week  
7 in particular we had to spike in demand as well, so it was a  
8 little bit of a supply issue, but also largely this week was a  
9 demand issue.

10 Q. Okay. But when initially it was a logistical supply  
11 problem, correct?

12 A. Yeah, and I would say, you know, the week prior it was  
13 a problem, but it wasn't a severe issue. This week, with the  
14 demand spike, it became, you know, the issue that was raised in  
15 my testimony.

16 Q. Okay. Would you agree that the decline in milk  
17 production in California which has been reported and testified  
18 to as recently as this morning by the dairy farmer, that that's  
19 a factor in the supply situation in California now?

20 A. I'm sure it's part of the issue, part of the component  
21 there. But I also say, I mean, milk supply has been falling or  
22 declining year over year throughout 2015. And up until, call  
23 it September, we had absolutely no issue in getting an adequate  
24 supply of milk to our fluid plants.

25 Q. Now, Dean Foods, besides purchasing from cooperatives,

1 has some of its own milk, farms in California, correct?

2 A. Yeah, as I stated in my testimony, we are both direct  
3 ship and cooperative supply in the State of California.

4 Q. Okay. And one or more of your, of your farms in  
5 California that the supply Dean, supplies Dean's plant over in  
6 Las Vegas, Nevada, correct?

7 A. That's confidential. I'm not going to answer  
8 specifically about individual producers and where they ship to,  
9 other than to say we have direct shipment.

10 Q. I'm not trying to -- trying to get into any individual  
11 producer identity. But isn't it correct that Dean has farms,  
12 has independent dairy farms in California, the milk from which  
13 it ships to its Las Vegas, Nevada plant?

14 A. There is not a lot of cows in Southern Nevada, so I  
15 would suspect that predominantly that's going to be California  
16 milk. Whether or not that's direct ship, I'm not positive.

17 Q. Okay. But, so the Dean plant in Nevada, Dean does have  
18 a plant in Las Vegas, right? A fluid milk plant?

19 A. Correct. We have a plant in Las Vegas, and the often  
20 mentioned plant in Reno as well.

21 Q. Right. Okay. So just talking about Las Vegas, I think  
22 just under, if I understand you correctly, that's predominantly  
23 supplied from California sources?

24 A. I'm not positive, but I believe that, I don't know that  
25 we're -- we have Nevada milk in that plant. I don't know that

1 to be true, but I know there's not a lot of cows in that area  
2 of, that area of the state.

3 Q. Okay. Do you think the shipment from California over  
4 to Nevada has anything to do with the tightness in your milk  
5 supply for your California plants?

6 A. I don't think those relationships have changed. I  
7 can't speak to the individual sourcing strategies in volumes  
8 because I'm not, that's not my direct role, so I don't that I  
9 could answer that question.

10 Q. Okay. So you are not aware then over the last couple  
11 of weeks when there's been some, you know, supply challenges  
12 here in California, whether you were able to divert some of  
13 your California milk to your California plants and have it  
14 replaced in Nevada with some cooperative milk over there?

15 A. I believe we have had to move around milk supplies,  
16 basically because of all the weather that impacted the state.  
17 So there were changes in our sourcing strategies in the last,  
18 if I recall, two weeks.

19 Q. Okay. Are you satisfied that under the current CDFA  
20 system, which you find to be orderly, that the ability to call  
21 if you need to for milk for Class 1 would do the job?

22 A. We, as I put in my testimony, we prefer to let the  
23 market take care of it. So if we need milk, you know, that's  
24 an agreement between buyer and seller, we'll do what we have to  
25 to get milk into our facilities. I think we would do the call

1 provision, which I don't think has ever been enacted in the  
2 state. I could very well be wrong, but I don't believe it has.  
3 I think our company view is, if we are relying on a call  
4 provision to get milk into our plants, we're already too late  
5 in solving the problem.

6 Q. Okay. So what you -- so the current -- just so I  
7 understand, the current California situation has no shipping  
8 requirements under it, correct?

9 A. That's correct.

10 Q. None to speak of?

11 A. That's correct. But I would say there's been a  
12 historical understanding going back TO the Milk Pooling days,  
13 and I believe Dr. Schiek testified to this, there's an  
14 understanding of that the milk plants will remain supplied. So  
15 there might not be a shipping percentage in the state  
16 regulation, but there's an implied understanding that they will  
17 be supplied.

18 Q. Okay. And you prefer to have it, I think, have them  
19 supplied on a marketplace basis. You would prefer to have the  
20 market work that out, I think you have just said, right?

21 A. Yes.

22 Q. Which would involve, of course, over order charges from  
23 time to time if they are necessary?

24 A. Yes.

25 Q. Okay. Let's talk a little bit about the exhibit, the

1 Class 2 issue, which in your exhibit, it was 110, the last  
2 page. So this is in response to Mr. Hollon's testimony. And I  
3 appreciate the Nashville column. I'm sure I would have asked  
4 you about it. So let me see if I, see if I understand what  
5 this shows.

6 Mr. Hollon pointed out that from time to time, because  
7 of the differences in Class 2 price formulas in California and  
8 the Class 2 price in the Federal Order system, from time to  
9 time those differences were such that it made it economical for  
10 milk to move out of California as far as the destinations you  
11 have depicted here in Table 1 of Exhibit 110. Is that how you  
12 heard his testimony?

13 A. I believe that's what he testified to.

14 Q. Okay. So you are not saying that those price, in your  
15 testimony here, you are not saying that those price differences  
16 aren't correct, I mean, he tracked all the correct prices on  
17 this exhibit, right?

18 A. In doing the regulated minimum class prices on a like  
19 for like basis, correct.

20 Q. Right.

21 A. But -- if I could add a but to that.

22 Q. Yes?

23 A. In the Federal Order structure, like I state in my  
24 testimony, Class 2, 3, and 4 stand-alone plants can elect to  
25 not pool, to elect to not be in the pool.

1 Q. I am going to get to that. I just want to walk there a  
2 step at a time.

3 A. Okay.

4 Q. Okay. So he had the right prices, minimum regulated  
5 prices, California versus Federal, and in some months, the  
6 difference in those prices, minimum regulated prices, was such  
7 that there would be an economic incentive, well, that you could  
8 take milk from California, move it to points in the Midwest,  
9 I'll just be general, to points in the Midwest, including  
10 Denver or Kansas City or even Nashville, and lend it at less  
11 than the applicable Federal Order price, correct?

12 A. I believe that was his assertion, yes.

13 Q. Right. And it's true, isn't it?

14 A. What I would say to his comparison of that price -- I  
15 mean, the first thing I want to say is, you know, California  
16 co-ops, I think the numbers they have used 75, 80 percent of  
17 the milk supply is who they receive milk from, in total  
18 California.

19 Q. Okay. Can you answer my question and then explain what  
20 you want?

21 A. Yes. Please ask the question again.

22 Q. The question was, isn't it true that in certain, in  
23 months from time to time, as Mr. Hollon showed, the price  
24 difference between the California price and the minimum Federal  
25 Order price is such that you could take milk for Class 2



1 purposes, condensed skim for instance is what was discussed,  
2 and move it from California to points in the middle of the  
3 county in the Federal Order system and land it at a cost, at a  
4 value that was less than the price applicable under the Federal  
5 Order system in that area at that time?

6 A. If the price gap is wide enough, that can happen.

7 Q. Okay. And --

8 MR. ENGLISH: Now, he gets to explain. You promised him an  
9 opportunity to explain.

10 MR. BESHORE: I thought he stopped.

11 MR. ENGLISH: Well, no.

12 MR. BESHORE: He's welcome to please explain. If the price  
13 difference is great, nothing can happen.

14 JUDGE CLIFTON: But you used two words in your question,  
15 you used both value and cost.

16 MR. BESHORE: I meant them to be synonymous.

17 JUDGE CLIFTON: Okay. So you weren't just using price.  
18 What was included in cost, transportation? You know, I got  
19 confused.

20 MR. BESHORE: Okay. Minimum regulated value in California,  
21 plus cost to transport to the destination in Denver or  
22 Kansas city or Nashville. Is that how you understood my  
23 question?

24 MR. BLAUFUSS: Yes.

25 MR. BESHORE: Good. Now, yes, under certain circumstances

1 that can occur?

2 MR. BLAUFUSS: Yes.

3 BY MR. BESHORE:

4 Q. And, please?

5 A. And now I can say my piece?

6 Q. Yes, you can.

7 A. The first part, and this will be a, I'll give you a  
8 little head's up, two part, but I'll try to be succinct with my  
9 point. When we talk about this, when Mr. Hollon talked in his  
10 testimony, it was basically, at least in my impression, implied  
11 that all condensed skim sales are happening on a spot basis.  
12 Which, from our own personal Dean internal view, is not the  
13 case. So any given year, a large buyer is going to contract a  
14 significant portion, in our case, well over half on a yearly  
15 basis the amount of condensed skim that we buy. So on those  
16 instances happen, let's say that's September where it was  
17 typically \$2.14, yes, that can occur, there can be spot loads  
18 that go, but that's not to say that all this California  
19 condensed skim is flooding the market. Because my contractual  
20 buy with, either I'm buying from California or I'm buying from  
21 Federal Orders, is going to lock me in and I'm going to be  
22 taking that product. So you do typically internally will have  
23 a little bit of wiggle room to allow ourselves be to buying  
24 some spot, but predominantly we're not huge in buying in the  
25 spot market.

1           And I guess the second point I'll say with respect to  
2 condensed skim, and this is getting to my point with the co-ops  
3 controlling 75 to 80 percent of the milk supply in California,  
4 I would have loved to see that data. You know, we talk price  
5 points, but we don't talk milk movements. And I understand the  
6 confidential nature of their data, but I would have liked to  
7 seen the correlation between the milk condensed skim leaving  
8 the State of California matched up to price levels. I  
9 understand the confidentiality, but if I look at the  
10 transportation analysis that was done, they were able to go  
11 through a third party and put that together. But instead, all  
12 that I heard in the testimony was a one or two month discussion  
13 Mr. Hollon had with his plant in Southern Minnesota, and  
14 Mr. Erba speaking about how they do have contract sales, but I  
15 don't believe he mentioned spot sales. I could be wrong, but I  
16 didn't hear it. And I don't believe -- and granted, I was  
17 feeding a one year-old at the time -- Mr. Schad's testimony, I  
18 don't believe he spoke to Land O'Lakes movements of condensed  
19 skim milk out of the State of California, or at least he wasn't  
20 aware of how they moved it.

21           Q. So you're suggesting that the movements could be on a  
22 spot basis but not regular. And if they are not regular, you  
23 don't consider it a significant issue. Is that what I --

24           A. I don't know. I mean, I don't have the data in front  
25 of me. I know from our, I can only speak to the Dean internal

1 view as we haven't seen in our marketplaces that we're buying,  
2 and we're buying in a lot of areas in the country, California  
3 condensed skim flooding these markets and making a real  
4 noticeable difference in what's going on in those markets, east  
5 of California.

6 Q. All right. Okay. You have seen some, but not enough  
7 to bother you.

8 A. I don't know that I'd characterize it that way. In  
9 talking with our procurement folks who have been in the  
10 business a long time and been at Dean for five, ten years, and  
11 have a long-term understanding of both internal and what's  
12 going on in the marketplace, when we discussed it, that was  
13 their view, is this, the price difference itself in the last  
14 few years hasn't created this significant disorder, as I think  
15 you, I think proponents of Proposal 1 have indicated.

16 Q. Okay. So just to understand then, the depooling point  
17 you are making on Table 1 of Exhibit 110. What you are  
18 depicting here, first of all, other than the plant in  
19 Wisconsin, do you know of any, which is the Dean plant, do you  
20 know of any plants operated by any entity in Order 32 that are  
21 pool plants, Class 2 pool plants, that would have the option  
22 for depooling?

23 A. Well, first, I'd probably make the correction that  
24 stand-alone Class 2 plants not in Wisconsin, first and  
25 foremost.

1 Q. I'm sorry.

2 A. But I just want to make sure the record's clear on  
3 that, that it is in Illinois.

4 Q. Okay. I think you said -- I guess you said Order 30?

5 A. I said Midwest, and that's, I realize a very general  
6 term, but sometimes includes Ohio and sometimes doesn't.

7 Q. Okay. But it's in Illinois the plant were you talking  
8 about?

9 A. That's correct.

10 Q. But in the Upper Midwest Order area?

11 A. Federal Order 30, yes.

12 Q. Okay. Sorry about that. My misunderstanding of that.  
13 So go on, do you know of any in Order 32?

14 A. To answer the question, I don't have the sheet in front  
15 of me. I know there's a yogurt plant and I believe it is north  
16 of Denver, I don't know if it is a pool plant, I just know it  
17 is there. I believe there's still a Class 2 facility in  
18 Nebraska, though I could be wrong on that, but I believe there  
19 still is one.

20 Q. Okay. So if there was, if there are any, they're pool  
21 plants and they are confronted with, and pool plants are  
22 subject to minimum prices for pool milk, correct?

23 A. Well, if they are in the pool, yes, they have to pay  
24 the regulated minimum price.

25 Q. Right. And your suggestion is that if there's, that

1 the remedy for them, if there is lower price competition from  
2 California, is to depool and therefore, buy at a lower price?

3 A. No, I wouldn't agree with that, I think you are tying  
4 it, you are trying to tie it together and I don't see it that  
5 way.

6 Q. Well, isn't that what Table 1 shows?

7 A. No, Table 2, or Table 1, sorry, just shows, if I'm a  
8 Class 2 facility, that stand-alone and can opt out of the pool  
9 should the opportunity arise, you know, a plant's going to look  
10 at it and say, look, here's my class price that I'm obligated  
11 to pay if I stay in the pool, and here's what the blend price  
12 we estimate will be. Typically, if they have the ability to  
13 not pool, they are going to opt out of the pool to avoid making  
14 that payment, should their regulated minimum class price be  
15 above the blend price, location adjusted, of course.

16 Q. But are you saying that the decisions you are showing  
17 here on Table 1 had nothing to do with the circumstance of  
18 lower priced Class 2 solids being available from California?

19 A. My point in this example was to look at, okay, if I'm a  
20 Class 2 plant and let's say I'm making condensed skim in these  
21 areas, first and foremost, what's my plant decision? Do I stay  
22 in the pool or do I opt out? Well, if I'm going to pay in, I'm  
23 going to opt out. The second question is, what are you paying  
24 for the milk? And that's an agreement between buyer and  
25 seller. I could be paying the Class 2 price, I don't know

1 that. It is just not regulated by the Federal Order. I could  
2 also be paying class minus. It is an agreement between buyer  
3 and seller at that point, and whatever your contractual  
4 arrangement is with your supplier, be it direct ship or  
5 cooperative.

6 Q. By the way, your contract set that for condensed skim  
7 that you reference for your plants are generally at Federal  
8 Order class prices, are they not?

9 A. I'm not going to speak to exact price points, it is  
10 confidential.

11 Q. If plants depool, plants in any Federal Order, depool  
12 in order to meet the competition from lower priced sources from  
13 California or elsewhere that represents a loss of revenue to  
14 that Federal Order pool, does it not?

15 A. I'm sorry, could you ask that again?

16 Q. If plants depool, and I'm, as depicted on Table 1 of  
17 Exhibit 110, that represents a loss of revenue to that Federal  
18 Order pool, does it not?

19 A. In its very nature, by opting out of the pool, yes,  
20 that would take, reduce the amount of payment that that plant  
21 would make to the Order. It wouldn't reduce necessarily the  
22 cost of the milk to get -- the cost or the price to get milk  
23 into the plant.

24 Q. Okay. The plant may end up paying the same price to  
25 get milk there, but it is not going to pay into the pool.

1 A. Correct.

2 Q. Okay.

3 A. Who is ever supplying that plant.

4 Q. It is a loss of revenue to the pool.

5 A. Yes.

6 Q. Okay. Let's talk about movements, interstate  
7 transactions in California, and your thoughts about them. You  
8 have indicated in your testimony, 109, that some years ago  
9 there were, Dean, as a Class 1 handler in California, was  
10 concerned with the volume of Class 1, or the volume of milk  
11 coming from out-of-state into California, volumes of Class 1  
12 milk, correct?

13 A. Correct. And if you looked at past CDFA hearings in  
14 the mid-2000's you will find us testifying to that.

15 Q. Okay. And the remedy was to have multiple CDFA  
16 hearings that reduce the Class 1 price in California  
17 sufficiently to deter the volume or to reduce the volume of  
18 those shipments, correct?

19 A. No, I mean, I don't think it was just the CDFA hearings  
20 themselves. I think a major role in reducing the amount of  
21 milk that's coming into the state had a lot to do with the MREA  
22 and how that treated the producer-handler out of Arizona. And  
23 I think CDFA data, and I don't have it in front of me, but CDFA  
24 data on the milk that was coming into the state California,  
25 from outside, you will see there's a pretty rapid drop off from



1 the amount of milk coming in that was unregulated at the time.

2 Q. Well, that's the Arizona plant. But in, on page 7 of  
3 your testimony, the second full paragraph, you talk about "in  
4 two separate hearings in the mid-2000's, CDFA dealt with the  
5 disparity between the California Class 1 price and uniform  
6 prices being paid the neighbor states. At the time, the wide  
7 disparity in prices had led to a loss in Class 1 sales for  
8 processors that produced, processed, and sold California milk.  
9 These hearings resulted in a reduction to California Class 1  
10 prices which reduced the economic benefit import milk into  
11 California."

12 Do you you see that? Did I read your testimony  
13 correctly?

14 A. I believe you did. I didn't follow you line for line,  
15 but it sounded pretty close.

16 Q. And that all had nothing to do with MREA, isn't that  
17 true?

18 A. There were separate hearings, yes. I will say, if you  
19 look back, and I believe there was a hearing in 2005, a hearing  
20 in 2006, and I believe in 2008. In 2005 hearing there were no  
21 changes made; 2006 there was different tweaks made, and I  
22 believe they added the, I think it was the whey adjustment  
23 factor I believe is what the term would be, and actually, if I  
24 remember reading correctly, as that impact statement was put  
25 forward, I believe at the time they said the price of Class 1

1 would actually go up. And how they did that, I need to check  
2 that, but I believe that's what the results were. The 2008  
3 hearing, though, yes, they did change the structure that we did  
4 see a decline. I don't know what the number was, but they did  
5 reduce the Class 1 price.

6 Q. So those changes in the California Order reduced the  
7 price disparities so that not as much milk is coming into  
8 California from outside the state?

9 A. A lot of the, we'll call it games, or lack of better  
10 term, that were going on in the mid-2000's with the California  
11 and areas outside, that did reduce the incentive to bring in  
12 bulk import milk into the state.

13 Q. Okay. So from a Class 1 handler's point of view, the  
14 problem was solved or brought into a tolerable circumstance?

15 A. I don't know that I would say that it was solved or  
16 tolerable, I would say when you look at the amount of milk  
17 coming into the state today, I'm not going to call it a steady  
18 state, but we have seen a pretty significant drop off in the  
19 amount of import milk into the state. And I think we --  
20 compared to what we were, say five, ten years ago, it is a  
21 noticeable change.

22 Q. And that's a positive one from your perspective.

23 A. It's a positive one for the California pool. From a  
24 Dean Foods perspective, we're buying California milk, producing  
25 California milk, and selling California milk. So, I mean, I

1 would say from a Class 1 perspective, if you are keeping volume  
2 in the state, you are helping out the pool.

3 Q. Okay. You understand that from the producers  
4 perspective, that milk is still not, the milk that's coming in  
5 is still not pooled in California?

6 A. The milk that's not -- that is currently coming in from  
7 outside the state, yes, the state cannot regulate that.

8 Q. Okay. And the milk that's coming into California that  
9 the MREA addressed, is not pooled in California, either,  
10 correct?

11 A. Yes. So that milk would be pooled fully regulated  
12 handler under the Arizona order.

13 Q. Right. In other words, what the MREA did for  
14 California was that it priced the milk from Arizona that's  
15 coming into California so that on the handler side, the  
16 competition was ameliorated, correct?

17 A. The MREA, sorry, I can't say that, basically stated  
18 that if a plant's located in a Federal Order and selling into a  
19 State Order with market-wide pooling, then it is going to be  
20 fully regulated under that Order in which it resides.

21 Q. The Federal Order?

22 A. Correct.

23 Q. Okay. So the MREA made sure that that plant, which had  
24 not been fully regulated under any Order, correct?

25 A. Correct.

1 Q. Was now fully regulated under a Federal Order, correct?

2 A. Correct.

3 Q. And it was the Arizona, in this case, it was the  
4 Arizona Federal Order and not the, it's the Arizona Federal  
5 Order, correct?

6 A. Correct.

7 Q. So that the Arizona producers received the benefit of  
8 the Class 1 sales into California of that plant located in  
9 Arizona presently, correct?

10 A. That milk is pooled in the Arizona Orders, yes.

11 Q. Right. And it's -- would it be your understanding that  
12 under Proposal 1, or 2 for that matter, that plant would be  
13 pooled in California, in the California Federal Order?

14 A. That's correct. I believe at the current time, both  
15 Proposal 1 and 2 handled producer-handlers and milk sales and  
16 milk flows in that respect the same.

17 Q. Okay. I have no further questions at this time,  
18 Mr. Blaufuss, thanks a lot.

19 A. Thank you.

20 JUDGE CLIFTON: Who next has questions? Good, Mr. Miltner.

21 CROSS-EXAMINATION

22 BY MR. MILTNER:

23 Q. Ryan Miltner, M-I-L-T-N-E-R, Counsel for Select Milk  
24 Producers.

25 Mr. Blaufuss, are you familiar with the United States

1 Census Bureau and their data sets at all?

2 A. In the general sense, yes.

3 Q. Okay. Are you aware that they define the Midwest and  
4 they include Ohio in the Midwest?

5 A. I believe they do. From our own, the way we handle  
6 things, we consider it to be the Mideast, so that's true, you  
7 can parse that up however you want.

8 Q. I understand that Ms. Uther would agree with you, on  
9 that point I would agree with her. But actually, I am not  
10 going to take too long.

11 I wanted to pitch a concept to you following up on  
12 Mr. Beshore's questions. Disorderly marketing, you would agree  
13 it is a nebulous concept and we have talked about it ad nauseam  
14 at this hearing, yes?

15 A. It's been discussed a time or two.

16 Q. As I hear your testimony and I look at your statement,  
17 it occurs to me that perhaps market disorder is not an  
18 all-or-nothing proposition. Would you agree with that?

19 A. I think it depends on what your definition of  
20 disorderly is, and which I stated first and foremost, ensuring  
21 an adequate supply of fluid milk to fluid plants and to  
22 inefficient movements of milk.

23 Q. And if either of those occurs, you would say that's  
24 disorderly?

25 A. I believe those would be the two criteria in my

1 definition, yes.

2 Q. And I wrote this down as you said it, and I think I got  
3 it right. You described a situation as, "disorderly to a  
4 certain level."

5 Do you remember saying that?

6 A. What was I referencing?

7 Q. I believe you were discussing the producer-handler  
8 activity in California.

9 A. I would consider the producer-handler, as I walked  
10 through with Ms. Hancock, to be disruptive. I don't believe it  
11 checks the box on my disorderly marketing conditions. The  
12 producer-handlers are not causing us not to receive milk into  
13 our plant, and I don't know that a mass inefficient movement of  
14 milk is occurring.

15 Q. Okay. Is it, would you -- would you agree, I don't  
16 want to say that because I don't know if I necessarily agree  
17 with it, but would you -- would you accept the premise that you  
18 could have something that's not particularly orderly but it  
19 doesn't rise to the level of disorderly marketing?

20 A. I think no matter if you are talking a State regulatory  
21 structure, or a Federal structure, there is always issues that  
22 can arise. I think the perfect example is simply looking at my  
23 testimony, the issues we have had in the last couple of weeks.  
24 It is not orderly, but that doesn't speak that there's a  
25 long-term disorder in the marketplace.

1 Q. It is almost as if, and maybe, I think I used this  
2 description yesterday with one of the witnesses, that it's  
3 almost like there's a continuum where on one end you have  
4 disorderly marketing and on the other end there is perfect  
5 order, and there are a number of states in between. Would you  
6 agree with that?

7 A. I would agree that life is seldom black and white.

8 Q. I think that's good. I appreciate your exploring that  
9 with me. Thank you.

10 JUDGE CLIFTON: Who next has questions for Mr. Blaufuss?

11 CROSS-EXAMINATION

12 BY MR. VLAHOS:

13 Q. John Vlahos.

14 Just one little area that I would like to explore with  
15 you a bit. It deals with the testimony you provided in answer  
16 to Ms. Hancock's questions and to Mr. Miltner about the  
17 difference between disruptive and disorderly marketing  
18 conditions. And if I recall your testimony correctly in  
19 response to Ms. Hancock's questions, you thought that the  
20 existence of the exempt quota of producer-handlers in  
21 California was disruptive in the Class 1 space, but did not  
22 constitute disorderly marketing conditions under your  
23 definition of the disorderly marketing conditions.

24 Have I got that correctly?

25 A. I believe so. I think it was viewed as represented, I

1 believe I did state we view them as disruptive, but per my two,  
2 how I view the conditions as disorderly, it did not check the  
3 disorderly.

4 Q. Okay. And in order to, under your definition to check  
5 the box for disorderly marketing conditions, it would have to  
6 have negatively impacted the supply of milk, fluid milk for  
7 Class 1 usage, or cause inefficient movement of milk, or both?

8 A. Yes, I would say those are my two definitions of  
9 disorderly marketing.

10 Q. Okay. Where did you get those definitions of  
11 disorderly marketing?

12 A. Well, if I'll put out ferret your own witness from an  
13 earlier time, my first check box, your, your witness,  
14 Lon Hatamiya, while he was still with AMS Dairy Programs, I  
15 believe he was the Administrator at that time, testified before  
16 Congress around the time of the 1996 Farm Bill, and I don't  
17 know if -- I'll just read the direct quote.

18 Q. Sure. Go ahead.

19 A. I'll read the paragraph before just so we get the  
20 context.

21 "Today, I would like to focus my remarks on the purpose  
22 of the Federal Order system and how this system relates to the  
23 economics of milk marketing. I will also provide a general  
24 perspective on some of the alternatives for change that have  
25 been raised.



1 Overview of the Federal Milk Marketing Order System

2 Federal Milk Marketing Orders are intended to ensure  
3 that an adequate supply of milk is available for consumption as  
4 a fluid product. Milk Orders are guided by the location of  
5 bottling plants, and in turn, by location of consuming  
6 population centers."

7 Q. And in that testimony did you -- did you get the  
8 inference that that's the only condition that would justify  
9 either an amendment to or the promulgation of a Federal Milk  
10 Marketing Order? He stated what a purpose was, but is that the  
11 only purpose for which you could either amend a Federal Milk  
12 Marketing Order or promulgate one?

13 A. I think you can always propose promulgating an order.  
14 I don't think it has to be directly tied to one or the other.  
15 In my purview, if I'm looking at amending or having an order,  
16 those are going to be the first two criteria. Is there an  
17 adequate supply of fluid milk? And two, is there inefficient  
18 movements of milk occurring?

19 Q. Okay. That's your view. Do you know of anything other  
20 than what you just read that supports the proposition in that  
21 sentence, the only way, the only criteria for which you can  
22 promulgate an order or amend an order?

23 A. I have no document or defined terms from, you know, to  
24 say that that's the only way that you can do it.

25 Q. Okay. Thank you.

1 JUDGE CLIFTON: Are there other questions for Mr. Blaufuss?  
2 Mr. Vetne?

3 CROSS-EXAMINATION

4 BY MR. VETNE:

5 Q. Mr. Blaufuss, we have had various cheese marketers come  
6 and explain to us what it cost to move a pound of cheese from  
7 California to elsewhere in the country. I don't think we have  
8 had a distributor tell us anything about the cost of moving  
9 packaged milk.

10 Do you have per gallon, per pound, per hundredweight,  
11 per 40,000 pound truck load, just a ballpark of what that cost?

12 A. I don't. The only thing I can say generally is it's  
13 typically more expensive to move a package fluid milk product  
14 than it is a bulk product. At least that's how I understand  
15 it.

16 Q. Okay. There has, however, been some discussion,  
17 inference, or assertion that at California bottlers have some  
18 kind of advantage because they can buy milk at fairly low state  
19 Class 1 price and move it to the East in competition with  
20 federally regulated handlers. Now let's, if it goes into a  
21 Federal market, I understand that USDA has a partially  
22 regulated up-charge based on the federal price at the location  
23 of your plant, you still have to move it to those markets. And  
24 then you also meet competition, for example, in Nevada, where  
25 there is no federal market to create an up-charge if it comes

1 from California. Do you know if, if the cost of transporting  
2 packaged fluid milk delivered to those locations, even with  
3 some up-charge to the Federal system or without, is  
4 sufficiently remunerative so that you have an advantage of you  
5 arriving in those marketplaces?

6 A. Are you specifically speaking of a California facility  
7 going to a Federal Order or going --

8 Q. My question, dysfunctionally, contained both. So let's  
9 start with a Federal Order. You do have a bit of an up-charge,  
10 but it's still, it is still lower?

11 A. Speaking generally of how the provision would work, the  
12 Federal Orders, if we're taking -- which I'll say we are not  
13 doing, we're not taking packaged milk in California and selling  
14 it very far east outside the state -- the Federal Order that we  
15 go into, they are going to look at where our plant's located,  
16 and essentially, from a price structure, and this is how I  
17 understand it, treat it as though it is a fully regulated  
18 plant, in the fact that you are going to have the Class 1  
19 differential attached with the State price. And they are going  
20 to look at that price versus what the Federal Order price is  
21 that month, and then you will have to pay in a compensatory  
22 payment, as it is called.

23 Q. Okay. There are a lot of markets, however, east of  
24 California, a lot of geography that isn't regulated at all. Do  
25 you have any comment on your ability to transport and undercut

1 the local price from California points of origin?

2 A. If we talk Northern Nevada, our price is tied directly  
3 to the California, Northern California, Class 1 price. So it  
4 is not like we take milk from, say, I think part of  
5 Mr. Hollon's testimony is, you can take packaged milk from  
6 Sacramento and sell it, or take Reno milk and sell it into  
7 Sacramento at a lower cost. And that's, I mean, that's the  
8 same price structure today on a Class 1 basis, Northern  
9 California and Northern Nevada.

10 Q. It's -- so Nevada has a state regulated Class 1 price  
11 structure that corresponds with California's Class 1 price  
12 structure around Sacramento?

13 A. The Northern, the Northern California, Northern Nevada  
14 are tied together.

15 Q. Thank you.

16 A. And that assumes, of course, that you are buying 100  
17 percent Nevada milk.

18 Q. Good, thank you.

19 JUDGE CLIFTON: Who else has questions for Mr. Blaufuss?  
20 Mr. Francis, if you have some, would you rather go before or  
21 after redirect by Mr. English?

22 MR. FRANCIS: No preference.

23 JUDGE CLIFTON: All right. Then Mr. English, why don't you  
24 do redirect and then we'll see if Mr. Francis has anything  
25 further.

1 REDIRECT EXAMINATION

2 BY MR. ENGLISH:

3 Q. Thank you, your Honor, I have no preference, either.

4 So just a couple questions. Just for clarity, you  
5 referenced the sworn testimony before Congress of Mr. Hatamiya.  
6 Was that on May 25th, 1995?

7 A. That's correct.

8 Q. You were asked a number of questions by Mr. Beshore  
9 with respect to some of the issues involving your current  
10 situation down in Southern California and how it relates to  
11 your preference. And you referred to sort of an informal  
12 understanding, as I understand it, that when pooling came in,  
13 that somehow Class 1 processors would get their obligations  
14 fulfilled. Remember that?

15 A. Yes.

16 Q. Okay. If we go to a Federal Order, do you understand  
17 first, that the Class 1 price surface is going to change and go  
18 up effectively?

19 A. Yes.

20 Q. Okay. And whether it's been effective in a formal  
21 sense or not, the existence of the call provisions could, of  
22 course, help move milk in the sense that people don't want them  
23 to be implemented, and therefore, people might move milk in  
24 order to avoid the call, correct? That's, theoretically that's  
25 why, that's one reason calls work when they have been used, or

1 at least existed, that they can at least theoretically cause  
2 milk to move even if they have never been used?

3 A. That's correct. Basically forces, talking specifically  
4 on the California side, they put out both Northern and Southern  
5 California a list of, here are the call handlers, if you need  
6 milk and you want to call, they give you the phone number to  
7 the plant. You submit that to the plant, while also telling  
8 the State that it is occurring, and they have within 48 hours  
9 to respond. And if they don't supply the milk needed, they are  
10 penalized.

11 Q. So if you end up in a Federal Order, what is your view  
12 about the reliance on some kind of informal arrangement in  
13 California dating back to 1967?

14 A. I think if we go into a structure where we are no  
15 longer in a California State Order, and instead, are in a  
16 Federal Order, I think from a company perspective, we would  
17 view that as a complete and disruption of the status quo. And  
18 the fact that, I would say that long-term agreement that's not  
19 written in stone will change.

20 But I think if we're talking a Federal Order structure,  
21 you have to have proper provisions to ensure that you are  
22 supplying the Class 1 facilities, which is what, you know, I  
23 reference in my testimony gives me extreme anxiety. I don't  
24 know what term I use, but basically anxious about having a  
25 long-term supply, when there's absolutely no reason or, there's

1 not, shouldn't need a reason, there's no regulation that forces  
2 milk to move to a Class 1 facility.

3 Q. Like there is in every existing Federal Order, correct?

4 A. Correct.

5 Q. And that's especially so if your price is going to go  
6 up? If your Class 1 differential is going to go up, that's  
7 even more of a reason why you need to have those performance  
8 standards?

9 A. Correct.

10 Q. I mean, you need them anyway, but you need it  
11 regardless, correct?

12 A. I mean, every Federal Order you have a basic level of  
13 performance, and that's going to differ depending on the Order  
14 you are talking about. If you are talking Upper Midwest, you  
15 are going to have a lower performance standard. If you are  
16 talking about Florida where you predominantly call it an 80 to  
17 90 percent maybe Class 1, you are going to have a higher  
18 performance standard in the marketplace.

19 And the California structure as written in Proposal 1,  
20 there's absolutely no performance by the plants. So if I am a  
21 manufacturing facility located in somewhere in the countryside,  
22 at the end of the month I'm still going to get the blend price  
23 that's using the Class 1 dollars generated, but they don't  
24 necessarily have to deliver any milk to a fluid plant to get  
25 those benefits in the market-wide pool.

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

2 JUDGE CLIFTON: Mr. Vetne?

3 RECROSS-EXAMINATION

4 BY MR. VETNE:

5 Q. Mr. Blaufuss, you referred to performance requirements  
6 applicable to plants in the Federal Order system. Does not the  
7 Federal Order system in all markets have performance  
8 requirements applicable to cooperative suppliers also in the  
9 form of diversion limits, which is related to Class 1 or pool  
10 plant supply?

11 A. Yes, that's also a provision that's uniform to all  
12 orders.

13 Q. Yes. So the Federal Order system not only gives you  
14 opportunity to, by regulatory encouragement, to attract milk  
15 from manufacturing plants or supply plants that might be  
16 pooled, but also gives you opportunity by regulatory  
17 encouragement to obtain milk from cooperative associations  
18 through the limits on diversions.

19 A. Not sure I'm understanding the question, sorry.

20 Q. You were, I'm just trying to take this, you talked  
21 about plants and the encouragement for plants. Okay?  
22 Diversion limits applicable to any handler, including your own,  
23 is the amount of milk that you can market to nonpool plants,  
24 the converse of which is the amount of milk you must market to  
25 pool plants, correct?



1 A. Correct.

2 Q. Okay. So the lower the diversion limit, the more  
3 restrictive, the more milk must be marketed to pool plants,  
4 correct?

5 A. Correct.

6 Q. Okay. And you operate pool plants?

7 A. We do.

8 Q. Okay. And diversion limits are frequently among those  
9 which the Market Administrator can adjust from time to time  
10 without going to hearing, correct?

11 A. I believe that's at their discretion.

12 Q. All right. A request can be made of the Market  
13 Administrator to adjust various performance requirements, if  
14 the market is in need of a supply for Class 1 use?

15 A. That's correct. And then that's one of the tools we  
16 talked about. It is one of the tools that allows them  
17 discretion to be able to change without having to go to a  
18 Federal Order hearing, which tends to take a little time.

19 Q. Okay. Thank you.

20 JUDGE CLIFTON: Mr. Francis?

21 RE-CROSS-EXAMINATION

22 BY MR. FRANCIS:

23 Q. Will Francis, USDA.

24 Just wanted to explore a little bit some of your  
25 statements in your prepared testimony, Exhibit 109.

1           On the bottom of page 6, where it starts "while" and  
2 then it continues on page 7, so it reads, "while differences in  
3 pricing systems have the potential to lead to disorderly  
4 marketing, it is not itself indicative of disorderly  
5 marketing." Can you elaborate on what other factors or items  
6 would be indicative of disorderly marketing?

7           A. If I'm speaking directly to this quote or what I have  
8 in my testimony, my point in this is talking, you know, we  
9 focus a lot on just the regulated price differences, and saying  
10 that I think proponents of Proposal 1 are of the mindset that  
11 prices alone is a disorder. And I think in my view, I talk  
12 about my two definitions for disorderly marketing, my point is,  
13 if there's, prices can be different, but that's not indicative.  
14 Unless there is actual movements or inefficient of milk behind  
15 them, I don't view that as disorder.

16           So my point is, if there is, if there is milk moving  
17 around the countryside because of this regulated price  
18 difference, be it whatever class of milk we're talking about, I  
19 don't view that as disorder, unless you have inefficient  
20 movements of milk behind it.

21           Q. Okay. Thank you. And then the other question is, on  
22 page 8, sort of in the middle section where that paragraph  
23 reads, "The California State Order has served both producers  
24 and processors well throughout the years." And then it  
25 continues on, and you talk about "CDFA has typically been

1 responsive" and then later on you talk about "CDFA has made  
2 appropriate adjustments to regulatory language." Can you be a  
3 little more specific in the types of adjustments and responses  
4 that CDFA has made?

5 A. I think I reference there was three separate hearings  
6 on Class 1. Typically, there's a lot of information put in the  
7 record, CDFA came out with a decision in fairly short order,  
8 compared to what happens, say, in the Federal Order structure.  
9 So when I say responsive, that's kind of what I'm talking  
10 about. You know, decisions be it of the processor, producer,  
11 we might not always agree on whether or not it is, agree on the  
12 results. But typically when there's issues arising, and I  
13 think as evidenced by the amount of hearings that CDFA has held  
14 in the last, call it three years, I think they have been  
15 willing to listen to what -- they are willing to listen and  
16 they are going to look at the record to see what data gets  
17 entered to ultimately make that decision.

18 Q. Okay. And they made adjustments to remedy disorderly  
19 marketing conditions. I'm interested in a little more  
20 specifics on what the disorderly marketing conditions were, and  
21 some specifics on the responses.

22 A. From a Class 1 side, I'll say if you look at the data  
23 going back to milk moving into the state, that increased  
24 significantly in the mid-2000's of some activities from areas  
25 outside I think. If you look at, by my definition of

1 inefficient movements of the milk, I think that was inefficient  
2 movement of milk. So in my purview, that would be a, you know,  
3 a lock down -- a lock down, which I think you are looking for  
4 with your question.

5 Q. Okay. Thank you.

6 JUDGE CLIFTON: Mr. English, do you have anything else for  
7 Mr. Blaufuss on this subject? No? All right. Mr. Blaufuss, I  
8 think this concludes your testimony on this particular subject.  
9 Mr. English, how would you like to proceed?

10 MR. ENGLISH: My next witness is not in the room at the  
11 moment, and the court reporter -- I mean, it's been, I think we  
12 have been going a little over an hour and a half, so I would  
13 like to at least pass out the testimony and get started with  
14 Mr. Vetne, but I think we would do ourselves a favor if we had  
15 a 10 or 15-minute break, especially for the court reporter.

16 JUDGE CLIFTON: Great. So let's take our 15 minutes, and  
17 we won't necessarily go a long time with Mr. Vetne, but if  
18 everyone will have the testimony in hand before we break for  
19 lunch, I think that's great. So let us take 15 minutes now.  
20 Please be back and ready to go at 12:50.

21 (Whereupon, a break was taken.)

22 JUDGE CLIFTON: We're back on record. I'm a bit early, it  
23 is 12:49, but everyone seems ready to go. Mr. English, I'm  
24 looking at the documents. I'll need your help here.

25 MR. ENGLISH: I may need the help of Mr. Vetne. I know

1 that there is -- this is Chip English. I know that there is a  
2 statement that Mr. Vetne has passed. Mr. Vetne has passed out,  
3 and I believe everybody has, but we'll confirm, a 7-page  
4 statement, which I would, would ask to be marked as the next  
5 exhibit.

6 JUDGE CLIFTON: Is that 111?

7 MS. ELLIOTT: That's correct.

8 JUDGE CLIFTON: Thank you, Ms. Elliott. We'll mark that  
9 statement as 111.

10 (Thereafter, Exhibit Number 111, was  
11 marked for identification.)

12 MR. ENGLISH: And then he has an Exhibit for John Vetne  
13 Statement with a big A in the right hand, and I think we have  
14 that marked as Exhibit 112, that's a multi-page document. Is  
15 that correct, Mr. Vetne?

16 MR. VETNE: Yes, that is correct. And that is all I  
17 believe needs to be marked.

18 (Thereafter, Exhibit Number 112, was  
19 marked for identification.)

20 MR. ENGLISH: You did pass out a one-page document called  
21 milk cows inventory, that's color.

22 MR. VETNE: Yes.

23 MR. ENGLISH: Is that duplicated in black and white in your  
24 Exhibit A which is now Exhibit 112?

25 MR. VETNE: Actually, it is duplicated in the package, and

1 the package includes A, B, C, and D. So about six pages back  
2 from the end of the package is Exhibit big C, and there is a  
3 black and white version, which is the way it was produced when  
4 it was mass printed. The original three copies, which I  
5 provided for the record, do have the blue version, so I wanted  
6 people who are interested, to see the blue version, which  
7 hopefully will appear on this document when it is scanned and  
8 posted on the website.

9 MR. ENGLISH: So what you are saying is that in  
10 Exhibit 112, since it is a multi-document, most of us received  
11 a black and white version, but the record received a color  
12 version of this particular page?

13 MR. VETNE: That is correct. And so I passed out a color  
14 version so everybody could see that also, but it does not need  
15 to be separately marked, because the ones that I provided for  
16 the official record are color.

17 JUDGE CLIFTON: Excellent and I thank you, Mr. Vetne. The  
18 ones that have the blue coloring certainly are more visible to  
19 prove the point, so thank you.

20 MR. ENGLISH: So I'm not sure we have identified and sworn  
21 in the witness.

22 MR. VETNE: No, we haven't.

23 MR. ENGLISH: That was addressed to Judge Clifton,  
24 Mr. Vetne.

25 JUDGE CLIFTON: Mr. Vetne, I'll swear you in in a seated

1 position. Would you raise your right hand, please?

2 MR. VETNE: I will.

3 JUDGE CLIFTON: Do you solemnly swear or affirm under  
4 penalty of perjury that the evidence you will present will be  
5 the truth?

6 MR. VETNE: I do.

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

9 MR. VETNE: John Vetne. V-E-T-N-E.

10 JUDGE CLIFTON: Thank you. Mr. English, you may proceed.

11 DIRECT EXAMINATION

12 BY MR. ENGLISH:

13 Q. Mr. Vetne, would you read that portion of Exhibit 111  
14 down through the first full paragraph that ends in "including  
15 regulatory decisions" and then stop, please?

16 A. Yes, I will.

17 Q. Okay.

18 A. The statement has a couple of headings, the main  
19 heading is: Proposals to Promulgate a Federal Milk Marketing  
20 Order for California Hearing in Clovis, California, October  
21 2015.

22 The statement title is: Statement of John H. Vetne on  
23 FMMO policy evolution: Orderly marketing in Section 8c(18)  
24 Supply and Demand pricing.

25 And the text begins as follows:

1 JUDGE CLIFTON: Please read more slowly from now on.

2 MR. VETNE: You think I would have like, caught on by now.

3 This hearing has presented a good opportunity for the  
4 industry and agency participants to learn, or to understand  
5 better, how government regulation of milk pricing came to be,  
6 and how government milk pricing policies have evolved in  
7 response to evolution of milk production, milk processing, milk  
8 manufacturing, and milk product distribution practices.

9 Dr. Bill Schiek has taken us through a history of the  
10 California program. Paul Christ and Dennis Schad have outlined  
11 the evolution of the parts of the FMMO program. I hope to  
12 contribute some additional perspective to the FMMO program from  
13 my experience of over 40 years and USDA literature, including  
14 regulatory decisions.

15 BY MR. ENGLISH:

16 Q. So please do stop there. I mean, the record now needs  
17 to know something more about Mr. Vetne. You were born in Oslo,  
18 Norway?

19 A. Yeah.

20 Q. And you, your undergraduate degree was from, it's a  
21 Bachelor of Arts from Andrews University?

22 A. In Southwestern Michigan, yes.

23 Q. And what was your undergraduate degree in, if you  
24 can --

25 A. I started out doing science courses because my dad's a



1 doctor, and then I found I could do really well without much  
2 study in sociology, history. So I'm a history major, education  
3 minor. My plan was to go into teaching elementary or high  
4 school level. I did practice teaching and I taught for one  
5 year before I decided to go to law school.

6 Q. May I say there's a number of us over the years,  
7 including myself, who have learned a lot from you. Where did  
8 you go to law school?

9 A. At Wayne State University in Detroit, Michigan, which  
10 also happened to be the university my father received his  
11 advanced medical training after emigrating from Norway as a  
12 practicing physician in Norway.

13 Q. And because you might be a little too shy, your JD was  
14 cum laude?

15 A. Yes.

16 Q. And then, where did you, after you got your law degree,  
17 go to work?

18 A. It was 1973. So I told my friends I was infiltrating  
19 the establishment, but I went to work for the government. I  
20 got a job at USDA with their Office of the General Counsel, and  
21 I was assigned to what was then called simply the Marketing  
22 Division. And I was, my primary responsibilities were Federal  
23 Milk Marketing Orders for dairy, fruits, vegetables, and some  
24 additional work in the Perishable Agricultural Commodities Act  
25 Programs.

1 Q. And for how long were you in the Office of the General  
2 Counsel?

3 A. That would have been from July of 1973 to December 31,  
4 of 1979.

5 Q. And by the time you left, were you a Senior Attorney in  
6 Litigation Specialist?

7 A. That was my title, yes.

8 Q. So in January of 1980, did you start at a law firm  
9 known as Wilner and Scheiner?

10 A. Not immediately. Actually, shortly thereafter. But  
11 while I was still working at USDA, a lawyer in Tennessee who  
12 had been representing seal tests owned by Kraft was retiring,  
13 and Kraft was looking for another lawyer, and they invited me  
14 to consider leaving public practice and entering private  
15 practice. So for a short period of time, I simply did the work  
16 I was assigned to do, and then looked around for a place to  
17 park. And Wilner and Scheiner in the Thurman Arnold Building  
18 in Washington, had an Administrative law practice, specializing  
19 particularly in communications law, so I was there for a period  
20 of time.

21 Q. Communications and agriculture, sort of like branching  
22 out into entertainment?

23 A. Definitely entertainment.

24 JUDGE CLIFTON: Would you spell the name of the firm,  
25 please?

1 MR. VETNE: W-I-L-N-E-R, S-C-H-E-I-N-E-R.

2 BY MR. ENGLISH:

3 Q. And did you continue to work for Kraft at that point?

4 A. Kraft was a client of mine and became a client of the  
5 firm, yes.

6 Q. And for how long did you work at Wilner and Scheiner?

7 A. Until early 1984, so it would have been about four  
8 years.

9 Q. And then you did what?

10 A. Then I, my wife at the time and I decided to move to  
11 New England so we looked for a place to land in New England,  
12 and settled in Southern New Hampshire. And I connected there  
13 with a small general practice firm called Blodgett and  
14 Mackechnie, B-L-O-D-G-E-T-T, M-A-C-K-E-C-H-N-I-E, in  
15 Peterborough, New Hampshire, the locus for the play Our Town.

16 Q. And since leaving USDA, is it safe to say you have been  
17 involved, as you said, over 40 years of experience in  
18 significant number of Federal Milk Marketing Order proceedings?

19 A. That is true. Fair to say. I would say 80 percent of  
20 my practice time over the years has been in Federal Milk  
21 Marketing Orders. A portion of that also involved in-state  
22 milk price regulation, including the State of Maine, the State  
23 of California, the State of New York, and a short experiment in  
24 the State of Vermont.

25 Q. You got ahead of me, that's fine. Your work in

1 California dates back to --

2 A. It dates back to approximately 1996. I received a call  
3 from the Manager of Security Milk Producers, a Southern  
4 California Cooperative, that I understand later merged with  
5 CDI. Karen Brookes called me and said, we got some issues  
6 coming up here, are you willing? So I said I was willing but I  
7 don't know that much, so let's find out a little bit about it.  
8 So there was a Dairy Institute course in Milk Marketing in  
9 California coming up, so I signed up for the course. It was a,  
10 it was a full-week crash course and I learned a lot. And learn  
11 a lot more as I go along, and I have learned a lot here at this  
12 hearing.

13 Q. You are also the author of a chapter in a book entitled  
14 Agricultural Law, correct?

15 A. That's right. About the time I left USDA, a law book  
16 publisher called Shepards, McGraw-Hill had commissioned  
17 John Davidson, South Dakota Law, Law School, to assemble a  
18 treatise on agricultural law, and they wanted one of the  
19 chapters to be in Marketing Order programs, so I received a  
20 call from John Davidson, and -- and I agreed to author the  
21 chapter and it was published, I think, '82'ish.

22 Q. And then there was a supplement that you provided in  
23 the late '80's?

24 A. Later in the '80's, I provided a supplement, they kept  
25 asking me to keep supplementing, but is hard to be a book

1 author.

2 JUDGE CLIFTON: It is hard to what?

3 MR. VETNE: To be a book author. So I did, I supplemented  
4 it once.

5 BY MR. ENGLISH:

6 Q. Are you aware of any other such published material in a  
7 law book on Federal Marketing Order programs?

8 A. Not as, not including both fruit and vegetables, I  
9 believe not including fruit, vegetable Marketing Orders as well  
10 as milk. But I know that Marvin Beshore contributed to a  
11 volume published by Matthew Bender, I think it was, so, and we  
12 were, and we came out, we're in and out of USDA about the same  
13 time, and we were given a similar charge by competing  
14 publishing companies.

15 JUDGE CLIFTON: Would you spell Davidson?

16 MR. VETNE: D-A-V-I-D-S-O-N.

17 MR. ENGLISH: Your Honor, I would move Mr. Vetne to be  
18 recognized as an expert in Milk Marketing Regulation and  
19 Policy.

20 JUDGE CLIFTON: Does anyone wish to ask Mr. Vetne questions  
21 before determining whether you object to his being accepted as  
22 an expert in Milk Marketing Regulation and Policy? No one. Is  
23 there any objection to Mr. Vetne being recognized as an expert  
24 in Milk Marketing Regulation and Policy? No one.

25 Mr. Vetne, I do accept you as an expert witness

1 regarding Milk Marketing Regulation and Policy.

2 BY MR. ENGLISH:

3 Q. So to break up the statement a little bit, why don't we  
4 maybe go through about ten minutes, Mr. Vetne and your Honor,  
5 to get us to 1:15, AND then we can come back at 2:30. SO why  
6 don't you continue with your statement that's marked as  
7 Exhibit 111, Mr. Vetne?

8 A. Okay. I have to re-read the last sentence of the first  
9 full paragraph to put context to the second sentence, or to the  
10 second paragraph.

11 Q. My fault.

12 A. I hope to contribute some additional perspective to the  
13 FMMO program from my experience of over 40 years, and and USDA  
14 literature, including regulatory decisions.

15 This is important, I believe, so that party  
16 presentations and agency deliberations can be measured against  
17 expressed policies and why such policies came to be. And if a  
18 departure from policy is desirable, to recognize the departure  
19 and explain why a departure is necessary.

20 Dairy economics literature is also important as a  
21 reference and a guide to decision making reasonableness. The  
22 U.S. Secretary of Agriculture, speaking through his judicial  
23 officer, has explained that Milk Order promulgation and  
24 amendment decisions are properly measured against "the view of  
25 leading experts in the field of dairy marketing...It is in the

1 light of these views by the leading dairy experts that the  
2 Secretary's final decision should be evaluated."

3 And then there's a footnote reference at that point.

4 Heading.

5 Q. I'm sorry, your footnotes are more than just  
6 references. Would you prefer they just be reproduced as part  
7 of the transcript or you want to read them in? I'm  
8 indifferent, so whatever you want to do?

9 A. Mr. English, I wrote the text so that it would flow a  
10 certain way. My preference is, when I'm all done, if you want  
11 me to go back to the foot notes to provide some additional  
12 context or elaboration I will do that; is that all right?

13 Q. That is okay. We'll figure it out. Go ahead.

14 A. Heading, Orderly and Disorderly Marketing of Milk

15 The AMAA statement of Congressional policy, in 7 USC  
16 Section 602(3), allows the Secretary "to establish and maintain  
17 such orderly marketing conditions for [milk and other farm  
18 products]...as will provide, in the interests of producers and  
19 consumers, an orderly flow of the supply thereof to market..."  
20 The terms "orderly" or "disorderly" are not defined, but are  
21 explained by historical context and agency decisions for 80  
22 years.

23 Historical context, and U.S. illustration of conditions  
24 that may demonstrate disorder --

25 JUDGE CLIFTON: Start that sentence again, please,

1 Mr. Vetne.

2 MR. VETNE: Historical context, and USDA illustrations of  
3 conditions that may demonstrate disorder sufficient to warrant  
4 federal intervention, are summarized in the most recent AMS  
5 program brochure entitled "The Federal Milk Marketing Order  
6 Program" (Marketing Bulletin No. 27, updated January 1989) --  
7 I'll refer to that as FMMO Bulletin 27. This publication has  
8 not been updated in the past 25 years and is not available on  
9 USDA web sites. I insert parenthetically (it will now be). So  
10 it is reproduced in Part A of my exhibits. Disorderly milk  
11 market early history is summarized in pages 7 - 10, and  
12 illustrations of more recent disorderly behavior in unregulated  
13 markets that may merit regulatory intervention or "conditions  
14 indicating need for an order" is described in pages 11 - 12 of  
15 FMMO Bulletin 27.

16 The application and evolution of USDA policy in  
17 identifying and quantifying milk market disorder is shown in  
18 its decisions. In my view and experience, USDA has generally  
19 applied its policies consistent with the Erba-Novakovic  
20 definition of "disorderliness" as "lack of a predictable,  
21 sustainable, and efficient flow of a product to a specific  
22 market," and lack of "orderly relationship between different  
23 markets in terms of price and supply..." that is, an assertion  
24 of disorderly or undesirable conditions is demonstrated, if at  
25 all, by observable and quantifiable market behavior.



1           The two most recent Milk Marketing Order promulgation  
2 decisions demonstrate this principle. In 1981 -- that's a  
3 correction.

4           JUDGE CLIFTON: All right. Let us get that. Ms. Elliott,  
5 you are right there?

6           MS. ELLIOTT: Yes.

7           JUDGE CLIFTON: Thank you. Begin the sentence again.

8           MR. VETNE: Thank you.

9           In 1981, a Marketing Order for Southern Idaho and  
10 Eastern Oregon was created. Proponent cooperatives, given a  
11 second chance to prove their case, presented substantial  
12 evidence of market behavior that was deemed disorderly. In  
13 1990, a Marketing Order was promulgated for the Carolinas.  
14 This promulgation was also supported by evidence of observed  
15 and quantified market behavior deemed to be disorderly, and I  
16 will depart from my prepared text. I represented clients and  
17 participated in both of those proceedings.

18           Back to the text. Milk Orders have been regularly  
19 amended to promote marketing efficiency, equity among handlers,  
20 equity among producers, adequate supplies for fluid use when  
21 needed, and efficient disposition of milk in excess of fluid  
22 needs to manufacturing plants. Amendments have been frequently  
23 needed because the Orders themselves created disorderly  
24 marketing. For example, during the 1980's and the 1990's,  
25 Grade A milk production was expanding rapidly in markets with

1 pooling standards designed to accommodate smaller pools of  
2 milk. To promote for surplus milk marketing efficiency and  
3 equitable access to market pools by producers ready, willing,  
4 and able to supply milk for Class 1 use, diversion limits and  
5 other pool performance standards were often suspended after  
6 opportunity to comment, but without hearing. Amendments, after  
7 formal hearing, followed after repeated suspensions. Gradually  
8 the orders adjusted to the market reality of larger pools of  
9 Grade A milk and occasional imbalance of supply with demand by  
10 giving authority to Market Administrators to adjust pooling  
11 standards.

12           Supply plant rules similarly evolved to promote  
13 efficiency. Historically, a supply plant was a place where  
14 small quantities of milk from many producers was assembled and  
15 transshipped to distributing plants. As farms produced more  
16 and more milk and transportation technology improved, supply  
17 plants were allowed to direct ship milk from producer patron  
18 farms to distributing plant customers, thereby enhancing  
19 marketing efficiency objectives. A vestige of the historical  
20 role of supply plants as a transshipment point is illustrated  
21 by the Upper Midwest's requirement, as explained by  
22 Henry Schaefer earlier in this hearing, that supply plant  
23 operators are still required to "wet the tank" once per month.

24           The point of this is that USDA has consistently and  
25 reasonably relied upon a proponent of a Milk Order or order

1 amendment, to meet its burden of proof with evidence of market  
2 practices that constitute disorder before creating a regulatory  
3 remedy. In cases where proponents appear to rely more on  
4 regulatory philosophy than on hard facts, USDA has rejected the  
5 proposed rule or order. This is illustrated by the 1979  
6 recommended decision in the first Idaho promulgation hearing,  
7 and in the 1989 Texas-Southwest Plains decision denying  
8 proposals to regulate large producer-handlers. In the Texas  
9 decision, the Secretary agreed that the lack of regulated  
10 pricing for producer-handlers "raises the potential for  
11 competitive inequities among handlers," and that in fact,  
12 "there is not an equal sharing among all dairy farmers in the  
13 market of the returns from the sale of milk in all uses."

14 JUDGE CLIFTON: So since that's a quote, I would like to  
15 you do it again.

16 MR. VETNE: Okay.

17 In the Texas decision, the Secretary agreed that lack  
18 of regulated pricing for producer-handlers "raises the  
19 potential for competitive inequities among handlers," and that  
20 in fact, "there is not an equal sharing among all dairy farmers  
21 in the market of the returns from the sale of all milk in all  
22 uses. The existence of large producer-handler operation merely  
23 implies that conditions for disruptive and disorderly marketing  
24 conditions may exist." Concluding his discussion of the  
25 proponents' failure to met their evidentiary burden, the

1 Secretary explained:

2 "The justified concern of proponents over the  
3 potential for unfair and disorderly marketing  
4 conditions has not manifested itself with any  
5 demonstrable evidence of disorder in the Texas  
6 market. \*\*\*\* Consequently, in view of  
7 insufficient evidence of marketing disorder  
8 attributable to producer-handler operations, there  
9 is no basis for adopting the proposal to regulate  
10 relatively large producer-handlers."

11 Notably, both in the Idaho market and in markets with  
12 large producer-handlers, proponents offered substantial  
13 evidence in subsequent proceedings that met their burden of  
14 proof, and the Secretary then granted a Milk Order remedy.

15 Q. Your Honor, I propose to stop there, it's 1:16. But I  
16 do want to note while we're here, in the quote that you just  
17 read, Mr. Vetne, after the ellipses, if you said, "consequently  
18 in view of insufficient evidence of marketing disorder," did  
19 you mean to read "market disorder"?

20 A. I meant to quote the decision precisely, and right now  
21 I do not know if the Secretary used the word market or  
22 marketing, so I invite anybody to look at that Federal Register  
23 and use the exact words, but I -- if you tell me to change it,  
24 I will, but --

25 Q. Well, I'm just saying, you read marketing.

1 A. I meant, I wrote market because that's the way I read  
2 it in the text, so yes. You are right. The way I spoke it is  
3 not the way I wrote it, and the way I wrote it is the way I saw  
4 it in the Federal Register.

5 Q. Fine. So that would --

6 A. No correction required, your Honor.

7 Q. Well, you have to -- to the extent you are not going to  
8 correct the exhibit, but to the extent you said marketing  
9 disorder and the actual quote is market disorder, that's what  
10 you meant to say?

11 A. That is what I meant to say. Yes.

12 Q. So it's now 1:17, your Honor.

13 A. Are we on the same page? It would be page 4.

14 Q. We are all on the same page, but we are going to take a  
15 break for lunch.

16 A. I would welcome that.

17 Q. Well, yes, with the Judge's indulgence.

18 JUDGE CLIFTON: Please be back and ready to go at 2:35.

19 MR. ENGLISH: Thank you, your Honor.

20 (Whereupon, the lunch recess was taken.)

21 ---o0o---

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1 WEDNESDAY, OCTOBER 28, 2015 - - AFTERNOON SESSION

2 JUDGE CLIFTON: We're back on record at 2:46. Mr. English?

3 MR. ENGLISH: Chip English.

4 BY MR. ENGLISH:

5 Q. Mr. Vetne, we were on page 4, at the heading,  
6 Remedies Available.

7 A. Okay. Continuing on page 4, the Exhibit 111.

8 Remedies Available and Considerations Required for Milk  
9 Order Rules.

10 This part of the text simply outlines the deliberative  
11 process built into the statute and the options available, and  
12 some things relevant to what the statute requires the Secretary  
13 to look at.

14 If a producer or --

15 JUDGE CLIFTON: Mr. Zolin is having trouble hearing. I'm  
16 having trouble hearing, but I know the speakers are in a  
17 different location, I'm not concerned about that. I want to  
18 make sure everybody in the back is can hear.

19 MR. VETNE: Is this okay? Starting again.

20 If a producer or cooperative or handler petitions the  
21 USDA for a hearing to promulgate a Milk Order or amendment to  
22 cure apparent marketing disorder, what can the Department do  
23 and what must it do, if proponents have met their burden of  
24 proof as to disorderly conditions?

25 Section 8c(5) of the AMAA governs marketing orders for

1 milk. The introductory clause says:

2 "In the case of milk and its products, orders  
3 issues pursuant to this section shall contain one  
4 or more of the following terms and conditions, and  
5 (except as provided in subsection (7)) no others."

6 There follows a list of authorized types of milk order  
7 rules, including the core principles of uniform classified  
8 pricing to handlers based on use, and uniform blend prices to  
9 producers regardless of handler use, each subject to certain  
10 limited adjustments in subsections (A) and (B).

11 In subsection (G) there is an express limitation on  
12 some types of trade barriers, which reads as follows:

13 No marketing agreement or order applicable to milk  
14 and its products in any marketing area shall  
15 prohibit or in any manner limit, in the case of  
16 products of milk, the marketing in that area of  
17 any milk or product thereof produced to any  
18 production area in the United States.

19 There is also an express standard for consideration of  
20 any Milk Order provision designed to fix or modify minimum  
21 prices to be paid producers. The Secretary must consider a  
22 variety of "economic conditions which affect market supply and  
23 demand for milk and its products in the marketing area to which  
24 the contemplated agreement, order, or amendment relates..."

25 JUDGE CLIFTON: Because of the commas, I would like you to

1 read it -- normally I'm not having you read punctuation, but  
2 the way this is written I think you should read it so that the  
3 meaning comes across. So would you read again just what's in  
4 quotes?

5 MR. VETNE: Okay. I'll start the three words before that.

6 Consider a variety of "economic conditions which affect  
7 market supply and demand for milk and its products in the  
8 marketing area to which the contemplated agreement, order, or  
9 amendment relates..." and then "fix such prices as he finds  
10 will reflect such factors, ensure a sufficient quantity of pure  
11 and wholesome milk, and be in the public interest." That's  
12 7 U.S.C. 608c(18), and I have emphasis "supplied" because I  
13 wanted to refer back there to, in this case, in the marketing  
14 area to which the contemplated order relates. So that would  
15 fit here where we have a contemplated order or a proposed  
16 order.

17 Continuing with the text. The Secretary has expressed  
18 his interpretation of this section many times in decisions and  
19 in correspondence. In 2008, the Secretary terminated a  
20 proceeding to consider higher Class I and II prices requested  
21 by NMPF, that's National Producers Federation, to provide  
22 economic relief to dairy farmers, and on several occasions he  
23 denied requests for price relief due to conditions of drought  
24 and other milk production challenges because the markets had  
25 adequate supplies of milk for fluid beverage use, and the AMAA



1 is not intended to be a price support program. Part B of my  
2 exhibits, in chronological order, contain some of these letter  
3 determinations by the Secretary. Letters of September 17th,  
4 2012, by Secretary Vilsack and AMS Deputy Administrator for  
5 Dairy Programs, Dana Coale, contain a concise and thorough  
6 explanation of USDA's interpretation of the limits of its milk  
7 pricing authority under the AMAA. The Deputy Administrator  
8 explained:

9 First, the Federal Milk Marketing Order (FMOO)  
10 program is not designed to be a price or income  
11 support program --

12 JUDGE CLIFTON: Mr. Vetne, would you read it again? I  
13 think you said FMOO.

14 MR. VETNE: I did not intend to. I will read it again, the  
15 quote:

16 First, the Federal Milk Marketing Order (FMMO)  
17 program is not designed to be a price or income  
18 support program, since it is not authorized to  
19 establish minimum prices above the relative market  
20 value of the products of milk. \*\*\*\*

21 And then further in that letter the Deputy  
22 Administrator continues:

23 Section 608c(18) of the Agricultural Marketing  
24 Agreement Act of 1937, as amended, outlines the  
25 criteria and procedure by which the Secretary

1           establishes and adjusts minimum prices in the FMMO  
2           program.

3           So if you will turn with me to Exhibit 112, I'll go off  
4 text here for a minute. The last six pages or so constitute,  
5 well, 10 pages or so, or 12, 14 -- a little more than  
6 two-thirds of the way through the packet, after the publication  
7 of AMS, which is double-sided, everything else here is  
8 single-sided, is Exhibit B. And that, in chronological order,  
9 contains a collection of responses, in some cases the letters  
10 to USDA, and responses by USDA in all cases, on requests for  
11 increased minimum prices, revenue enhancement for one reason or  
12 another because of drought, because of tough times, because of  
13 margin, cost of production.

14           The first letter, for example, is a reply to  
15 Congressman Roy Blunt from Secretary Ann Veneman to a request  
16 for a drought adjustment surcharge on Class I and II prices.  
17 And the second paragraph at the end, the last sentence says,  
18 "the FMMO program is a marketing tool, not a price support  
19 program." And then the letter goes on to describe other things  
20 that USDA was working to do to help address the situation.

21           The second letter, a couple of pages on, is a letter to  
22 Congressman Don Sherwood, basically along the same line,  
23 responding to an incoming letter from Congressman Sherwood  
24 asking USDA to call a hearing for increased prices as requested  
25 by DFA, and basically the same responses given. The objectives

1 are to assure an adequate supply of milk for the fluid market  
2 and create an orderly structure under which farmers can market  
3 milk year-round. Again, the letter says the FMMO program is a  
4 marketing tool, not a price support program.

5           The third letter is a letter, May 20, 2003, from  
6 Congressman Phil English to Ann Veneman, asking for price  
7 relief, price enhancement after USDA turned down the request by  
8 DFA. So it's a renewed request, apparently spurred by high  
9 feed costs, transportation costs, stress in the dairy producer  
10 community, producers going out of business. That's a one-page  
11 letter, and following that there's a response of June 16, 2003.  
12 The second paragraph of which, as the prior ones, say "the FMMO  
13 program is a marketing program with the objective of assuring  
14 that fluid drinking," the word drinking has been put in, "milk  
15 markets are adequately supplied and it is not intended to be a  
16 price support program."

17           And lastly, it is an incoming letter from Dori Klein,  
18 you don't know where Dori Klein lives or what her address is  
19 because it is properly deleted, asking for a hearing to  
20 increase Federal Order prices. And follows a response by  
21 Secretary Vilsack on September 17, 2012. And Secretary Vilsack  
22 in turn, refers Dori Klein to a letter of the same date, from  
23 Deputy Administrator Dana Coale. And in Dana Coale's response  
24 to Ms. Klein, there is the discussion on marketing tool and the  
25 limits of Section 8c(18) authority provided in the AMAA to the

1 to the Secretary, which I quoted in my prepared statement.

2 Okay. Going back to the prepared statement.

3 Examination of local and regional supply and demand conditions  
4 in some marketing areas, have nevertheless, led to increased  
5 minimum prices since FMMO Reform. USDA has twice --

6 JUDGE CLIFTON: And you missed a word so please just  
7 re-read that sentence.

8 MR. VETNE: Examination of local and regional supply and  
9 demand conditions in some marketing areas, has nevertheless led  
10 to increased minimum milk prices since FMMO Reform. USDA has  
11 twice increased Class I prices and the Southeast markets -- to  
12 address hurricane-created fluid milk supply difficulties in  
13 2004, and to address declining milk supplies available to a  
14 growing population in 2008.

15 There's one other provision of the AMAA that requires  
16 examination of conditions unique to regional marketing and  
17 production areas for milk and other commodities.

18 Section 608c(11)(C) states:

19 All orders issued under this section which are  
20 applicable to the same commodity, or product  
21 thereof, shall, so far as practicable, prescribe  
22 such different terms applicable to different  
23 production areas and marketing areas as the  
24 Secretary finds necessary to give due recognition  
25 to the differences in production and marketing of

1           such commodity or product in such areas.

2           End of quoted statutory text, back to my text.

3           But the Secretary's tasks are not completed even if the  
4 record evidence is good, proposed rules conform to the limits  
5 of Section 8c(5), proposed prices are fixed after thoughtful  
6 consideration of Section 8c(18) pricing factors and unique  
7 regional factors are considered. If handlers do not agree to  
8 be bound to the terms of a marketing agreement, and for Milk  
9 Orders they never do, the Secretary must determine, "that the  
10 issuance of such order is the only practical means of advancing  
11 the interests of producers of such commodity [i.e. milk, in  
12 this case] pursuant to the declared policy..." and is approved  
13 by producers. And that's a directive in 7 U.S.C. Section  
14 608c(9)(B). Although the "only practical means" test is  
15 expressed at the end of the process, it is something the agency  
16 should -- let me insert parenthetically (I believe does) --  
17 bear in mind from the time a petition for hearing is received  
18 through the conclusion of decision making. Application of this  
19 standard is reflected in USDA's decisions that modify Milk  
20 Order terms requested by proponents, and in decisions where  
21 USDA, on its own initiative, creates a regulatory remedy that  
22 no proponent has asked for.

23           Several of these provisions, that is the provisions of  
24 the statute, present some unique challenges for USDA in  
25 addressing the Cooperatives' proposal for a California Milk

1 Marketing Order, and in reconciling the proposed regulatory  
2 remedies with express statutory limitations and instructions.  
3 The proposals largely disregard Section 608c(18) milk pricing  
4 standards, particularly for Class III and IV uses of milk, and  
5 they appear to create several barriers to the marketing of milk  
6 and dairy products intention with the limits of Section  
7 608c(5)(G). The proposal to incorporate California milk quota  
8 system -- start that again. The proposal to incorporate the  
9 California milk quota system as part of a Federal Milk  
10 Marketing Order plan for distribution of classified milk price  
11 revenue to producers, unnecessarily creates tension with  
12 "uniform" producer price requirements of Section 608c(5)(B).

13           And then a subheading: A Few "Big Picture"  
14 Observations About Supply and Demand for Milk and its Products  
15 in California - The Marketing Area to Which the Contemplated  
16 Order Relates - And in Other U.S. Milk and Milk Product  
17 Production Areas

18           Much data is already in the record concerning the  
19 growth of milk production and of milk products production in  
20 California. Useful visual tools to illustrate dairy growth in  
21 California and the dairy endeavors in the rest of the U.S.  
22 include U.S Census of Agriculture Maps from 1997, 2002, 2007,  
23 and 2012 Census, showing the population of milk cows by  
24 location. The 2012 map is reproduced in Part C of the  
25 exhibits.

1           So now again, towards the end, about five pages in from  
2 the end of the package of exhibits, and this would be  
3 Exhibit C on most of the copies you are looking at, shows a map  
4 of United States with black dots, and the hopefully the  
5 original exhibit will have blue dots, as it was prepared by  
6 NASS, showing the population density of milk cows, one dot  
7 equals 2,000 cows, in the country. This is the milk cow  
8 inventory in 2012.

9           You can go back to the Agriculture Census on the NASS  
10 website and find similar maps showing milk cow inventory for  
11 each of the preceding 5 years, 10 years, 15 years. The Census  
12 is taken every five years, and the results are published about  
13 two years after the Census, so this is the most recent  
14 Agriculture Census, and a visual illustration of the milk cow  
15 population.

16           To me, rather than looking at numbers, I like to look  
17 at maps. And I look at the dots on the map and see there's  
18 fairly substantial concentration of milk cows in the Central  
19 Valley of California, close to that to the Northeast is a  
20 concentration in Idaho. You move down the map towards the  
21 New Mexico-Texas border there's somewhat smaller concentration,  
22 but still a concentration. And then you move up to, to  
23 Wisconsin, and Southeastern Minnesota, there's another  
24 concentration. And there's another concentration a bit more  
25 scattered in New York and Southeast Pennsylvania.

1 I find that useful to visualize where milk is, and  
2 therefore, where product is produced, and where it needs to  
3 flow from. And the absence of maps would be, absence of dots  
4 on the map would suggest that's a place milk and products need  
5 to flow to.

6 Returning to the bottom of page 6. Another useful  
7 visual tool to examine supply and demand for products of milk  
8 produced in California and in the rest of the U.S., and how  
9 supply and demand for these products have changed rather  
10 dramatically from 1993 to May 2006, is the product flow to  
11 population demand maps generated by the U.S. Dairy Sector  
12 Simulator Model, that's the US DSS, to which frequent reference  
13 is made in the -- in the 1999 Final Decision of USDA on Federal  
14 Order Reform, and the 1998 Recommended Decision of USDA on  
15 Federal Order Reform.

16 So if you will, and that venture by Cornell in  
17 preparing this, the simulated and map contours in 1998 and  
18 1999, was based on milk production in 1993. And it was updated  
19 to a couple months for fluid milk, let's see, '93. I think  
20 they incorporated 1996 in the final version. I don't think the  
21 manufacturing sector was updated. So if you will turn to the  
22 last exhibit in my package, that would be Exhibit D, which  
23 would be the last four pages. D is the cover page for that.

24 The first is simply the cover page of the 1996 staff  
25 report, staff paper, by Cornell. It is a rather long document.



1 I didn't reproduce it. What I simply was focusing on here was  
2 the flow of product to market, which was illustrated by the  
3 output of the computer model used by Cornell in their Dairy  
4 Sector Simulator. And what the Dairy Sector Simulator did, was  
5 to take the existing milk production during the period of time,  
6 mostly 1993 for that purpose, and force the model to move the  
7 milk and products produced of milk, in the most efficient way  
8 possible. In other words, to remove human equation from it,  
9 there's no competition, just take all this milk and move it as  
10 efficiently as you possibly can.

11           So, for example, for state like California, which even  
12 back then produced more cheese in the aggregate than its  
13 population consumed, the model being efficiency driven, would  
14 require all the citizens of California to consume only  
15 California cheese, there would still be some left over that had  
16 to be exported. And as you can see in the map prepared in the  
17 1996 simulator, which is assembly, processing, and distribution  
18 cheese plants, there is, in fact, some product that is  
19 assembled and distributed in California that moves out.

20           I did the math for 1993, and based on the population of  
21 California at the time, the average per capita consumption of  
22 cheese in the nation attributed to California population, and  
23 the cheese production as reported by NASS for that year,  
24 California would have had to export, in 1993, about 44 million  
25 pounds of cheese. So there was some export.

1           So fast-forward to 2006. The Dairy Sector Simulator  
2 was used again in the presentation of Chuck Nicholson at the  
3 2011 Dairy Economists Conference. And the update at that time  
4 was, at least as to location of producer milk, where's the milk  
5 supply, was funded, at least in part by AMS. And while they  
6 were at it, they produced a revised "How Would Cheese Flow in  
7 2006?" Based on existing milk supply and population. Again,  
8 as most, as efficiently as possible. A picture says a thousand  
9 words.

10           You look at the cheese flow in 1993 compared to cheese  
11 flow, and this was just for one month in May, not the whole  
12 year like 1993 data was, and there was a lot of cheese flowing.  
13 And again, so I did the math again for 2014, the most recent  
14 year for which all of the data is available. We know the  
15 population of California in 2014, around 38 million people. We  
16 know how much cheese was produced in California, that's in the  
17 NASS data, and we know the per capita consumption, which had  
18 increased somewhat per capita from '93 to 2014. And for 2014,  
19 instead of 44 million pounds that would have to be exported,  
20 minimum, from California, making the most efficient use of  
21 cheese, about 1.3 billion pounds would have to be exported from  
22 California. So that -- that change in supply relationship of  
23 California to the rest of the country, not just California,  
24 look at Idaho, and look at the absence in 2006 of cheese  
25 flowing from the Southeast cheese plants that were in the

1 Southeast in 1993 just haven't survived, and cheese  
2 manufacturing has moved elsewhere.

3           Okay. Enough of my comments on that. I will go back  
4 to my text, which is the top of page 7 and coming to a  
5 conclusion.

6           The simulated Class III price surface for milk  
7 delivered to cheese plants in the 1996 US DSSS report, based on  
8 1993 data is contained on page A10 of the report (.pdf page  
9 52), I did not produce that, but you can access it with the  
10 website access material I provide in the footnote.

11           With the nation's lowest pricing points in the 1993  
12 Class III or cheese price surface, in Central California,  
13 Southern Idaho, and Minnesota, and slightly higher prices in  
14 Wisconsin, I think the difference was 20 cents.

15           California's supply of milk and cheese have clearly  
16 changed since 1993, and since even 2006, the most recent year,  
17 with some published cheese marketing results using the US DSS  
18 model. Cooperative proponents for a California Federal fluid  
19 Milk Marketing Order, a Federal Milk Marketing Order, urge USDA  
20 to look no further than 1990's data on supply and demand for  
21 milk and milk products, along with 1999 agency evaluation of  
22 that data, to reach a decision on the appropriate minimum  
23 Class III and IV prices for California in 2015-16. It is  
24 difficult to imagine how proponents' myopic approach can  
25 satisfy Section 8c(18) of the AMAA.

1           Let me go off text here just for a moment. I'm not  
2 saying that proponents and everybody else haven't referred to  
3 the most recent data available, everybody has. Everybody has.  
4 But what's been termed the Federal Pricing Grid was created in  
5 the 1998, '99 Federal Order Reform process, the 1999 decision,  
6 and the pricing surfaces were produced in the US DSS model for  
7 fluid milk and for cheese, and the template, let me call it a  
8 template rather than grid, that resulted was a pricing surface  
9 for fluid milk based on supply and demand in 1993 to '96 in a  
10 '99 decision. And the template for Class III and IV, or  
11 manufactured products, was based on data pre-existing the 1999  
12 decision. And actually, the pricing surface produced by the US  
13 DSS model at that time, showed that the three lowest pricing  
14 points were pretty close to each other. Wisconsin being a  
15 little bit higher than the Central Valley, as I look at that  
16 map, but not a lot. But then there wasn't that much cheese  
17 flowing out of California, much production in California.

18           And in this hearing where it has to, we're asked to  
19 take that 25 year-old data, essentially, that produced the 1999  
20 decision and superimpose it onto California, well, the template  
21 that existed post-Federal Order Reform, included market  
22 supplied demand and production of products and milk prices in  
23 California that weren't Federally regulated. The template  
24 carried forward a pre-existing milk pricing aspect, which was  
25 California.

1           When, Federal Order Reform was the product of informal  
2 rule making, and USDA described its decision making process  
3 quite transparently, too. USDA assigned its staff to various  
4 committees, and there were some on uniform provisions, some  
5 were in classified pricing, and all of this is discussed in a  
6 decision, as well as, actually in some greater detail, in the  
7 regulatory impact analysis that accompanied that decision. The  
8 committees were composed of Market Administrator staff, and I  
9 think what the description of what happened in those decisions,  
10 for Class I pricing, for example, is pretty informative here.

11           The Department described its process of coming to  
12 conclusions, deriving in part from the US DSS model. In part,  
13 from the pre-existing price surface, and in part from the input  
14 of staff that were familiar with the markets they administered.  
15 So the end result, there was sometimes a little, sometimes a  
16 lot of adjustment in individual markets based on the input from  
17 those that were responsible for administering those markets who  
18 knew the market conditions. There was no staff person in any  
19 of those deliberations representing market, supply, demand, and  
20 pricing for milk in California. There was not one.

21           But in 2015, there were, the Department will still have  
22 to deal with Section 608c(18), and that is the supply and  
23 demand for milk and the products of milk in California. That  
24 is a 2015 perspective, not a 1993 or 1999 perspective.

25           Okay. So the last sentence says, detailed discussion

1 of reasonable levels for Class III and IV pricing in California  
2 in the event an FMMO is adopted for the state, will come in  
3 later testimony. That's all I have prepared, thank you.

4 BY MR. ENGLISH:

5 Q. Chip English. Looking, just referring first to the  
6 foot notes. Are there any particular foot notes that you  
7 think, rather than just being in your exhibit, that you need to  
8 discuss in any detail or can they just be part of your exhibit?

9 A. Well, you know, in the footnote 1 on the first page,  
10 for example I quote the Secretary speaking through the judicial  
11 officer, and that refers to the case called In re Borden, Inc.,  
12 which was published in Agriculture Decisions, Volume 46,  
13 starting at page 1315. And the reference in that document is  
14 page 1420. So you know the decision's already 105 pages. Let  
15 me tell you, page 1420 is only the beginning of that decision.  
16 It is a long decision. And it has to do with the location  
17 value of milk, but the Judicial Officer went out of his way to  
18 say, "We measure the reasonableness of what the Secretary did,  
19 in part, by the study of milk, Milk Marketing by the experts."  
20 And he gave particular attention to two studies, reports,  
21 originating within the Department of Agriculture, to the  
22 Department of Agriculture. The Nourse report was such a  
23 report. And then a decade after the Nourse Report came what I  
24 call the Knutson Reports. The Knutson Reports were two, one in  
25 '72 and one in 1973. And in '72 Knutson described how we got

1 here, and what's the problem, and what are we going to do when  
2 all that Grade B milk disappears?

3         So part one created the framework for the problem that  
4 that committee was trying to address. Part 2 was examination  
5 of different ways to address it. And part 2 contains detailed  
6 discussion on various ways to price milk when Grade B milk  
7 disappears, and came to the conclusion that a product price  
8 formula using surveyed product prices, or determined product  
9 prices, however you arrive at market value of product prices,  
10 and a make allowance, would produce a minimum regulated price  
11 pretty close to what the competitive milk price under the  
12 Minnesota-Wisconsin price series did. And for those who might  
13 be listening that aren't familiar with that, there was a time  
14 when there was a large volume of Grade B milk in Minnesota and  
15 Wisconsin, totally unregulated price-wise, and USDA surveyed  
16 prices actually paid for that milk, Grade B supply, and used  
17 that as a basis for fixing the Federal Class III price. During  
18 most of that time there was only one manufacturing class price  
19 and that was Class III, cheese, butter and powder.

20         It wasn't until the '90's that that subcategory was  
21 further subdivided to Class III and III(a), III(a) being  
22 essentially what is now Class IV, because those two commodity  
23 prices produced, well, the class -- butter, powder makers were  
24 struggling mightily, and mostly-producer organizations were  
25 struggling to account at the Class III price when they made a

1 product that would not return to them a Class III value. So  
2 cooperatives in particular, who use that product for balancing,  
3 had to account to the pool, bore the losses between the  
4 regulated price and what they could get for the market, they  
5 suffered the cost but had to share the benefit of the regulated  
6 price, which they didn't receive in the first place, it was all  
7 the producers who got a higher blend price as a result. So the  
8 Secretary said, probably be a good idea to have a separate  
9 class for butter and powder. And that's where we have been  
10 since. So those are the two reports, the Nourse Report and the  
11 Knutson reports, that's page 1.

12 JUDGE CLIFTON: So the court reporter will have footnote 1  
13 to look at for spellings, but just for now would you spell  
14 Borden, Nourse, and Knutson?

15 MR. VETNE: Borden, B-O-R-D-E-N, Borden Company, the Happy  
16 Elsie Cow Company. Nourse, N-O-U-R-S-E, and Knutson,  
17 K-N-U-T-S-O-N.

18 MR. ENGLISH: It's spelled differently than Knudsen the  
19 company.

20 MR. VETNE: Spelled differently than the failed dairy  
21 company in California. Actually, Ron Knudsen may have changed  
22 his name after that, I don't know.

23 BY MR. ENGLISH:

24 Q. Let me just turn quickly to footnotes 12 and 13.  
25 Footnote 12 is basically the source for the data that is the



1 next to the last, and the second to the last page of your  
2 exhibit, the first two pages of D, correct? Of Exhibit 112?

3 A. That's true. There was a cheese flow, national cheese  
4 flow map produced by the U.S. Dairy Sector Simulator model, you  
5 know, both in 1996, and published in a 1996 report, and  
6 published in a 2011 report, both of course, relied on milk  
7 supplies for prior years, you can't simultaneously observe and  
8 report, so that's the source of both maps. I'm aware that  
9 during the period between 1996 and 2011, the model has been  
10 improved. Everybody that tinkers with computer models makes  
11 improvement as they go along.

12 Q. But the underlying assumptions --

13 A. They show the same thing. The same thing being the  
14 most efficient movement of product from where it's being  
15 produced to where it would be purchased.

16 Q. Going to the bottom of page 4, the top of page 5, when  
17 you discuss 608c(5)(G) and I think what's euphemistically  
18 called the "trade barrier" discussion. And I may have given  
19 your experience a little short trift, and I apologize.

20 When you referenced California, one thing you got  
21 involved in was representing Southern Nevada entities in the  
22 case that ultimately, two cases went up to the Supreme Court,  
23 U.S. Supreme Court, and I think maybe you think that you got  
24 the name Hillside accidentally and it should have been  
25 Ponderosa.

1 A. All the lower court decisions were called  
2 Ponderosa V whoever, and then you got there first, Chip, and  
3 the Supreme Court took Hillside as the name of the case.

4 Q. But do you recall whether the, in addressing the case  
5 in the District Court, whether the Trade Barrier argument of  
6 (G) was, an Lehigh Valley case, ended up being analyzed as sort  
7 of the mirror image for what states could or couldn't do  
8 interstate commerce?

9 A. Absolutely. I know I, and I think others that do what  
10 I used to do, you know, look at this as being a Federal version  
11 of the Commerce Clause. I think -- I think it might have --  
12 okay. I was sworn to tell the truth, and maybe go off script a  
13 little bit.

14 I think it might have a little less teeth when it comes  
15 to milk because it says, "orders can't prohibit the marketing  
16 of milk from elsewhere." The Lehigh case said, you know, if  
17 it, for all practical purposes prohibits, you know, you look at  
18 the practical effect, not for the word "prohibit" to have that  
19 effect, but, or in any manner limit in the case of products of  
20 milk. That's a really tight restriction. I think that, that's  
21 as close to the Commerce Clause examination as you can get.  
22 And, you know, there's products of milk, there is fluid milk,  
23 there's cheese. So that's why I refer to that.

24 Mr. Vlahos?

25 MR. VLAHOS: On the grounds that the witness is now

1 interpreting a case, I'm going to object to it and ask that it  
2 be stricken, and it's a legal conclusion, and the case speaks  
3 for itself.

4 JUDGE CLIFTON: Your objection is noted, the witness's  
5 testimony stands. I will not strike it.

6 BY MR. ENGLISH:

7 Q. And finally, Mr. Vetne, before I move admission of the  
8 exhibits and allow others to question you. As I read your  
9 testimony, I sort of thought the heart of it, and if I were to  
10 summarize it for my part, was looking at the bottom of page 3  
11 and the page 4, top of page 4, the concept that a proponent had  
12 a burden of proof of the evidence of market practices, rather  
13 than market theory.

14 A. That's really the heart of step one, yes. And that's  
15 what, that is the focus. And then, the second focus was if  
16 USDA gets that, what do they do with it? And the most  
17 important part about what they do with it is, the HTST pricing.  
18 So those are the three highlights.

19 Q. And so over on page 4, what the Secretary himself said  
20 at the time you referenced what you call the 1989  
21 Texas-Southwest Plains decision, having been there myself, and  
22 on the losing side I might add, you know, I call that sort of  
23 the pure milk Gore, Inc., Gore Brothers Pure Milk Case. Hat,  
24 the Secretary acknowledged that the mere, that, yes, because an  
25 entity was a producer-handler, there was unpriced milk. And

1 because there was unpriced milk, there was the potential for  
2 unfair disorderly marketing conditions, correct?

3 A. Yes.

4 Q. But the problem was, as the Secretary says in that  
5 statement on the top of page 4, that there was a lack of  
6 demonstrable evidence of actual disorder.

7 A. That's --

8 Q. And I did, I inserted the word "actual".

9 A. That's exactly right. And I -- I have been to many  
10 dozen Milk Order hearings over the years, and I have frequently  
11 disagreed with conclusions of the Secretary as to what  
12 constitutes disorder, what needs to be remedied, or what remedy  
13 to provide in the circumstances, but I have never, I do not  
14 remember any case, and I think I remember all of them, in which  
15 there were not observed practices, marketing practices,  
16 transactional practices, that were the subject of the inquiry,  
17 and what to do with them when proven was really the debate, you  
18 know --

19 JUDGE CLIFTON: Did you just say you do not remember any  
20 where there was not an examination of practices?

21 MR. VETNE: Exactly right. There was always an examination  
22 of something that was observed. Something that was observed.  
23 And frequently, we say, "I observed that, I think it's a good  
24 thing." Somebody else will say, "I observed that, you better  
25 do something about it." But there was always an observation of

1 something.

2           And I also noted that, you know, frequently it is the  
3 Marketing Orders themselves that create it. Thank you for  
4 giving me the soapbox, but we had ten years of hearings on  
5 performance standards that could have been avoided if only USDA  
6 had zoned out producer milk from the market in which it was  
7 pooled. That's what brought California milk into Ohio, it  
8 brought Idaho milk into the Upper Midwest. The value of that  
9 milk in relation to the market, as it had been prior to Federal  
10 Order Reform, would have been so low there would have been no  
11 regulatory incentive to make inefficient movements of milk  
12 simply to pool. That's one example.

13           There are other opportunistic things, like Superior  
14 Dairy in Ohio. Superior Dairy saw the chance to be a partially  
15 regulated plant. Took advantage of existing provisions,  
16 created a partially regulated plant, and realized a financial  
17 benefit over a period of time. It took a year to address it.

18           And actually in the final conclusion -- I wish we would  
19 do this more often -- you know, there was, there wasn't  
20 formally negotiated rule making, but there was a negotiated  
21 resolution that was proposed to the Secretary by opposing  
22 sides. I wish that could happen more often.

23           JUDGE CLIFTON: In this hearing, for example, I'm just  
24 saying.

25           MR. VETNE: Who was it that said, let's get Scott,

1 everybody in the same room, bang their heads together and come  
2 up with some solution. That could work. There is room in the  
3 system for negotiated rule making, thought ought to be given to  
4 it.

5 JUDGE CLIFTON: Well, it can be addressed in your briefs,  
6 and the work that you do leading to your briefs. Mr. Vetne,  
7 what did you mean by zoned out?

8 MR. VETNE: Zoned out is a way that that producer milk,  
9 that is, the revenue from the pool that goes to producers, used  
10 to be priced from a market center. So, for example, if the  
11 center of the market is Chicago, a producer delivering to a  
12 plant in Wisconsin would get a lower price because the value of  
13 milk at that location is less than the value of milk delivered  
14 to a plant in Chicago. And if it went even further away to a  
15 plant in Minnesota or South Dakota, it would be even lower  
16 there. You take that and extend it further out, once you get  
17 to Idaho, there would be, like a buck left. There was  
18 something way below any blend price that anybody would want to  
19 try to associate Idaho milk in the Upper Midwest.

20 The final Federal Order Reform Decision didn't use that  
21 practice on a market-by-market basis, but had this contour  
22 prices, the price grid for Class I, and continued to adjust  
23 producer prices exactly the same as handler prices, so even if  
24 you are a thousand miles from the market where relative to that  
25 market the milk ought to be worth not very much at all because

1 it is so far away, if there were higher class price or a good  
2 class price, that producer's blend price would not be reduced a  
3 thousand miles away from the market. So that is a, was a  
4 major, major difference pre-Reform and post-Reform, and I don't  
5 think it was a good Reform.

6 JUDGE CLIFTON: Mr. English, when you referred, I believe  
7 you were referring at the bottom of page 3 to the  
8 Texas-Southwest Plains decision, and you said, "I call that  
9 the -- "

10 MR. ENGLISH: Pure milk, P-U-R-E, M-I-L-K.

11 MR. VETNE: That was his clients.

12 MR. ENGLISH: No, that wasn't my client, that was  
13 Mr. Yale's, we have referred to Ben Yale that passed.

14 MR. VETNE: Pure Milk was the, what was the company that --

15 MR. ENGLISH: Was the producer-handler.

16 MR. VETNE: The producer-handler that stimulated the  
17 request for remedy.

18 MR. ENGLISH: And just because, you know, I just want to be  
19 clear, that was not my client, that was Mr. Yale's client, and  
20 he was successful.

21 At this time, your Honor, I have completed direct  
22 examination and I would move admission of the Exhibit 111 and  
23 112.

24 JUDGE CLIFTON: Let's start with Exhibit 111. Is there  
25 anyone that would like to question the witness regarding

1 Exhibit 111 before you determine whether you have objections to  
2 it being admitted? There is no one. Is there any objection to  
3 the admission into evidence of Exhibit 111? There is none.  
4 Exhibit 111 is admitted into evidence.

5 (Thereafter, Exhibit Number 111, was  
6 received into evidence.)

7 JUDGE CLIFTON: Regarding Exhibit 112, is there anyone that  
8 would like to question Mr. Vetne regarding Exhibit 112 before  
9 determining whether you have any objection? There is no one.  
10 Is there any objection to the admission into evidence of  
11 Exhibit 112? There are none. Exhibit 112 is admitted into  
12 evidence.

13 (Thereafter, Exhibit Number 112, was  
14 received into evidence.)

15 MR. ENGLISH: I'm done.

16 JUDGE CLIFTON: Very good. Thank you. Who will be the  
17 next to question Mr. Vetne? Mr. Miltner.

18 CROSS-EXAMINATION

19 BY MR. MILTNER:

20 Q. Ryan Miltner, Counsel for Select Milk.

21 Hi, John.

22 A. Hi, Ryan. Yeah, you don't have to call me Mr. Vetne.

23 Q. I won't start now.

24 So as I was reading over this and trying to figure out  
25 what I wanted to ask, I was thinking of my Administrative Law



1 class many moons ago, and how I probably shouldn't have skipped  
2 it to go to Indians games when we talked about formal rule  
3 making. But I have picked up on a few things since then.

4 A. Yes, you have. I agree. Very well, too.

5 Q. Thank you.

6 I guess, let's start with your statement. The first  
7 thing I think is easy, your footnote number 1, what you call  
8 the Knutson Reports, is that the Milk Pricing Policy, Part 1  
9 and Part 2?

10 A. Exactly right.

11 Q. Okay.

12 A. Dr. Knutson, who was then a Chief Economist, I think  
13 Chief Economist, in AMS Dairy Programs chaired the committee.  
14 So like the Nourse Report, Ed Nourse was the Chair, I called it  
15 the Knutson Reports because he was the Chair. But it is the  
16 Milk Pricing Policy and Procedures.

17 Q. Okay, great. So let's talk about Section 6023.

18 A. 6023?

19 Q. Yes.

20 A. Where are we?

21 Q. This is the last paragraph on page 1.

22 A. Oh, okay.

23 Q. And you quote the section which begins, your quote  
24 begins, "to establish and maintain such orderly marketing  
25 conditions for milk and other farm products." I want to focus

1 on "such orderly marketing conditions."

2 A. Yes.

3 Q. In your experience, is that the clause that leads us  
4 all to this dance around what is disorderly versus orderly?

5 A. No and yes.

6 Q. I'm glad you have clarified it.

7 A. Orderly is used twice in that section. "Establish  
8 orderly" and then "orderly flow of the supply thereof to  
9 market". If one reads Nourse, if one reads the first few pages  
10 of the Federal Milk Marketing Order program, which is my  
11 Exhibit A, Part A of Exhibit 112, orderly has context. And  
12 this was written in the early '30's when there was chaos, not  
13 just in milk, but in agriculture in general. Came off the  
14 Stock Market plunge in 1929 and the whole country went into a  
15 depression. And leading up to that time, in a period of  
16 irrational exuberance, everybody was producing more than they  
17 probably should have. There was, in fact, for milk and other  
18 products, too much of a supply. What happens when there's too  
19 much of a supply? Price goes down.

20 And for milk, there were have and have not's. Some  
21 producers had a, like we heard earlier in this hearing, before  
22 the Gonsalves Milk Pooling Act that happened in the '30's.  
23 Some had a Class I market, some did not. Prices between the  
24 producers varied differently and there was a struggle between  
25 producers to get a share of that Class I market, and they would

1 economically, if not physically, cut each other's throats to  
2 secure a share of that market. That is, there's, if there is a  
3 question of where the line for market disorder exists, that is  
4 way above the line.

5           There was a -- there was an Appellate Court Judge in, I  
6 think the Fourth Circuit, named Judge Frank, very  
7 well-respected, who wrote a decision called Queensboro Farm  
8 Products. And he sort of describes his emotions after hearing  
9 about -- about the dairy economy leading up to that case. And  
10 I think I got most of that, part of the decision by memory.

11 And here it goes:

12           "The city dweller or poet who views the cow as a symbol  
13 of bucolic serenity is naive indeed, for from the udders of  
14 that placid animal flows a bland liquid indispensable to human  
15 health which has produced more human strife than alcoholic  
16 beverage."

17           And that's really, that human strife is what led up to  
18 the enactment here. So the context for orderly, getting back  
19 to your question, is what happened there. And bringing  
20 production back into line with supply, and then doing whatever  
21 you can to make market channels work efficiently, and to avoid  
22 the farmer-to-farmer strife that was observed by Congress  
23 leading up to this Act. Okay.

24           So does that answer your question?

25           Q. Sort of.

1 A. More than you wanted or less than you wanted?

2 Q. No, it's, that's helpful. It's the Second Circuit.

3 A. Second Circuit.

4 Q. Yep.

5 A. Thank you. You Googled it while I was --

6 Q. No, no, no. I knew it. I'm trying to find the quote I  
7 in there that I like better than yours, which is something  
8 along the lines of: "To completely understand the complexity  
9 of the milk problem would require almost a universal knowledge  
10 of chemistry, biology..." and several other disciplines. I  
11 like that one.

12 A. Okay. Well, I like the one that isn't in a court case  
13 that somebody said, "there are more people that understand  
14 Quantum Physics than understand how milk is priced." So that's  
15 why we're here. Thank you.

16 JUDGE CLIFTON: How is Queensboro spelled?

17 MR. MILTNER: Q-U-E-E-N-S-B-O-R-O.

18 JUDGE CLIFTON: Thank you.

19 MR. VETNE: I know you and I are having fun, but let's try  
20 to contribute to this record.

21 BY MR. MILTNER:

22 Q. Okay. So let's, I want to ask another follow up on  
23 that particular phrase, "such orderly marketing conditions."  
24 And obviously there are a litany of marketing conditions, but  
25 my question is, does the AMAA describe a situation or describe

1 a, what I will call a set of one -- in other words, the  
2 Secretary has a singular goal, which is to protect orderly  
3 marketing conditions, and is that, is that a Holy Grail or is  
4 that a continuum of acceptable outcomes?

5 A. Hopefully what happens after the Secretary intervenes  
6 is more orderly, more efficient, more predictable, more  
7 transparent, than before. Producers couldn't trust their  
8 butterfat tests, we're getting paid for all the butterfat, and  
9 after involvement they can. That kind of thing.

10 However, rather than, I want to refer you, the Borden  
11 decision that is cited in Footnote 1, the lengthy decision, has  
12 a heading, that's chapter and headings throughout, and has a  
13 heading that essentially says, here's how, here's how USDA has,  
14 and how we judge disorderly marketing conditions. And then the  
15 Judicial Officer goes through the economic and regulatory  
16 history, the writings about it, and in that case, the decision  
17 that was under review.

18 So it, as I say in the next page, it has context. It  
19 has historical context and it has context as applied, and  
20 that's what I mean. It is -- is it a fixed? I think you used  
21 the term fixed.

22 Q. Close enough.

23 A. It is -- it is fluid.

24 Q. No pun intend?

25 A. No pun intended. It is fluid. What is unfair and

1 disruptive today may not have been thought about 20 years ago,  
2 so, or what was deemed to be Holy Grail 20 years ago may not  
3 exist today, and yet we still continue to operate the same way  
4 as though it still existed. I think that's just as pertinent.

5 Q. The section of the Borden decision you cite or you have  
6 referred me to, would you characterize that, that section as a  
7 statement of policy or a statement of law?

8 A. It is a review by the Judicial Officer of policy as  
9 applied by the USDA.

10 Q. Okay. That decision is now 28-years old I think, if my  
11 math is right. No, that would make me older than I am. The  
12 Borden decision is '87, right? So that's 28 years?

13 A. Yes.

14 Q. Okay. So because what may be the Holy Grail at one  
15 point and no longer be the Holy Grail, have you read the  
16 decision? I assume you have read it recently, do you believe  
17 that the articulation of policy there is still an accurate  
18 state of what the policy is or should be today?

19 A. I think it is a good articulation of the process. The  
20 decision may not, you know, the decision involved a pricing  
21 result that doesn't exist today, so the circumstances on the  
22 ground are different, but the process of getting there I think  
23 is the same, except that we have more information, such as the  
24 Dairy Sector Simulator. We have more sophisticated, both  
25 marketing and policy analysis tools today than we had in 1987.

1 I think the process is the same. We have better tools to apply  
2 to that process.

3 Q. In the particular section that you have pointed to  
4 which talks specifically about what disorderly marketing is,  
5 you believe that section, I guess, looking at that section in  
6 isolation regardless of the actual decision there, you believe  
7 that is still relevant for our consideration and the  
8 Department's consideration today?

9 A. I think that still illustrates it, yes.

10 Q. Okay. I want you to look at page 5 of your testimony,  
11 if you could.

12 A. Oh, good you skipped through all the way over to 5.

13 Q. There's no promise I won't go back. The section you  
14 quote in the middle of the page, and you're quoting from a  
15 letter -- is this the letter from Dana Coale that you are  
16 quoting there, I think?

17 A. That's true. Dana Coale's letter of September 17,  
18 2012.

19 Q. Okay.

20 A. End-to-end. And I quoted that as an expression of  
21 fact, that is, the fact of that policy in 2012; the fact of  
22 that policy in years prior to 2012; the fact of that decision  
23 expressed, that policy expressed in decisions since I have  
24 looked in vain for a departure from that policy since 2012, so  
25 I have to believe it continues to exist.

1 Q. The clause that you quote prior to the ellipsis there.

2 A. Yes.

3 Q. Talking about the, and I'll read the section I'm  
4 looking at: "Since it is not authorized to establish minimum  
5 prices above the relative market value of the products of milk,  
6 with respect to manufactured products." Would you agree with  
7 me that the Secretary, the Department, has adopted a national  
8 market as the relevant market for those products?

9 A. I would agree that product prices that are surveyed by  
10 USDA are the result of surveying transactions throughout the  
11 United States, resulting in a calculation that produces an  
12 average price for all products in the United States.

13 Q. And so for purposes of establishing minimum prices  
14 under the Federal Orders, that average price you refer to is a  
15 single national price, correct?

16 A. That is what is produced in the Federal Order system  
17 that resulted from Federal Order Reform in 1999, that resulted  
18 in a template that did not include California.

19 Q. So is that yes?

20 A. It's yes, but.

21 Q. Okay.

22 A. Your question, the answer to your question would  
23 produce a misleading inference if I didn't do the but, so yes.

24 Q. Maybe incomplete, but not misleading. To the extent  
25 that any proponent here seeks a different federal price for



1 manufacturing classes than what exists in the current Federal  
2 Orders, would that be a deviation or a change in policy for the  
3 Department?

4 A. It would be a different price. I do not believe it  
5 would be a deviation from, or a change in policy. I think the  
6 Secretary, what resulted from Federal Order Reform, was, at the  
7 time, the reasonableness and functionality of the Class III  
8 price was measured against how closely does it match what we  
9 used to use as the basic formula or M-W price? Okay? One of  
10 the factors by which it was measured was, is it pretty close?

11 One of the factors that was measured beyond that was  
12 rational economics, maybe the something that wasn't exact term,  
13 but rational economics. What was produced at the time was a  
14 price that was pretty close to what had previously been  
15 announced as the M-W price, which was the price of milk used to  
16 produce cheese in the most efficient, lowest price production  
17 area of the country, Minnesota and Wisconsin. And as I recall  
18 looking at the Class III price surface, that was true at the  
19 time. Supply and demand for milk and products of milk are  
20 different now.

21 So somebody asked an earlier witness, I can't say who,  
22 so, you know, the Secretary could have different manufacturing  
23 prices with different locations to reflect local supply and  
24 demand. So -- or, and the answer was yes, and I can't member  
25 who said that. Or the Secretary can establish a manufacturing

1 price by formula at a level which is lowest in the country, and  
2 individual markets then, can adjust by premiums or other  
3 factors unhampered by minimum prices. So if it is at the  
4 lowest price, you don't need multiple, multiple pricing points.  
5 If it's at a higher price someplace, then you might need to  
6 consider having a lower pricing point in a market where supply  
7 and demand for their product produces a value for that product  
8 in that local market.

9 Q. This might be a difficult question because I -- because  
10 I can't, we don't have a true comparison, but I'll try it  
11 anyway. Are you arguing that the formulas for manufacturing  
12 milk in particular, that we currently have, are no longer an  
13 appropriate, or no longer a close approximation of what the  
14 MWNBFP were?

15 A. I'm not making that argument, but I think that it's  
16 moved farther away from what the MWNBFP were. It's been 20  
17 years data time since that time, and I'm not saying it is  
18 higher than M- or BFP would have been, but less a reflection of  
19 what it is then. I -- as I was preparing for this hearing, I  
20 took a look at the NASS data on cheese production. And NASS  
21 used to report cheese production by, I think five regions. It  
22 was the Western Region, there was the South Central Region, the  
23 Northwest Central Region, the Northeast Central Region, and  
24 then the Eastern Seaboard. Maybe the Eastern Seaboard was  
25 subdivided, and so maybe there were six, so you had a pretty

1 good idea.

2           And when you take cheese or cheddar cheese, you try to  
3 plot out where the dividing line is, where is the midpoint at  
4 which half the production is to the east and half the  
5 production is to the west. And you assume that when prices are  
6 surveyed, they are more or less followed to be weighted that  
7 way, or half the production is to the north and half to the  
8 south. There would be a geographical line just simply, or a  
9 pinpoint if you could do it, as to where is the center of  
10 cheese production. And back then, as now, that line falls  
11 somewhere in the Central Region. Probably not as close to, as  
12 close to Chicago as it used to be, it's probably moved quite a  
13 bit west, but it is still in the Central Region.

14           The West Production Region doesn't produce half, so you  
15 have to move into the Central Region before you get to half the  
16 cheese production. So the cheese is basically a Central United  
17 States price if the surveys are somewhat proportioned either in  
18 cheddar or all cheeses to production regions, but if you take  
19 that same approach to nonfat dry milk, for example, and you try  
20 to pinpoint the center of production so that as much powder is  
21 produced to the west of the line as to the east of the line,  
22 you get a line that's not, it is not, you know, near Wisconsin  
23 and Minnesota, the line is at the Nevada-California border.

24           So whatever survey price is produced now for butter and  
25 powder, is heavily weighted towards what I believe to be a

1 lower value of that product in California, but it's not much  
2 lower for in terms of transportation to get into Nevada a  
3 little bit. But for California, product still has to equalize,  
4 would still have to move into the Central part to get an  
5 equalized value. So California and the evidence is the value  
6 is lower here.

7 There is no option other than finding a value for that  
8 product in California. And if that requires two price  
9 surfaces, two Class III prices, or a new lowest price being the  
10 California price, I don't know. But that should be the outcome  
11 of this hearing, if there is an outcome, to make that  
12 determination.

13 Q. That kind of leads me to my next question then. So how  
14 do you put a number on or quantify a formula or a price that  
15 approximates what the M and W and the BFP represented 20 years  
16 ago? Not that you are going to replicate those formulas, but  
17 that you achieve what I think you perceive to be as an accurate  
18 determinative price?

19 A. You don't need to. You don't need to replicate the M  
20 and W, 20 years ago. You know, you had a product price formula  
21 that represented the milk value in cheese at the lowest, at the  
22 lowest priced area within the Federal Order system. California  
23 was not part of the Federal Order system. Didn't need a lower  
24 price in California than the Federal Order system, it already  
25 had a State Order with a lower price.

1           Now, if you bring into California, the process is the  
2 same. You have to determine a market value for the products of  
3 milk in the marketing area to which the contemplated Order  
4 applies, that's the directive of Section 608c(18). So you  
5 determine a California value for cheese.

6           If you go back to the second Knutson Report that the  
7 one in which a recommendation was made for product price  
8 formulas, you got to do two things, you got to determine a  
9 value for the product, and you got to determine a reasonable  
10 make allowance so that in the end, the manufacturers receive  
11 enough margin they are willing to take milk and continue to be  
12 in business to dispose of milk that's not used in Class I and  
13 II. That's the end result. And you can have a make allowance,  
14 you know, that's twice the average cost. If you have a product  
15 price that is a dollar above that, it doesn't matter if you  
16 have got a good make allowance, both have to be in harmony in  
17 the market that you are looking at.

18         Q. And even though California is not in the Federal Order,  
19 we nevertheless, the prices for cheese manufactured in  
20 California are already incorporated into the formula, are they  
21 not?

22         A. They are incorporated into a California price, if  
23 that's what you mean.

24         Q. No, I don't mean a California price. They are  
25 incorporated into the prices surveyed which set the price.

1 A. Oh, absolutely. They are part of the survey that sets  
2 the price, sets a national price for cheese. It doesn't tell  
3 you what the value of cheese is in California, all it tells you  
4 is what the average value of cheese is on a given day where all  
5 cheese clears the market.

6 Q. Well, it actually sets a weighted average price on  
7 that, doesn't it? So it reflects both the price and the  
8 volumes produced in California and other locations, correct?

9 A. Yes, yes. That line -- that line, since 1999, has been  
10 edging closer to California. California and Wisconsin have  
11 both produced more cheese. Wisconsin started to come back from  
12 the edge, and is finally climbing back up in the direction that  
13 California was for 20 years, maybe not as fast or as large. So  
14 the midpoint line is, wherever that line is, everybody to the  
15 east of that line, value flows from west to east. Everybody to  
16 the east of that line will have no problem in a minimum price  
17 set at the center. Everybody to the west of that line, if they  
18 are subject to a minimum price set in the center of the line,  
19 will have their product priced more than they can recover in  
20 the marketplace.

21 And now we have this unregulated area in Idaho. A lot  
22 of product. You can look at the '06 product flow map, lot of  
23 product is now coming from Idaho, unregulated. No minimum  
24 price applies.

25 Q. And yet but still those cheese produced in Idaho, if it

1 meets the specifications, are incorporated in the survey  
2 nonetheless, correct?

3 A. Cheese, yes. They are incorporated in the survey. But  
4 the measure here is not the value of cheese on average, it is  
5 the value of cheese in California. And more importantly, it's  
6 the value of milk going into the cheese in California.

7 Q. This colloquy we're having about whether it's the  
8 average or whether it's California, isn't that a policy  
9 consideration?

10 A. No, it's an economic consideration. The policy's  
11 already established. The policy is from the final Federal  
12 Order Reform Decision, and is guided by, I believe, the Knutson  
13 report, too. You find a commodity price, you apply a  
14 reasonable manufacturing allowance to produce a result that  
15 will allow manufacturers to purchase milk and make a reasonable  
16 profit. It is the essence of reg. making. It's a new concept  
17 in Milk Orders to consider it reg. making, but that's what reg.  
18 making does, it sets cost, regulates prices, and allows a  
19 reasonable return on investment. That's where we are in the  
20 Class III and IV formula.

21 You take something, any component of that, and pretend  
22 that there's revenue where there isn't, you have produced  
23 chaos. Illegal chaos and economic chaos.

24 Q. The decision by the Secretary to utilize the average  
25 price in setting the formulas, though, that is a policy

1 consideration, would you agree?

2 A. That was a policy -- that was the result of policy, it  
3 wasn't, that wasn't the policy.

4 Q. Well --

5 A. That was the result of policy. And if you read the  
6 decision, the policy was, we will find a price that allows  
7 manufacturers to pay for milk and recover a reasonable return  
8 on their investment. The most emphatic clause I think in the  
9 Federal Order Reform Decision, says "the importance of  
10 establishing a price for manufactured use is low enough to  
11 clear the market cannot be understated. The importance of  
12 market clearing cannot be understated." But I'm not concerned  
13 about clearing the market in New York or in Ohio, here. What  
14 is the price that will clear the market in California?

15 Now, it may be demonstrated in California that the  
16 average price for cheese, whatever it is, Western Missouri,  
17 Eastern Missouri, Iowa, Wisconsin, that manufacturers here can  
18 take that price as the commodity price, subtract the make  
19 allowance and pay producers and stay in business, that would  
20 follow policy. That would follow that policy. What resulted  
21 from the Federal Order Reform Decision was the result of  
22 policy, and it was, it was the result of policy that did not  
23 require USDA, as I have said, to consider whether that's  
24 applicable to supply and demand for products of milk and milk  
25 itself in California. It wasn't part of the template, although



1 it is part of the process upon which prices are surveyed. It  
2 is not part of the pricing template at the time.

3 Q. The line you have described as far as setting the,  
4 excuse me, the center of cheese manufacturing is, as  
5 California's cheese manufacturing is increased, you note that  
6 line moves west.

7 A. It does, it has to.

8 Q. As it moves west, doesn't the impact of that cheese  
9 production, including the costs of California manufacturers,  
10 get pulled into the formula to a greater extent?

11 You are shaking your head no.

12 A. No, I'm not shaking my head no meaning --

13 JUDGE CLIFTON: He's thinking.

14 MR. MILTNER: Okay.

15 JUDGE CLIFTON: I think we need a break. Remember exactly  
16 where you are, "to the extent that line gets pulled west -- "

17 MR. MILTNER: I have a note here, your Honor.

18 JUDGE CLIFTON: Okay, good. I'm going to ask you to ask it  
19 again when we come back. It is 4:13. Let's just take 10  
20 minutes roughly. Please be back and ready to go at 4:25.

21 (Whereupon, a break was taken.)

22 JUDGE CLIFTON: We're back on record at 4:26.

23 Mr. Miltner, you may proceed.

24 BY MR. MILTNER:

25 Q. Thank you, your Honor. I believe my last question

1 before we went to break dealt with the line Mr. Vetne had  
2 referred to, reflecting the center of cheese production in the  
3 U.S., and he had testified that that line over the years has  
4 moved westward. And my question was, as that line moves  
5 westward, does it not incorporate California cheese sales  
6 prices in the national price survey to a greater extent?

7 A. And the answer is yes, but let me add. The line -- the  
8 line doesn't just move westward. The line that I have in mind  
9 moves westward because a proportionately greater volume of the  
10 national cheese supply is in western states compared to eastern  
11 states as time goes on. So that would be California, Idaho,  
12 New Mexico. So at this point, you know, in our discussion, we  
13 don't know whether that makes a difference in arriving at an  
14 average price, because it could be that all other prices  
15 surveyed are the same price, so it doesn't matter where  
16 geographically it is, but it does matter if on one side of the  
17 line, survey prices tend to be higher, on another side lower.  
18 So as, if, indeed, as I think the facts prove, surveyed prices  
19 reported are lower in the western states, whether it's  
20 California or anyplace else, that line will move towards those  
21 states. And a regulated price produced at that line would not  
22 create any challenges for any plants located to the east of the  
23 line because the line is at an average price lower than survey  
24 results to east. It would create a challenge the further west  
25 you get from the line, if indeed prices are lower to the west,

1 because it would impute a value that doesn't exist to the west  
2 of the line.

3           When the Federal Order Reform Decision came, if you  
4 look at the price surface map, it didn't make much difference  
5 in the Federal Order system to have one price that was  
6 essentially the Upper Midwest price, and the DSS model, I  
7 think, served to reassure USDA that if we do it this way, it is  
8 something everybody can live with, you know, because that model  
9 produced a price that was lowest in the Upper Midwest. Well,  
10 almost lowest, lowest in Minnesota, Central California, and  
11 Idaho.

12           And, in fact, if you look at, if you look at the flow  
13 of product on the next to the last page of Exhibit 112, even  
14 then there wasn't a lot of product that needed to flow to the  
15 east from California or the Pacific Northwest at that time. So  
16 it was a combination of policy articulation and application of  
17 policy which produced a result that didn't look to, if I were  
18 looking at it as Administrator Analyst, it didn't look like it  
19 produced too many problems for those plants within the Federal  
20 Milk Marketing Order system. So I think it was a rational  
21 result at the time.

22           If you look at the next page, the last page again, the  
23 Pacific Northwest doesn't have to go very far under ideal  
24 efficiency conditions to dispose of its production of cheese in  
25 excess of per capita consumption, but California now does, and

1 Idaho now does, and it all flows east. And where a market is  
2 flowing from where produced to where consumed, it tells you,  
3 any economic analysis tells you that if its lowest value where  
4 produced and highest value where consumed, oranges flow to  
5 New England from Florida, cheese flows from California to  
6 Atlanta. It is worth more in Atlanta than it is in Tulare. So  
7 you have a problem to the west of that line.

8           So what kind of a rational system, then, would create a  
9 problem for half the market or a quarter of the market, and  
10 basically allowing no challenge to some of the players, and  
11 significant challenge to a good portion of the players.  
12 That's -- that's a new conundrum that needs to be raised for  
13 the first time in this hearing, because it is for the first  
14 time that USDA has been presented with an economic challenge to  
15 its application of policy in the Reform Decision. That ends my  
16 answer.

17       Q. Thank you. You stated in your answer, and I think you  
18 stated it once before the break, no cheese manufacturer east of  
19 the line would have a problem with the price set based on the  
20 line in the middle of the country, more or less. Did I say  
21 that -- is that right?

22       A. I did, because, yes, I am assuming that the prices,  
23 that the values are higher to the east because that's the way  
24 the product moves.

25       Q. Now, we have been in hearings, you and I, representing

1 different clients on manufacturing prices, but as you recall  
2 there were cheese manufacturers from the Northeast complaining  
3 about the prices from the formulas being too high, that they  
4 needed to be adjusted lower. Remember that?

5 A. That was in the make allowance. Absolutely. Yes. The  
6 resulting price was more than they could recover in the  
7 marketplace because the make allowances were set too low.  
8 There are two places in application of the policy where there's  
9 a danger of making a mistake, and one is in determining what  
10 the value of the product is, where the price is to be applied,  
11 and determining the cost, reasonable make allowance for the  
12 product so that there can be return on investment.

13 Q. And you remember in the same hearing, there were  
14 producers who owned interests in cheese plants west of the line  
15 saying everything is fine, you don't need to change the make  
16 allowance for us, right?

17 A. Well, the make allowance wasn't changed for producers,  
18 it was changed for manufacturers, so I don't think that's  
19 right. You will have to ask your question with more precision.

20 Q. You remember that there were producers who owned  
21 interests in cheese plants. Therefore, they had a processor's  
22 interest as well as a producer's interest, and they testified  
23 their cheese operations were doing just fine under the current  
24 make allowances. You remember that?

25 A. I remember that there were producer groups and I

1 remember that there was a cheese plant in New Mexico that is  
2 owned by producers, and I remember that producers didn't want  
3 to increase the make allowance. That's as far as my memory  
4 goes. I don't remember that the producers, although they had  
5 an ownership interest, were speaking for the managers of that  
6 plant or the butter directors of that plant. To me, it makes  
7 no difference if they say, "I own stock in this company,  
8 therefore, regulate or don't regulate." That's not really the  
9 point.

10 Q. Your answer also prompted another question, your  
11 previous, previous answer. The page in your Exhibit 112, I  
12 believe, the one that has the May 2006 map with cheese flows?

13 A. Yeah, the last page.

14 Q. Yeah. How is the length of the line originating from  
15 each triangle determined?

16 A. If you go back, if you go back to the text on the last  
17 page which tells you where to find the 1996 us US DSS spatially  
18 disaggregated model, it has many pages of the narrative  
19 description how the model works and what the lines mean. There  
20 is some of that in the Chuck Nicholson presentation, but go  
21 back to the model because it takes product from where produced  
22 through distribution, to points of consumption as far as it  
23 needs to go, till all the product's gone. So some of the lines  
24 aren't very far because the product, the aggregate of products  
25 produced a certain location don't need to go very far until

1 they are all disappeared and all the demand is satisfied. And  
2 this model, not, this map, again, most efficient possible  
3 distribution of all the cheese, wherever produced, to all  
4 consuming points, wherever they are, has product flowing from  
5 Central California to populations in the Southeast, Georgia,  
6 Florida. We know California product ends up in Chicago,  
7 Kansas City.

8           The model doesn't allow it to do that because the model  
9 doesn't incorporate human distortions to maximum efficiency.  
10 So this is -- this gives you a picture that illustrates  
11 direction. As soon as you bring, you know, a pound of cheese  
12 into California, which the model doesn't do, from Idaho, that's  
13 a pound of cheese that can't be consumed in California, it has  
14 to flow out of California. So this is an understatement, I  
15 think, of the flow of product, but it gives you an indication  
16 of what would have to be done at maximum efficiency. So the  
17 end of the line is, all the product is consumed. That was your  
18 original question.

19       Q. So it is assuming that the cheese only travels as far  
20 as it needs to find a consumer; is that right?

21       A. All of the cheese travels as far as it needs to go to  
22 find, to find consumers. It takes all the consumption points,  
23 all the production points, and puts them together as  
24 efficiently as possible.

25       Q. And the triangles that represent cheese manufacturing,

1 are those only plants that manufacture a commodity cheddar?

2 A. No. No.

3 Q. No.

4 A. Not in this model. This is -- this is all cheese.

5 Q. So what, it represents all cheese?

6 A. All cheese.

7 Q. So is each triangle a cheese plant or are they just

8 kind of --

9 A. Yes, aggregated.

10 Q. They are aggregated?

11 A. Yes. That's my read. Again, go to the 1996 study, it

12 will describe, because they have triangles and things there,

13 too.

14 Q. Yeah, but I haven't had a chance to do it yet, so since

15 you have put it in here, I'm trying to get your interpretation

16 of it.

17 A. You did it before, right? You did it in 1999? Looked

18 at the model?

19 Q. In the model? I have looked at them, yeah.

20 A. Okay. So points of production are the triangles. The

21 lines are where it goes most efficiently to where the

22 population is.

23 Q. Most efficiently. But again, they are not

24 representative of where the cheese actually goes?

25 A. Absolutely not. We know that's not the case.



1 Q. Right.

2 A. We don't operate this efficiently.

3 Q. And for instance, it doesn't -- if you looked at that  
4 map, and we know Cabot Cheese is distributed nationwide, and  
5 everything up there would have, indicates that there are at  
6 least enough consumers in New England that it wouldn't need to  
7 leave New England, but it's got a nationwide demand for that  
8 product.

9 A. Probably not. I don't think you could actually map the  
10 actual distribution of cheese. You would have -- you wouldn't  
11 be able to see the states underneath all the lines.

12 Q. True. Okay. Let's move on a little bit. Page 6 of  
13 your statement.

14 A. Yes, sir.

15 Q. First full paragraph, you have underlined it, only  
16 practical means, do you see that section there?

17 A. Yes.

18 Q. And actually, as you wrote this, you state, "the  
19 Secretary must determine that the issuance of such order is the  
20 only practical means of advancing the interest of the producers  
21 of such commodity."

22 A. Yes. And as approved by producers.

23 Q. And as approved by producers.

24 A. The Act is intentionally producer-oriented.

25 Q. Right. I guess I want to try to see if I can pick your

1 brain as to the contours of what only practical means  
2 encompasses. Is that purely a discretionary finding of the  
3 Secretary?

4 A. It is clearly a discretionary finding. I assume, I  
5 assume that public servants, such as the Secretary who was  
6 appointed, makes a diligent and good faith effort to apply  
7 directives such as this as best they can. It's a requirement  
8 that the Secretary determined, it is the only practical means.  
9 So the Secretary actually says those words every time a  
10 decision is made.

11 I worry that the importance of those words somehow gets  
12 lost in the process or is lost to those that participate. I  
13 think, I think the Secretary has the right, if not the  
14 obligation, to ask proponents of rule changes, you know, is  
15 there any other practical means of achieving a result here that  
16 cures the problem? And I think certainly that those will come  
17 before the Department ought to have that in mind.

18 Q. Let me offer a hypothetical for you to think about, and  
19 hopefully talk about.

20 Let's assume that there's a milk problem, that the  
21 Secretary convenes a hearing, that there are multiple  
22 proposals, more than one of which would provide a means of  
23 advancing the interest of producers in such commodity, but for  
24 instance, two solutions would advance those interests. How do  
25 we determine which one is the only practical means, or if there

1 are two, is it the Secretary's discretion to choose between  
2 them?

3 A. The Secretary must always make a choice, and the  
4 Secretary, as a prudent public servant, I think, should, and  
5 will, walk away with confidence that the chosen one was the  
6 only practical means. Your question doesn't necessarily  
7 suggest competing solutions, just different solutions.  
8 Frequently there are different solutions that aren't that far  
9 apart.

10 Q. Is it that it perhaps in practice, the section you  
11 quote there might be better written, not that we can write it,  
12 it is Congressional language, but it might be, it might be  
13 better interpreted as that the issuance of an order is the only  
14 practical means of advancing the interests, etcetera?

15 A. That's not what it says and I don't think that's what  
16 it means. It's not an order, the order presented. Or -- or  
17 that, not just the order presented, the order the Secretary  
18 comes up with in a final decision. Because we talked about,  
19 you know, the Upper Midwest when it was merged, having reserve  
20 supply plant which nobody thought of and was created by the  
21 Secretary. That was one of the instances I had in mind. The  
22 only practical means. Okay. "I got something better than you  
23 or you or you have proposed here, I think it is the best option  
24 for this market, so here we go."

25 Q. Okay. Let's talk for a few -- well, your, Honor, what

1 time do you want to go off record today?

2 JUDGE CLIFTON: I think I can -- I think I can give you  
3 four more minutes and then I would like you to interrupt your  
4 cross and resume it tomorrow.

5 MR. MILTNER: Okay.

6 MR. VETNE: Is this still cross?

7 BY MR. MILTNER:

8 Q. Let's look at Section 18, 8c(18).

9 A. I got it. Okay. I got the whole thing right here.

10 Q. Great. Let me get mine so we can talk somewhat  
11 intelligently. In the penultimate paragraph of your testimony,  
12 you have stated, "it is difficult to imagine how proponents  
13 myopic approach can satisfy Section 8c(18) of the AMAA." And  
14 as you expounded upon that, I interpreted your testimony to  
15 mean that that is related principally to the fact that the data  
16 upon which the price surface is set, is outdated. Is that  
17 accurate at least in part or in whole?

18 A. That is accurate in part and almost the whole. It, the  
19 request hearing Proposal 1 is, let's take the prices and the  
20 surface created in 1999, based on '96 and '93 data, and apply  
21 it. And, you know, in Section 8c(18) which I have here, and  
22 which I quoted, quoted in part, "market supply and demand for  
23 milk and its products in the marketing area to which the  
24 contemplated order, proposed order, relates, and fix such  
25 prices as you find will reflect those factors and ensure

1 sufficient quantity of pure and wholesome milk and be in the  
2 public interest." Supply and demand for milk and its products  
3 in California is the primary, the primary directive -- to  
4 borrow a phrase from Star Trek -- the prime directive.

5 Q. Let me take your argument and extend it a bit.

6 A. It's not my argument, I'm quoting the statute.

7 Q. Okay. Forget the statute, let's talk about  
8 specifically your articulation of the myopic approach.

9 A. Myopic, I struggled hard --

10 Q. I know.

11 A. -- because that, that was the only semi-disparaging  
12 word I think I used in my entire statement, and I ended up  
13 using it because it was a softer word than I otherwise had in  
14 mind.

15 Q. You could also say that it wasn't necessarily  
16 disparaging, just value-laden.

17 A. Okay. Thank you.

18 Q. We're supposed to use value-laden words. I was taught  
19 that when I took legal writing.

20 A. Okay.

21 Q. Let me extend that, though. If that's true, and we  
22 hypothetically had to reauthorize all the other Federal Orders  
23 using current regulations, would those orders be illegitimate?

24 A. No. What do you mean reauthorize?

25 Q. I want to say hypothetically we didn't have a Mideast

1 Order, and the hearing was about, let's take what we have in  
2 the Upper Midwest and use that price surface and use those  
3 universal regulations and create an Order for the Mideast.

4 A. Yes.

5 Q. Would that be illegitimate?

6 A. Would that be illegitimate? No. You create an Order  
7 for the Mideast, and look at supply and demand and prices in  
8 the Mideast when you create the Order. Now, it's one thing --  
9 it's one thing to judge a regulation by the things that you do  
10 and look at when it is created. It's a more difficult task as  
11 time goes by, to judge the point at which a regulation becomes  
12 unsustainable because things have changed since it was first  
13 created, and that happens, too. Doesn't change what you have  
14 to do at the inception. We're now at the inception.

15 Q. Okay. I think that takes up our four minutes, your  
16 Honor.

17 JUDGE CLIFTON: Yes, I think that's a good stopping point.  
18 Thank you so much. I would just comment that the last part of  
19 the examination of Mr. Vetne related to page 7 of Exhibit 111.  
20 All right. Thank you, Mr. Miltner. And we'll allow you to  
21 resume, hopefully tomorrow.

22 Let's see what Mr. English has in mind for tomorrow,  
23 given the fact that we only got halfway through his people.

24 MR. ENGLISH: Thank you, your Honor, Chip English.

25 Well, to my knowledge, and of course dairy farmers can

1 show up anytime. To my knowledge, I don't have anybody coming  
2 tomorrow who has to go tomorrow. Now, the schedule is a very  
3 fluid thing, but at the moment, my anticipation is that we will  
4 pick up tomorrow with Mr. Vetne on the stand. And from there,  
5 we would move forward to Dr. Schiek, Part 2, which is pooling;  
6 Al Zolin, Part 3, which is pooling; and Sue Taylor, her Part 1,  
7 which I think is primarily pooling. And I am fairly confident  
8 that that would consume the day.

9 JUDGE CLIFTON: All right. And you're flexible if we have  
10 other people who would like to be heard tomorrow?

11 MR. ENGLISH: I'm flexible. All of those people, as you  
12 may have noticed, have been here virtually full-time for this  
13 proceeding, and all of them will be here Friday and Monday and  
14 whatever. So the answer to that question, your Honor, is yes.

15 JUDGE CLIFTON: Excellent, thank you. Ms. May, do we, are  
16 we allowed to leave everything right where it is over night?  
17 Yes is the answer. Would you like to speak?

18 MS. MAY: Yes.

19 JUDGE CLIFTON: Good.

20 MS. MAY: Laurel May. Just as a preview, next week we will  
21 be in this room Tuesday through Friday, but Monday we're going  
22 to be in the auditorium of this building, which is, presents a  
23 few challenges, all of which can be overcome. But I thought  
24 maybe if you wanted to, we could go over to that room  
25 afterward, if anybody is interested in looking at it. What it

1 has is a stage and a theater-type classroom environment, so  
2 very nice chairs, think about that -- and the peasants  
3 rejoiced -- and with the little flip-down gismo that goes in  
4 front of you, just like back in college. So not a whole lot of  
5 space to spread out all your junk. Very few plugs. So it is  
6 kind of like going on a little nature field trip for the day.  
7 So you pack light, just one day, just Monday over there.  
8 Tuesday through Thursday back in here.

9           So if you are interested in seeing what that looks like  
10 so you can kind of anticipate what you are going to do, join me  
11 for a field trip right afterwards, and hopefully that room is  
12 still unlocked.

13           JUDGE CLIFTON: Mr. Vlahos?

14           MR. VLAHOS: That's next week you are talking about, not  
15 tomorrow?

16           MS. MAY: I'm talking about Monday. Tomorrow and Friday  
17 here, but we just thought maybe you'd want to plan ahead.

18           JUDGE CLIFTON: Mr. English?

19           MR. ENGLISH: I'm sorry, next Tuesday through Thursday back  
20 here or Tuesday through Friday back here?

21           MS. MAY: Tuesday through Friday, sorry, I might have said  
22 the wrong thing.

23           JUDGE CLIFTON: All right. Now, to get to the auditorium  
24 from here, it is as if you are going out the entrance and it's  
25 on your right.



1 MS. MAY: Yes. I'll meet you over there right after we  
2 stop.

3 JUDGE CLIFTON: All right. Excellent. Anything else?  
4 I have asked Mr. Van Nortwick to testify at his convenience  
5 either tomorrow or the next day, so when he arrives, I would  
6 like to put him on the stand when he's ready to testify.

7 Mr. Vlahos, if you would come to a microphone I could --

8 MR. VLAHOS: We're on the record, I'm sorry. John Vlahos.  
9 Your Honor, we didn't catch the name.

10 JUDGE CLIFTON: His name is Van Nortwick, V-A-N,  
11 N-O-R-T-W-I-C-K, he's the gentleman behind you, Mr. Vlahos.  
12 He's the publisher of "Agribusiness Publications" and he's the  
13 gentleman who has created the ability for us to listen to the  
14 recorded audio feed on the website. All right.

15 Other preliminary issues, announcements? I see none.  
16 Then we'll go off record. What time is it? We go off record  
17 at 4:57. And Ms. May is leading the way to the auditorium.

18 (Whereupon, the evening recess was taken.)

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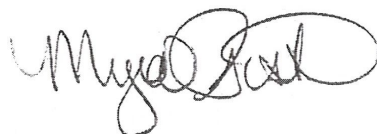
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