

**Prepared Testimony of
Daniel S. McBride,
Northwest Dairy Association**

Re: Proposals No. 1 and No. 10, "Double Dipping"

Federal Milk Market Order Hearing
Docket Nos. AO-368-A30; AO-380-A18; DA-01-08
April 16, 2002

My name is Daniel S. McBride. I am testifying today on behalf of Northwest Dairy Association and which is usually referred to as "NDA". My title is Director, Milk Pricing Programs for NDA. I am responsible for coordinating all matters pertaining to Federal Orders, and have done so since leaving the Market Administrator's office to join the NDA staff in 1986.

Background Information About NDA. NDA is a cooperative association, which acts as a handler in both the Pacific Northwest Federal Order market (Order 124) and in the Western Order (Order 135). NDA markets milk on behalf of approximately 600 producers whose milk is associated with the Pacific Northwest order, and over 100 producers associated with the Western Order. Therefore, the provisions being considered at this hearing are of vital interest to NDA.

NDA is the parent company of WestFarm Foods, which operates many plants in both orders. This includes three bottling plants regulated under Order 124, as well as manufacturing plants at Chehalis, Issaquah, Lynden, and Sunnyside (all in Washington state). And in Order 135, WestFarm Foods operates a bottling plant at Boise, a non-pool drying plant at Caldwell, Idaho, and a non-pool condensing plant at Jerome, Idaho. The Jerome plant is now being expanded into a drying plant.

Purpose of Proposals No. 1 and No. 10. NDA is the proponent of this hearing's Proposals No. 1 and No. 10. They are essentially identical in their intent, and their language. Both propose identical new language to the sections of each order which state qualifications for a dairy farmer to be a "producer" under each order.

Both proposals relate to the practice we call "Double Dipping" – that is, pooling milk under a Federal order that is also pooled under a state order. California's is the only state order known to be used for this purpose. Pooling monies are drawn from both orders – a practice that would not be permitted if a producer were to be otherwise eligible for pooling on two Federal orders. The result is to obtain greater financial advantage for the organization able to "double dip", and thereby to obtain a competitive advantage for that organization.

Almost by definition, this practice presents a situation in which “disorderly marketing” can occur, as producers could theoretically scramble all over each other for the ability to take advantage of this potential windfall. The interesting twist is that at first glance the disorderly conditions would appear to be occurring outside the market area, in California! But upon second glance, it can be seen that the windfall can be used to create competitive advantage within the market area, as well.

What makes this practice even more pernicious is that the milk involved seems never to be actually delivered to the Federal order marketing area, from which the additional revenues are drawn (other than to meet any pool qualification requirements). This is done for the sole purpose of shifting revenues for the benefit of a cooperative or for the benefit of producers who take advantage of the scheme. Such milk typically continues to be delivered to plants located near where it is produced, rather than being delivered to the market whose pool is being raided. As we see it, such pooling is “artificial” because it is pooled only on paper, opportunistically, for no reasons related to service to the affected market.

NDA’s intent is to implement a concept recently incorporated into the Upper Midwest Federal Order (Order No. 30). In that decision, the Secretary of Agriculture emphatically, and unambiguously, concluded that it was inconsistent with Federal order philosophy for milk to be pooled both on a statewide marketing pool that is outside the Federal order system, and simultaneously on a Federal Order.

Similar changes should be made in all other Federal orders, as soon as possible. It threatens to undercut political support for the marketing order program, due to the very unfair disadvantage the practice imposes on producers pooled in the “target” order on which the California milk is loaded.

If the Department wishes to have greater consistency in the various order provisions dealing with this issue, NDA would support such modifications of Proposals No. 1 and No. 10 as the Department feels may be appropriate to be consistent with the language of Order 30 and perhaps other orders. We note that the Order 30 change, which came out after our proposals were submitted, amends Section 13 (which defines producer milk), whereas we have proposed a change in Section 12 (which establishes qualifications to be a producer). Either approach is fine with us.

At this time, NDA would like to request that Official Notice be taken of that Order 30 Recommended Decision, which was issued on February 14th of this year. That decision appeared in Volume 67 of the Federal Register, beginning at page 7040. I quote the following, which appears on page 7045, and which applies equally well to any other Federal order:

“Since the 1960’s, the Federal milk order program recognized the harm and disorder that resulted to both producers and handlers when the same milk of a producer was simultaneously pooled on more than one Federal order. As noted above, producers do not receive uniform minimum prices, and handlers receive unfair competitive advantages. The need to prevent “double pooling” became critically important as distribution areas expanded and orders merged. The issue of California milk, already pooled under its State-operated program and able to simultaneously pool under a Federal order, has, for all intents and purposes, the same undesirable outcomes that Federal orders once experienced and subsequently corrected. It is clear that the Upper Midwest order should be amended to prevent the ability to pool on more than one order when both orders employ marketwide pooling. “

We request that Official Notice be taken of this entire decision, because of its relevance to the present proceedings.

Just to clarify our position, NDA is not concerned about milk produced outside the market area that regularly serves the market. For example, we have five members of our cooperative who produce milk in California and whose milk usually goes to the WestFarm Foods bottling plant in Medford, OR. Similarly, the milk from a group of NDA producers near Cottonwood, ID (just south of the Order 124 marketing area) goes to a Class I handler at Spokane, WA.

Impact on Western Order Pool. We are not aware of any “double dipping” presently occurring in the Pacific Northwest order, but it has become a huge problem in the Western order.

We believe the practice began in November of 2000. Table 1, attached to this testimony, shows NDA’s estimate of the dollar impact during calendar 2001. From the assumptions in our estimates, we compute that over \$4.5 Million was diverted from the Western order pool, which resulted in a reduction in the producer blend price that averaged 10 cents per cwt throughout the entire year.

There is no justification for such monies to be removed from the Western order area. It has been a one-sided arrangement. We at NDA are aware of no compensatory services or delivery of milk from California that would benefit the Western order in return.

Request for Emergency Adoption. NDA hereby requests that Proposals No. 1 and No. 10 both be adopted on an emergency basis.

The evidence in this hearing record demonstrates that California milk is being “double dipped” on the Western order in great quantities. This is a present emergency. I would like to point out that the trend shown in Table 1 is clearly upward, with substantially more California milk being pooled on the Western order after April of last year.

While we are aware of no such double dipping that is presently occurring in the Pacific Northwest order, we feel that a potential emergency situation exists there, as well – for the simple reason that as soon as this loophole is plugged in other orders, the California milk currently being pooled on those orders will be available for pooling on orders that have not yet had this opportunity corrected. The Pacific Northwest order adjoins California, and is a likely target for such activity. That potential situation must be corrected as soon as possible.

We are aware of no opposition to this proposal. We respectfully request that an emergency decision be issued on these two proposals. We do not see a need for emergency adoption of any of the other proposals.

We appreciate this opportunity to present these proposals, and I would be happy to answer any questions.

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Table 1

Estimated Impact of Pooling Milk from California in the Western Order

Month	CA lbs pooled	WO ppd	Value 1/	Impact on Blend
Jan-01	22,285,892	\$1.71	\$358,803	\$0.11
Feb-01	28,746,222	\$1.52	\$408,196	\$0.14
Mar-01	29,936,169	\$1.47	\$410,126	\$0.14
Apr-01	30,623,399	\$1.35	\$382,792	\$0.11
May-01	75,472,880	\$0.91	\$611,330	\$0.16
Jun-01	72,251,009	\$0.65	\$397,381	\$0.09
Jul-01	74,425,825	\$0.44	\$253,048	\$0.06
Aug-01	74,370,687	\$0.49	\$290,046	\$0.06
Sep-01	71,981,156	\$0.42	\$230,340	\$0.05
Oct-01	12,340,949	(\$0.25)	(\$43,193)	(\$0.01)
Nov-01	67,360,249	\$1.56	\$983,460	\$0.20
Dec-01	69,434,932	\$0.53	\$298,570	\$0.06
	629,229,369		\$4,580,898	\$0.10

1/ Value is the PPD plus (or minus) the location adjustment
Used \$1.80 location adjustment for Calif milk adjustment of (\$.10)