



**BEFORE THE UNITED STATES DEPARTMENT
OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE**

In the Matter of Milk in California;
Notice of Hearing on a Proposal to
Establish a Federal Milk Marketing
Order

7 C.F.R. Part 1051
Docket No.: AO-15-0071;
AMS-DA-14-0095

Fresno, California, November 2015

Testimony of Ted DeGroot

In Support of Proposal 4 of Ponderosa Dairy

Proposal to Establish a Federal Milk Marketing Order for the
State of California

My name is Ted DeGroot. I am the managing owner of Ponderosa Dairy in Amargosa Valley, Nevada, which is just seven miles from the California border. I have been involved in the operations of Ponderosa Dairy since its inception on April 1, 1994. The location was chosen for several reasons, including the fact that water was readily available, existing alfalfa farming made dairy farming suitable and the land was reasonably priced. We opened Ponderosa Dairy for the specific purpose of providing milk to our plant in Downey, California, approximately 280 miles from the dairy. In evaluating the economics of developing Ponderosa Dairy, we made the decision to invest in the dairy assuming we would receive our plant blend price for milk sold into California, but knowing we sacrificed the ability to participate in the California quota program.

When Ponderosa Dairy was established, California producers establishing dairies were eligible to purchase or otherwise obtain quota or obtain transportation subsidies. Out-of-state producers, such as Ponderosa Dairy, were not. Instead, out-of-state producers were permitted to receive the plant blend for their milk (the average class price based on the plant's utilization). The plant blend has been important to Ponderosa Dairy to essentially compensate it for not being able to own quota or obtain the benefit of transportation subsidies.

Several years after Ponderosa Dairy was started, CDFA and the dairy farmers supported a California Food & Agriculture Code

regulation that required California processors to account to the pool for their purchases of out-of-state milk based on the utilization of that milk. The quota and overbase pool prices are paid to California raw milk producers with revenue generated from the pool. Prior to the introduction of the new regulation, quota and overbase prices were calculated after the out-of-state milk had been subtracted from the pool. The effect of this change was that quota and overbase prices increased, but the price to out-of-state producers was decreased by the pro rata reduction caused by the payments made first to quota and transportation from the pool.

Along with other out-of-state producers, we filed a lawsuit challenging the legality of such disparate treatment of out-of-state producers. Many in this room are intimately familiar with the litigation known as the *Hillside Dairy* case, after the first named plaintiff in that lawsuit. After years of litigation, Ponderosa Dairy prevailed in the U.S. Supreme Court. We prevailed because the CDFR action treated out-of-state producers differently: our out-of-state milk was at a price disadvantage because we were forced to pay into the California quota pool, but we were precluded from receiving any benefits of the pool. We participated in this litigation to ensure equal treatment for producers outside of California and to protect our out-of-state production.

The Cooperative's proposal attempts to do the same thing that was disallowed by the Supreme Court in *Hillside Dairy*: pay out-of-state

milk producers the non-quota blend price, after the pool deducts quota premium payments and all transportation allowance. But out-of-state milk is not permitted to participate in the quota or transportation benefits. We would contribute our producer milk to a pool that pays out benefits to which we cannot participate. And the only justification for this treatment is that we are seven miles beyond the California state line.

As I understand it, most federal orders are not drawn on state lines; they are drawn to accommodate the dairy farms and plants that need the milk in a larger geographic region. The proposed order would further facilitate the discrimination of dairies simply because they are located outside of California. If a federal order were implemented, it could encompass our farm in Nevada and allow our farm to receive transportation allowances (similar to the Dairy Institute's proposal on this point) and other benefits of a federal order in California. It could also exclude from the pool the volume coming from outside the state to protect those who cannot participate in the quota program.

If a federal order is adopted in California without incorporating Proposal 4, Ponderosa Dairy's milk would be punished so drastically that it could not travel across state lines. This leaves Ponderosa Dairy with few choices to market its milk. And there is little downside to preserving the treatment of our out-of-state milk as it is treated now – allowing us to collect plant blend payments rather than forcing us to take a lower overbase price. The USDA concluded that, as measured against

base, adopting Proposal 4 would not have much, if any, impact on the parties as measured against baseline. There would not be a huge influx of out-of-state producers because there are still logistical issues with shipping out-of-state milk to California from Nevada (*i.e.*, mountains). Another deterrent is that out-of-state milk cannot be used to produce any products branded with the “Real California” seal that is used for consumer products in California. ~~Attached as Exhibit ___ is a list of plants eligible to use the Real California seal.~~

Our ^{farm} ~~plant~~ does not have a lot of choices outside of shipping to California. The logical choice is one or both of the two fluid plants in Clark County, Nevada: Dean Foods and Anderson Dairy. However, several years ago, Clark County was allowed to be exempt or excluded from the federal order pricing. The Nevada State Dairy Commission sets the minimum prices those two fluid plants pay Nevada dairy farms. Currently they buy all their milk from either Utah or California farmers at a price that is cheaper than a Nevada dairy farmer can sell it to them under the Nevada State Dairy Commission statutes. And even though Ponderosa Dairy is the most local milk to Las Vegas, Ponderosa Dairy has a built-in disadvantage.

There has been testimony that out-of-state milk has caused “disruption” in the California market. I do not believe that the California market has been “disrupted” or that out-of-state milk competes with in-state milk, as some have claimed in their testimony.

As an example, many products are labeled with the Real California milk and cheese seals, making those products more attractive to California consumers. Milk from out-of-state dairies cannot be used to produce products with those seals. Also, the plant blend that Ponderosa Dairy receives is less than the Class I price.

If or when a federal order is adopted, it is our sincere hope that consideration will be made for equal treatment of our milk, which has supplied the Southern California market for over 20 years. Ponderosa Dairy would not be opposed to being regulated under a California federal order, if payment under the federal order traditional payment pool allows it to receive plant blend payments. In our view, any California federal order that requires out-of-state dairies to pay into the quota pool, from which it obtains no benefit, improperly discriminates against out-of-state dairies.

Thank you again for taking the time to listen to my testimony.