CERTIFIED TRANSCRIPT

NATIONAL FEDERAL MILK MARKETING ORDER

PRICING FORMULA HEARING

DOCKET NO.: 23-J-0067; AMS-DA-23-0031

Before the Honorable Jill Clifton, Judge

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Carmel, Indiana

November 29, 2023

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Reported by:

MYRA A. PISH, RPR, C.S.R.
Certificate No. 11613

A P P E A R A N C E S:

FOR THE USDA ORDER FORMULATION AND ENFORCEMENT DIVISION, USDA-AMS DAIRY PROGRAM:

Erin Taylor
Todd Wilson
Brian Hill
Michelle McMurtray

FOR THE MILK INNOVATION GROUP:

Charles "Chip" English
Grace Bulger

FOR THE NATIONAL MILK PRODUCERS FEDERATION:

Nicole Hancock
Brad Prowant

FOR SELECT MILK PRODUCERS, INC.:

Ryan Miltner

FOR INTERNATIONAL DAIRY FOODS ASSOCIATION:

Steve Rosenbaum

FOR THE AMERICAN FARM BUREAU FEDERATION:

Dr. Roger Cryan

FOR LAMERS DAIRY:

Mark Lamers

FOR DAIRY FARMERS OF AMERICA:

W. Todd Miller

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(Please note: Appearances for all parties are subject to change daily, and may not be reported or listed on subsequent days' transcripts.)

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IN CHRONOLOGICAL ORDER:

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WEDNESDAY, NOVEMBER 29, 2023 -- MORNING SESSION

THE COURT: Let's go back on record.

We're back on record. It is 2023, November 29, Wednesday, at approximately 8:00 in the morning.

We had a witness on the stand at the end of the proceeding yesterday. Should that witness resume the witness stand?

You may. Welcome back.

And I'd ask now that the Agricultural Marketing Service return to the witness stand the record exhibits that he is using, and I will give him the 301 that I have.

Please, again, state and spell your name.

THE WITNESS: Scott Werme, S-C-O-T-T, W-E-R-M-E.

THE COURT: You remain sworn.

And I have forgotten where we were. We were -- ah, yes, Ms. Butcher (sic).

You may resume cross-examination.

SCOTT WERME,

Having been previously sworn, was examined and testified as follows:

CROSS-EXAMINATION

BY MS. BULGER:

Q. Good morning. Grace Bulger for Milk Innovation Group.

Good morning, Mr. Werme.

A. Good morning.

THE COURT: Now, I'm saying your last name wrong, aren't I?

MS. BULGER: It's Bulger.

THE COURT: Bulger.

MS. BULGER: B-U-L-G-E-R.

THE COURT: Thank you. I'm calling you by the name of someone else who is going to be involved in this proceeding. Bolger, B-O-L-G-E-R (sic). Thank you.

BY MS. BULGER:

Q. Mr. Werme, just to start with you, I would like to start with follow-up from yesterday. We ran out of time at the end of the day.

But I think yesterday you said that you moved two to three loads out of Maine; is that correct?

A. Per day.

Q. Was that per day?

A. Yes.

Q. Yes. Thank you.

Where does that milk go?

A. It generally goes -- we get some slots in the Franklin plant, DFA plant in Franklin, Mass.

THE COURT: You are not loud and clear. Now, you may not have to move your body, but I think if you come toward me just a bit, you will be more aligned with the microphone. Thank you.

BY MS. BULGER:

Q. Is that -- is the DFA plant in Franklin, Massachusetts --

A. Franklin, Mass.

Q. Is that a Class I plant?

A. It is.
Q. Do you have Exhibit 369 in front of you?
A. I do.
Q. So if you can look at, on page 1, Row 1194.
Is that the -- it's -- the plant identified on Row 1194; is that the plant that --
A. That's correct.
(Court Reporter clarification.)
MS. BULGER: Is that the plant that the milk, the two to three loads per day that --
THE COURT: Two or three loads what?
MS. BULGER: -- per day that Agri-Mark moves out of Maine goes to?
THE WITNESS: Correct.
BY MS. BULGER:
Q. I might return to this question.
You say in your testimony that "if the model results were adopted unchanged, the respective differentials would have incentivized Maine milk to leave the state for plants in Eastern Massachusetts," correct?
A. That's correct.
Q. And you have identified that the two to three loads per day that you send out of Maine go to a plant in Massachusetts?
A. They currently do. Yes.
Q. How much Maine milk overall would you say leaves the state for plants in Eastern Massachusetts under the current differentials?

A. I don't have the answer to that question. I can only speak to Agri-Mark's supply.
Q. And for Agri-Mark it's two to three loads --
A. Two to --
Q. -- per day?
A. -- three today.
(Court Reporter clarification.)
THE WITNESS: It's two to three loads today -- a day, correct.
THE COURT: So both of you just have to remember to wait until the other's voice dies down before you respond.
BY MS. BULGER:
Q. So we heard testimony from Ms. Ryll yesterday that DFA proposes keeping the differential in Massachusetts that we just looked at on page -- or Row 1194 on Exhibit 369, and they are like the same as the differential -- sorry. Let me rephrase that.
Returning to Row 1194, the Franklin, Massachusetts, plant, the current differential is $3.25, correct?
A. I see that.
Q. Looking at the row above 1194 on Exhibit 369, 1190, the differential in Hampden County, Massachusetts, is $3, correct?
A. It is.
Q. Currently. Yeah.
So the difference between those two counties, the

current differential is $0.25 per hundredweight?
A. Yes.
Q. The testimony that we heard from Ms. Ryll and the DFA proposes keeping that difference the same by leaving the Agawam HP Hood plant county -- in Hampden, Massachusetts, County, proposing to set the differential at $4.85.
Do you see that?
A. I see that.
Q. And the differential for Norfolk County, Massachusetts, where the Franklin plant is, at 5.10, maintaining that $0.25 difference, correct?
A. It is.
Q. The model average for those counties, the model average for Norfolk, Massachusetts, where Franklin, Massachusetts, is, model output was $5.25 per hundredweight, correct?
A. Correct.
Q. So that proposal moves the proposed differential down, decreases from the model average result by $0.15 --
A. Correct.
Q. -- correct?
Looking up at Row 1146, Cumberland, Maine, the proposed differential in Proposal 19 is $4.85 per hundredweight, correct?
A. Correct.
Q. That's $0.25 less than the proposed differential of $5.10 in Franklin, in Norfolk County, Massachusetts?

A. Correct.
Q. The model output, however, puts the Cumberland, Maine, average differential at $4.50, correct? Compared to the -- sorry.
A. Correct.
Q. Thank you.
Compared to the Franklin model average at $5.25, so that's a $0.75 per hundredweight difference between the model averages for the Franklin location in Norfolk County, Massachusetts, and Cumberland, Maine?
A. Let me switch back.
Q. Sorry, we're looking at Row 1194 and 1146, the University of Wisconsin model average.
A. And what did you say it was?
Q. So the model average for Cumberland, Maine, is $4.50 per hundredweight, and for Norfolk, Massachusetts, where Franklin -- Norfolk County, Massachusetts, where Franklin, Massachusetts, is located, is $5.25 was the average; is that correct?
A. I see that.
Q. So National Milk's proposal, as we have established, then, proposes a differential in Cumberland, Maine, of $4.85, and in Norfolk County, Massachusetts, of $5.10.
So National Milk's proposal proposes raising Cumberland, Maine, by $0.35, and lowers the Franklin -- Franklin, Massachusetts in Norfolk County, Massachusetts, by $0.15, which keeps the difference the same, correct?

A. Correct.
Q. And that's -- that difference is maintained the same even though hauling costs have risen?
A. That's correct.
Q. Would you say that the hauling costs, in your opinion, hauling costs for moving milk out of Maine have increased such that you think that the difference between the differentials in Norfolk County, Massachusetts, and Cumberland, Maine, should be raised?
A. The hauling costs have risen, but the purpose of this was to flatten the -- call it the run, from Maine and out to -- out of Maine, to disincentivize the movement of milk.

So, in fact, when DFA Agri-Mark made this change to the model, we made it actually cost more for us to move milk out of Maine. And that's -- and we -- and we understand what we did there in terms of penalizing ourselves on hauling, to leave the milk and to incentivize the milk to stay in Maine. And -- and the milk would -- our milk, Agri-Mark milk, would either have to go to Franklin, which is not our customer but DFA gives us slots in there, otherwise it would have to go all the way to Springfield. So -- but we want the milk to stay in Maine.
Q. At present, though, Agri-Mark, you said moves two to three loads per day --
A. At present.
Q. -- to Massachusetts, to Franklin, Massachusetts?
A. That's correct.

Q. Wouldn't you rather the price be higher in Franklin, Massachusetts, so in order to cover more of your hauling costs?

A. But the purpose was to keep the milk in Maine, to look in the future and to realize the attrition of dairy farms that we're going through right now, and Agri-Mark is not immune to that, and we just -- from our perspective, we would share the cost of that throughout the co-op for the benefit of the farmers in Maine. Which is sometimes what you have to do in cooperatives, is you -- you know, you have to look at the whole picture of the cooperative and realize that sometimes -- it's never equal, but you try and make it equitable. And so that's what we were trying to do there, because our producers in Maine are very important to us. And we believe those -- those two fluid plants are very important to the state of Maine.

And so I will say that I realized the hauling penalty, if you will, for this decision, but we felt that the state of Maine, people of Maine, and our members in Maine, superseded that additional cost that we occasionally have to bear in spread throughout the co-op in unrecovered hauling costs.

Q. So why raise the proposed differential from the model average in Cumberland, Maine, from $4.50 to $4.85?

A. I think you have to look at the whole state. And as you move from Portland, Maine, kind of northeast through the state where the farms are located, also those zones were increased, too, so that even bringing the milk

from where the farms are to Portland, the incentive, the recovery of hauling, we have taken that away. So we wanted -- it was a true effort to keep the milk in the state.

Q. So you would rather -- as you said, you want to incentivize milk to stay in Maine, you would rather Agri-Mark's milk go to a Class I plant?

A. The Maine milk, we would rather our Maine milk go to a Class I plant in Maine, that's correct.

Q. In your opinion, does the National Milk proposal with -- sorry, let me start over, the question.

If at present you are moving milk two to three loads per day to Massachusetts --

A. Correct.

Q. -- and the proposal maintains the existing difference between the locations, the differentials at the locations in Cumberland County, Maine, and Franklin, Massachusetts, Norfolk County, Massachusetts, it maintains the difference between the 25 --

A. It maintains the difference, yes.

Q. So what -- what impact do you think that the National Milk proposal maintaining that difference will have on -- do you -- do you think that the proposal will be successful in -- for Agri-Mark, in maintaining your milk in Maine --

A. We do.

Q. -- or increasing -- keeping your milk in Maine?

A. We do.

Q. Even though it maintains the current differential?
A. We do.
Q. All right.
MS. BULGER: I think that's all the questions I have for you today. Thank you very much for your time.
THE WITNESS: Thank you.
MS. BULGER: Thank you, Your Honor.
THE COURT: Thank you, Ms. Bulger.
Who next will cross-examine this witness?
Mr. Lamers.
MR. LAMERS: Good morning, Mr. Werme.
THE WITNESS: Good morning.

CROSS-EXAMINATION

BY MR. LAMERS:
Q. Mark Lamers, Lamers Dairy.
Just a couple questions for you.
Are you -- you stated yesterday, if I remember right, that about 75% of your member milk goes to your own plants?
A. Correct.
Q. Okay. Are those plants at capacity?
A. No.
Q. So they --
A. Two of the cheese plants are. One cheese plant and the culture plant is not at capacity. And West Springfield is balancing, so it changes from day to day.
Q. Okay. So then the other 25% you've stated goes to some Class I plants?

A. It goes to some Class I plants.
Q. Okay. The majority of that 25%?
A. I don't know that off the top of my head. We have -- we service three Class I customers, and the rest of them are IIs and IIIs and a IV.
Q. Okay. Do you pay your members over-order premiums?
A. We do not.
Q. You do not.
The milk that goes to the Class I market, do you charge over-order premiums for that milk?
A. When we can, something. It depends on the customer. It depends on the location. It depends on how far the milk goes.
Q. Are those --
A. The --
Q. -- Class I -- oh, I'm sorry.
A. The competitive environment at that location, too.
Q. Are those Class I plants dependent of your milk?
A. I would say, yes, they are.
Q. So wouldn't that enable you to command, for lack of a better word, an over-order premium for that milk?
A. There are currently ser- -- we call them service charges. There are currently some service charges in place.
Q. Okay. One of the purposes of the AMAA, Agricultural Marketing Agreement Act, is to ensure an adequate supply of fluid milk to the consuming public,

correct?

A. Correct.

Q. When I look back at Federal Order 1 for last month, I just took this off their website, it's pretty even for the most part, about 30% across all classes, the main classes of milk: 30% Class I, about 26% Class II, and 30% Class III.

So looking at the volume of milk produced in the Northeast, would you say that there's an adequate supply of milk for the fluid market?

A. In the entire Northeast?

Q. Correct.

A. I would say the Class I plants are supplied.

Q. Then why do we need to increase Class I differentials?

A. Because of the cost, the increased cost it takes to service a lot of these Class I plants, and the demands that they put on us to -- to -- for example, PI counts, lower somatic cell counts. And I believe PI counts aren't even in the PMO in terms of -- in terms of a regulation. But we're under constant demand to lower PI counts, shuffle milk out of loads. They are reviewing loads on a -- on a pretty much a daily basis. They are regularly looking at our FARM program for animal welfare and wellbeing. All that has a cost.

And we do service a couple of Class I plants that -- that don't take milk -- one of them doesn't take milk on a weekend, so -- well, a Friday/Saturday, they

start taking again on Sunday but -- so there's additional costs that have happened over the years to service these Class I plants.

Q. Wouldn't it be better to handle those costs on an individual basis rather than -- again, lack of a better term -- taxing the entire order?

A. Well, we can't pick and choose between which farms that we -- that we manage this to, because a lot of times we're -- you know, these loads are all blended, and it's hard to isolate and traffic milk with particular farms on the loads into particular plants. That's a very complicated thing for us. I mean, we have 550 farms over seven states of a variety of sizes, from 10 cows to 4,000 cows. So it's -- it's very difficult to do that.

Q. Uh-huh. Okay.

MR. LAMERS: Thank you. No further questions.

THE WITNESS: Thank you.

THE COURT: Are there other questions for Mr. Werme before I invite the Agricultural Marketing Service questions?

I see none. I invite Agricultural Marketing Service to question Mr. Werme.

CROSS-EXAMINATION

BY MS. TAYLOR:

Q. Good morning.

A. Good morning.

Q. Thank you for being here today.

A. Thank you for having me.

Q. Just a couple questions.

Let's start with Maine. You said numerous times it's important that the milk stays in Maine. I wonder if you could elaborate why Agri-Mark finds that important.

A. Well, having -- since I returned to the membership department in 2015, I have probably made a dozen visits to the state to -- to speak in front of our members up there, and it -- it -- it's very important to our members up there to service their population. The population in Maine, we feel, wants to see the agricultural community exist and do well. They actually have a state order premium up there. And so realizing that farmers are exiting the business pretty regularly these days, and just trying to look forward, Agri-Mark feels that it's better, it's a benefit to the entire co-op to have that state be in balance with its -- the plants that are currently there. We hope they stay there.

Q. And I would guess since the state is a peninsula up there that -- since the state is a peninsula basically up there, right?

A. Yes.

Q. So can you speak to the difficulty if the milk leaves the state, trying to find other milk to come in and service consumers?

A. That would be extremely difficult.

Q. Okay. The two plants in Maine -- so Maine's not in the Federal Order area?

A. Correct.

Q. So are the two plants in Maine pooled?
A. I don't know the answer to that.
Q. Do you know if the milk receipts of those plants are pooled?
A. Don't know the answer to that either.
Q. And how about the loads that Agri-Mark ships into Federal Order 1, do you know, is that milk pooled?
A. Yes, it is.
Q. Okay. On Vermont, you mentioned you reduced the differentials in Northeast Vermont to encourage milk to move to Eastern -- into Massachusetts, basically.
A. It's -- I don't know if I would call encourage. It is what it is. We move a lot of milk south.
Q. You state in this region there are no significant delivery points.

So I was wondering if you could just explain what you define that as?
A. Well, so there were a couple of larger plants up in very Northern Vermont a couple of decades ago, and those are no longer in existence. We have the Middlebury plant in more Central Vermont. Cabot is up there. And I think I mentioned yesterday that they are working probably on an average of six days a week.

And so when we can roll the milk through those areas, we do. But we currently, right now, have a lot of our milk going from the very north of Vermont to West Springfield. And if it can roll through Middlebury Cabot, depending on how long it takes to assemble the load, if

it's -- if they are picking up six or seven farms, you know, we'll roll it through and send -- and assign a Middlebury load to go south or a Cabot load to go south. But if they just pick up one farm or two farms, that -- that hauler's got to drive to Springfield because there's nowhere else to go. We try and keep the Middlebury milk in the Middlebury area just because it's the most efficient thing to do.

Q. So the -- making a greater slope in that area helps pay for some of the hauling --

A. Helps offset some of the hauling cost --

Q. Okay.

A. -- that's correct.

Q. And then --

THE COURT: Be sure to wait until her question is finished. Thank you.

BY MS. TAYLOR:

Q. And then it seems it was basically the same situation in Northern New York?

A. That's correct.

MS. TAYLOR: That's it from AMS. Thank you.

THE COURT: Mr. English.

CROSS-EXAMINATION

BY MR. ENGLISH:

Q. Good morning, Mr. Werme.

My name is Chip English for the Milk Innovation Group.

A. Good morning, Mr. English.

Q. I want to follow up directly on the questions asked by Ms. Taylor for Agricultural Marketing Service.

Do you still have Exhibit 369 in front of you?

A. Yes.

Q. And understanding the comment yesterday from Ms. Hancock, nonetheless, if you look at that document on the fourth line for Row 1146, and do you see that under the next column, pool distributing and supply plants, both DFA Oakhurst and Portland, and HP Hood in Portland, are listed as supply plants -- Your Honor, I'm sorry -- pool distributing plants, under that fourth line, fourth row, 1146?

A. I see the fourth row.

Q. Yes.

A. Yep. I see that fourth row.

Q. So assuming that MIG has correctly taken from Order 1's data that those plants are pool distributing plants, that would indicate that they are both fully regulated on Order 1, correct?

A. Correct.

Q. Okay. And in order to be fully regulated under Order 1, they would have to have at least 25% of the route disposition in the marketing area, correct?

A. I don't have that kind of knowledge --

Q. Okay.

A. -- about milk marketing, I'm sorry.

Q. Okay. They would have to meet whatever the definition is by USDA, correct?

A. Again --

(Court Reporter clarification.)

BY MR. ENGLISH:

Q. They would have to meet whatever the Order 1 requirement is in order to be a pool distributing plant under Section 7 of that order, correct?

A. Again, I don't have that depth of knowledge. I'll have to take your word for that.

Q. Do you know at least the -- that the marketing area starts when you cross the Piscataquis River into New Hampshire, from --

A. Yes.

Q. Yes. Okay.

So assuming that there is a requirement that milk be shipped, the minimum amount of milk be shipped into Order 1, the milk would have to be shipped, you know, into Portsmouth or down in Boston, correct?

A. Correct.

Q. Thank you.

MR. ENGLISH: That's all I have.

THE COURT: I love to see Mr. English in his comfort zone.

Ms. Hancock.

MS. HANCOCK: Thank you.

REDIRECT EXAMINATION

BY MS. HANCOCK:

Q. Good morning, Mr. Werme.

One -- one clarification from yesterday.

When you were talking with MIG's counsel yesterday, she had asked you a question about whether the model results were fully accounting for some of the factors that you were discussing, and I thought I heard you answer in the affirmative, and I just want to make sure that your testimony is clear on the record.

Were you intending to say yesterday that the model results fully accounted for the market conditions that we're addressing in the differential proposal from National Milk?

A. Yes.

Q. Okay. Let me -- were you saying that the model by itself fully accounted for all of those market conditions or were you saying that there were additional work that had to be done in order to put those in context?

A. Maybe that was the confusion. There was additional work that we felt needed to be done from the model that the computers, if you will, gave us.

Q. Okay. And can you tell me, and you have talked a little bit about some of the motivations for making sure that milk stays in Maine, were there other factors or work that you did on the team to make sure that the model results were properly adjusted to reflect actual market conditions?

A. We did.

Q. What kind of things did you do?

A. We looked at each of the areas, we looked at how we, in reality, move milk around New England and New York,

and discussed further adjustments to the model that, =the three of which that I testified to.

Q. And in your experience in working in the industry, were those modifications to the model results necessary in order to properly ensure that the -- that the differentials were set properly?

A. I believe they are.

Q. Okay.

MS. HANCOCK: Your Honor, at this time we would move for the admission of Exhibit 370.

THE COURT: Is there any objection to the admission into evidence of Exhibit 370, which is also NMPF-43?

There is none. Exhibit 370 is admitted into evidence.

(Thereafter, Exhibit Number 370 was received into evidence.)

THE COURT: Mr. Werme, before you step down, I would like the Agricultural Marketing Service to come to you and collect their originals and my 301 to give it back to me on their way back. So they are looking for 53, 58, 366, 368, and 369.

MS. HANCOCK: Thank you, Mr. Werme.

THE COURT: Thank you. You may step down.

MS. HANCOCK: Your Honor, our next witness is Johnny Hiramoto.

THE COURT: Welcome.

THE WITNESS: Thank you. Good morning.

THE COURT: Good morning.

Would you please state and spell your name.

THE WITNESS: Johnny Hiramoto, J-O-H-N-N-Y, Hiramoto, H-I-R-A-M-O-T-O.

THE COURT: Have you previously testified in this proceeding?

THE WITNESS: I have not. This is my first testimony ever.

THE COURT: May you enjoy.

THE WITNESS: I hope so.

MS. HANCOCK: That sounded a little like the Hunger Games.

THE COURT: If you raise your right hand, I'll swear you in.

JOHNNY HIRAMOTO,

Being first duly sworn, was examined and testified as follows:

MS. HANCOCK: Your Honor, if we could have the next exhibit number for his testimony.

THE COURT: The next one is 373.

MS. HANCOCK: And we'll mark that on Exhibit NMPF-56.

THE COURT: Yes. 373, Also NMPF-56.

(Thereafter, Exhibit Number 373 was marked for identification.)

DIRECT EXAMINATION

BY MS. HANCOCK:

Q. Good morning, Mr. Hiramoto.

Would you mind providing your business address for the record.

A. Sure. 1405 North 98th Street, Kansas City, Kansas 66111.

Q. And did you prepare Exhibit 373 in support of your testimony today?

A. I did.

Q. And if you wouldn't mind providing that statement for us, just being mindful of your reading speed for our court reporter.

A. I will. I'll do my best.

Hello. My name is Johnny Hiramoto. I'm here on behalf of Dairy Farmers of America, Inc.'s (DFA) Western Area. The Western Area is one of seven fluid area divisions within DFA.

THE COURT: A little more slowly.

THE WITNESS: Okay. Sorry.

Currently, Western Area has 203 farmer-owners in California and Northern Nevada producing over 600 million pounds of milk per month. Currently, the majority of the milk is pooled in Federal Order 51. 100% of Western's member milk is transported by either a third-party hauler or by the farmer-owners themselves. Milk is delivered throughout the state of California and Northern Nevada.

DFA also operates six manufacturing facilities in California and one in Northern Nevada. These facilities receive raw milk, cream, and condensed skim milk, and make a variety of products including, but not limited to,

cheese, whey, HTST and ESL fluid milk and fluid products, nonfat dry milk, whole milk powder, and other specialty dairy products. All but one --

THE COURT: Let me just ask. Right after you mentioned HTST and ESL fluid milk, rather than reading "and milk products" you read, you said, "and fluid products."

THE WITNESS: I apologize.

THE COURT: Does it make a difference?

THE WITNESS: Yeah, milk products.

THE COURT: Milk products. All right. Thank you.

THE WITNESS: Okay.

-- nonfat dry milk, whole milk powder, and other specialty dairy products. All but one of these DFA-owned facilities received raw milk from our farmer-owners.

For almost 25 years I have had various roles in DFA, mainly in California. Currently I am the director of accounting and marketing information for Western Area. My duties include monthly closings, financial reporting, regulatory reporting, budgets, market forecasting, compilation of historical data and statistics, and I act as a customer, vendor, and regulatory liaison. The best thing about my work is getting to know the farmer-owners and their families.

Understanding that I -- understanding that what I can positively affect these farm families --

THE COURT: Start again, please.

THE WITNESS: Oh, sure.

Understanding that what I do can positively affect these farm families is truly rewarding.

I am here today in support of Proposal 19 submitted by the National Milk Producers Federation (NMPF) to modernize the national Federal Order pricing surface in Class I differentials. My testimony will focus on the price surface proposal for Northern Nevada and California. Below are maps that show current, proposed, and the difference between proposed and current, location differentials, both nationally and the regions I will be focusing on.

Map 1, which is Current (National); Map 2, Current, which is California and Nevada; Map 3 is NMPF Proposed (National); Map 4, NMPF Proposed (California and Nevada); Map 5, NMPF Proposed versus California -- I'm sorry -- Proposed versus Current (National); and then lastly, Map 6, NMPF Proposed versus Current (California and Nevada).

In addition to supporting the testimony of Mr. Vandenheuvel of California Dairies, Inc., regarding California, I would first like to discuss Northern Nevada. Nevada has Class I operations in and around Las Vegas, Clark County, and Reno, Washoe County. DFA operates a medium-sized manufacturing plant in Fallon, Churchill County.

THE COURT: Slow down just a bit, if you will.

THE WITNESS: Yes, ma'am.

Washoe County and Churchill County are in Northern

Nevada. Currently, Washoe and Churchill Counties have the same differential as milk-producing counties directly to the east in California. These counties in California have a mix of Class I plants and manufacturing plants. It is necessary to continue a similar price surface between these plants in this bistate region to maintain competitive equity for them relative to blend prices under the California order. See Map 2.

Historically, Washoe and Churchill County, and other counties in Northern Nevada, have followed the pricing structure of Northern California. See Map 2. These counties have strong and historical association with Northern California.

Prior to November 2018, while California still operated under a state order, Nevada had adopted the same basic pricing structure in place in Northern California for use in Northern Nevada. When California began operating under the Federal Order system, Nevada, once again, utilized California's pricing structure, adopting the Federal Order 170 pricing differential --

THE COURT: Now, just so that it's clear what you mean by "170," would you read that number again?

THE WITNESS: Sorry, $1.70.

THE COURT: No, it's an order number -- oh --

THE WITNESS: Oh.

THE COURT: -- oh, wait a minute, maybe -- maybe you are talking about the $1.

THE WITNESS: Yeah.

THE COURT: Okay. So the Federal Order that you are talking about is the Federal Order that includes California and Nevada?

THE WITNESS: Yeah, Federal Order -- yeah, the Federal Order price differential.

THE COURT: Thank you.

THE WITNESS: Okay.

-- adopting the Federal Order $1.70 pricing differential the same as Northern California.

Additionally, a plant in Northern Nevada has consistent route distribution in Northern California. We support the relationship that Northern Nevada and Northern California have historically held, which continues today. We believe this will continue to keep all handlers competitive in both regions. The proposed value for Clark County, Nevada, is $2.90 value. Other NMPF member cooperative witnesses will be providing testimony about this area, and DFA agrees with the $2.90 value and recommends its adoption.

NMPF supports consolidation of California's $1.60 and $1.70 zones to the new $2.50 zone. Milk and route distribution in both zones moves interchangeably between the zones. We also agree with Mr. Vandenheuvel's testimony during the 2000 Federal Order Reform, California was under -- was operating under a state order and we almost assuredly did not scrutinize, as we would today, the differentials assigned, as they played little to no role for us.

Almost 19 years later, with California adopting a Federal Order in November 2018, the differentials are not suitable.

I did change that word, Your Honor.

THE COURT: From "were" to "are"?

THE WITNESS: Correct.

THE COURT: So we'll do that also on the record copy. We're on page 6 of Exhibit 373, middle of the page.

So again, read -- that line begins with the number "2018," just begin there, if you would.

THE WITNESS: Okay.

-- 2018, the differentials are not suitable. They do not reflect accurately the cost of moving milk and provided little incentive by themselves to route milk to Class I plants, particularly in the large Northern and Southern California urban areas. We scrambled to adjust, adapt, and ultimately arrive at a price mechanism to facilitate necessary milk movements.

Proposal 19 to modernize the national Federal Order pricing surface and Class I differentials gives us an opportunity to adjust to current times. We also feel that the differentials assigned by the study fell short for the Western region, especially in California. We support Mr. Vandenheuvel's view of the relationship between California's Central Valley and the major Upper Midwest milk sheds of Wisconsin, Minnesota, and South Dakota.

Regulation continues to challenge California dairy

producers, such as air quality, water rights, wastewater disposal, and zoning, to name a few. Costs of production continues -- I added the word "to."

THE COURT: Ah, so we're on page 7, second line, we're just putting the word "to," T-O, after "continues."

THE WITNESS: You want me to re-read that sentence?

THE COURT: Yes, please.

THE WITNESS: Costs of production continues to increase, and from what I understand, it's magnified in the West. Labor, feed, insurance, and utilities costs, among others, are higher in California. DFA's Western Area average hauling costs have nearly doubled compared to 2001. I have included information from Frazer, specifically for California, shown in Appendix 1 below, that was previously provided into the record.

Even being a top milk -- I'm sorry -- even being a top milk producing state, moving milk is not as simple as it would seem. California geographically is a very large, elongated state, containing significant mountain ranges, traffic at times is horrendous, particularly in the very large urban areas, but increasingly in the growing urban areas of the Central Valley as well. This adds significant travel time, wear and tear on equipment, and places additional strain on the driver pool.

There are few milk producers in close proximity to the large Southern and Northern California urban areas, which necessitates increasing longer hauls. One of our

contract haulers, a large milk hauling business in California who has asked to remain anonymous, has provided the following data, Chart 1, of the changes in its cost structure. Traffic alone has increased hauler resistance, and hauler rates have increased steadily for milk deliveries to these plants. Also, high cost of labor, insurance, and regulation among with restrictive weights limits, all combine to make hauling milk demanding and expensive.

And there's Chart 1.

Our farmer-owners are also dealing with increases in labor costs, utilities, regulatory costs, maintenance costs, feed costs, and a variety of other issues to name a few. I'm sure that -- sorry -- I am sure that is probably true -- and I changed the word "to" to "for."

THE COURT: All right.

THE WITNESS: F-O-R.

THE COURT: So we're on page 8, it's the third line under the chart, and the word "to" is now "for."

And would you read the sentence again.

THE WITNESS: Okay.

I am sure that is probably true for farmer-owners across the country, but it seems to be -- and I struck out the word "a" -- apologize.

THE COURT: No worries. That's easy for us.

THE WITNESS: -- magnified in California because -- and I struck out the word "of."

THE COURT: I see.

THE WITNESS: -- everything costs more in California. Just because California dairy producers are considered to be very "efficient" does not mean that they should be penalized. Federal Order 51 was modeled after the Upper Midwest, but the -- but the disparity of the differentials in California compared to the Upper Midwest is not equitable from the recent study, let alone to the rest of the country. NMPF's proposal brings back to the similar relationship between California, Nevada, to the Upper Midwest.

In conclusion, we support NMPF's proposal of the Class I differentials and the testimony of Mr. Vandenheuvel. Thank you for the opportunity and the time to allow me to speak.

And the last two pages is Appendix 1 of the Frazer.

BY MS. HANCOCK:

Q. Thank you, Mr. Hiramoto.

If we could turn to page 5 of your testimony. You were talking about the differentials and the comparison between Nevada and California. And in that first paragraph on page 5, about halfway through, after you have listed the counties there, you said that currently Washoe and Churchill Counties have the same differentials as milk-producing counties directly to the east in California.

Should that be west?

A. West. Yes. Thank you.

THE COURT: All right. We'll make that change now. That's page 5, it's six lines down. We're going to change "east" to "west."

And would you just read that sentence for us now.

THE WITNESS: Currently, Washoe and Churchill Counties have the same differential as milk-producing counties directly to the west in California.

BY MS. HANCOCK:

Q. And then if we turn to page 6, the last paragraph on that page, you were talking about National Milk's Proposal 19, and you state that, "We also feel that the differentials assigned by the study fell short for the Western region."

And I'm wondering if you could tell us what study you are referring to there.

A. Nicholson and -- can't remember the other gentleman's name, I'm sorry.

Q. Stephenson?

A. Stephenson. Yeah, Stephenson.

Q. Are you talking about the model results?

A. Correct. Yeah.

Q. Okay.

A. Both versions.

Q. I'm sorry?

A. Both versions.

Q. Meaning the May and the October?

A. Correct.

Q. Okay.

MS. HANCOCK: Your Honor, at this time we would make Mr. Hiramoto available for cross-examination.

THE COURT: Thank you.

MR. ENGLISH: Good morning, Your Honor.

CROSS-EXAMINATION

BY MR. ENGLISH:

Q. Good morning, Mr. Hiramoto.

A. Good morning.

Q. My name is Chip English for the Milk Innovation Group.

So what is the Class I utilization in California?

A. What do you mean?

Q. What -- what percent of milk produced in California is processed as Class I?

A. That depends.

Q. You mean it depends on whether all milk is pooled or not?

A. Depends on how much milk is pooled at any particular month you are referring to.

Q. So let's take a month when all the milk is pooled, or essentially all the milk is pooled.

What would the Class I utilization be in California?

A. Well, prior to Federal Order, California was inclusive pooling, so I don't remember exactly what the number was back in October of 2018. But I -- I don't want to guess.

Q. Well, don't guess.

But since you mentioned the term, and I don't think it's been used yet in this Federal Order hearing, what do you mean by the term "inclusive pooling"?

THE COURT: Uh, what --

MR. ENGLISH: Inclusive pooling.

THE COURT: Inclusive pooling. Thank you.

THE WITNESS: The California state order requires that all milk be pooled in the state. That's what I referred to as "inclusive pooling."

BY MR. ENGLISH:

Q. Is it fair to say that at that time, Class I utilization was under 20%?

A. I think that would be fair to say.

Q. Okay. Would it be fair to say that milk production has continued to increase in California since becoming part of the Federal Order?

THE COURT: Did you say "increase"?

MR. ENGLISH: Increased. Total milk production in California has continued to increase.

THE WITNESS: I struggle to answer that question because I would need years to compare. Currently it's decreased.

BY MR. ENGLISH:

Q. Is there an adequate supply of milk for fluid use in California?

A. I would -- I would ask you to give me what "adequate use" means and "adequate supply" means.

Q. Are you familiar with that term as used by USDA in

Federal Order decisions?

A. The reference does not come to mind.

Q. Do you know whether USDA has supplied, in the past, or applied in the past, any reserve supply concept of 25 to 30% of the milk being available for Class I?

A. I am not aware of that statistic, no. I apologize.

Q. If that statistic were applied to California, given at least in 2018 a less than 20% Class I utilization, you would agree that there would certainly be more than enough reserve supply in California, correct?

A. Well, being that DFA is not the largest cooperative in California, without having all the numbers, I cannot answer that question with -- with authority.

Q. All right. Thank you.

Nonetheless, you have 25 years of experience with DFA, and mostly in California, correct?

A. That's correct.

Q. So you have testified that DFA has six manufacturing facilities in California. I don't need to know all the specifics, maybe just, like, by class.

Could you name those six facilities and which class of milk they essentially produce?

A. I will do my best. We have two Class I plants -- I'm sorry, three Class I plants in Southern California; one Class II plant in Southern California; we have a cheese plant in the Central Valley; and we have a -- I don't know what you'd call it, it's a joint venture, fluid

milk product in Ventura County.

Q. When you say three Class I plants in Southern California, how do you define Southern California?

A. They are -- one's in Orange County, and two is in L.A. County.

Q. And the facility in Churchill County, Nevada, is that a -- what kind of plant is that?

A. Sorry, I got my counties kind of screwed up here. Okay. That's under Fallon. That's a Class IV facility.

Q. And do you recall when that was built?

A. I want to say around 2013, 2014.

Q. It was built prior to there being a Federal Order in California, correct?

A. That's correct.

Q. The milk that is supplied to your Class I facilities, is that all milk from Dairy Farmers of America?

A. No.

Q. And what about the cheese plant in the Central Valley, is that 100% supplied by Dairy Farmers of America?

A. At most times, yes.

Q. When you say "at most times, yes," does that mean that at some times of the year it serves as a balancing facility and accepts milk from other areas, from other suppliers?

A. I wouldn't consider that cheese plant a balancing plant. There's just times where, based on milk movement, that it gets supplied by a third party.

Q. But you, in essence, consider that to be a full supply plant, basically it's a dedicated supply?
A. In my mind, yes.
Q. Thank you.
I do not want confidential information, but an approximate percentage for the Class I plants, how much milk is supplied by DFA?
A. Well, if you don't want confidential information --
Q. And that's fine. If you don't even want to answer generally, that's fine.
A. I don't.
Q. Fine.
A. Yeah.
Q. Sir. I think we've actually known each other for a period of years --
A. Yes.
Q. -- and I also have a reputation at these hearings, I don't want my clients giving it, and I don't want you to give it, so that's fine.
A. I appreciate that.
Q. Does DFA operate any plants in Arizona?
A. Not that I'm aware of.
Q. Does DFA have dairy farmer members in Arizona?
A. The Western Area does not, so not that I am aware of.
Q. Okay. I think there's another witness for DFA who is testifying who might cover Arizona, so -- but as far as

you know for your area, no?

A. Yeah. For our -- for the Western Area of which I represent, we do not have an Arizona member.

Q. And since you represent the Western Area, if DFA had an Arizona member that shipped into California, you would know about that, correct?

A. If it falls under our region, yes, I would.

Q. California is your region, right?

A. California -- yes, California is our region.

Q. So was there a red pencil -- I think there was a red pencil crew for the West, correct?

A. I was not part of any red pencil crew.

Q. That's going to cover a lot of questions.

Did you, nonetheless, consult with Mr. Vandenheuvel on the development of the California position for National Milk?

A. Sorry, I didn't catch the beginning.

Q. Okay. I apologize.

Since you -- even though you were not on the red pencil crew, did you nonetheless consult with Mr. Vandenheuvel on the development of Class I differentials in California?

A. Yes, we have had discussions.

Q. And what were those discussions?

A. Regarding the differentials that was established by the -- what I will say the task force, and it was then dispersed to certain areas. And Mr. Vandenheuvel was in the West, represented the West.

Q. And do you recall any specific discussions about that?

A. I guess I would need to know what specifics you are asking for.

Q. About why, for instance, National Milk was seeking to increase Class I differentials above that of the model results.

A. Yeah, I was in some of those discussions.

MR. ENGLISH: Your Honor, I would like to have another exhibit marked.

THE COURT: Certainly. Shall we go off record for a moment?

MR. ENGLISH: Yes.

THE COURT: Let's go off record at 9:07.

(An off-the-record discussion took place.)

THE COURT: Let's go back on record.

We're back on record at 9:09.

Mr. English, I have before me MIG Exhibit Number 57. I have marked it as Exhibit 374.

(Thereafter, Exhibit Number 374 was marked for identification.)

MR. ENGLISH: Thank you, Your Honor.

So what has been marked as Exhibit 374 is, again, a MIG-prepared document for selected California and Nevada locations. I note on the second page, the legend, to provide a basis for where the information comes from.

And I will note ahead of time, again, that, yes, MIG prepared this document. The sources are there. I'm

perfectly content to accept ahead of time what I think will be National Milk Producer Federation's attorney's same concern from yesterday with respect to the Order 1 information. You know, we'll deal with it at the time of admission. But I recognize that. But, again, this is a document that has been prepared using information that is already in the record, and the only differences, of course, are calculations in the last columns.

We have, as you will note from yesterday, and now going forward, we're trying to conform making everything the same. In other words, we're not trying to omit different columns or add new columns going forward, so that there is sort of a consistency to the kind of information that is presented.

THE COURT: Thank you.

BY MR. ENGLISH:

Q. So I guess part of my question, Mr. Hiramoto, is going to be: At what point did you have the conversations?

And I ask that because there was the model numbers that came out, which are referenced in the columns May '21 estimates, October '21 estimates, and the University of Wisconsin (UOW) Version 3 average that's sort of in the middle of the page.

Then there were -- National Milk provided information over a period of time to USDA, and they did so in March of '23, which is the proposed Class I March '23. Again, what was called -- labeled on what's Exhibit 300,

new proposal May 2023, and then ultimately, a new submission, which is Exhibit 301, Proposal Number 19, in June 2023.

And there are some differences, especially from -- I think the only differences really are between the model and National Milk's numbers, but in terms of March to May.

And so one question I have is, at what point do you recall getting involved?

A. With respect to Mr. Vandenheuvel, is that what you are saying?

Q. With respect to Mr. Vandenheuvel, or for that matter, in looking at any of these proposed Class I differentials.

A. Time seems to run together these days. I want to say late last quarter of 2022.

Q. Thank you.

And was it then that you concluded, or you concluded in consultation with others, that the results presented by the model were inadequate?

A. I don't know if the conclusions happened in 2022, but we definitely felt that it fell short.

Q. In what ways did it fall short?

A. We feel that the study didn't feel like it adequately captured costs of moving milk -- or just costs of producing milk in the State of California.

Q. In what way in calculating Class I differentials prior to this proceeding has the cost of processing milk in an area played a role in the level of the Class I

differential for that location?

A. Can you ask that a different way?

Q. Do you know how USDA has, in the past, calculated the level of Class I differentials for a particular location?

THE COURT: A particular --

MR. ENGLISH: Location.

THE COURT: Location.

THE WITNESS: For myself, again, being new to Federal Order, no, I do not know directly. I have some understanding indirectly.

And, again, as I stated in our testimony, when we went to Federal Order in November 2018, we had talked to, I believe, USDA and other folks, that the differentials fell short, but there was no way to get that changed without a national hearing.

BY MR. ENGLISH:

Q. Do you understand that at least presently, the Class I differentials are composed of a base differential plus a value based upon location?

A. I have some understanding of that, yes.

Q. Do you understand that that difference in value based upon location is based on the cost of moving milk from where it is produced to where it is processed?

A. To my understanding that is a, that is a factor. A piece of it.

Q. Where in the factor of setting, whether it's the base or the differing value for location, does cost of

production figure in?

A. I don't know if I can answer that question.

Q. Okay. If you were involved in late 2022, do you know what happened between March of 2023 and May of 2023 such that if you look at the very last set of columns, difference May '23 minus March 2023, there were changes proposed in what National Milk was proposing for the selected counties in California, Nevada?

A. I think I understand your question, but can you say it a different way?

Q. Sure. A column in the middle of the page has "Proposed Class I March '23," and the column immediately to the right is "New Proposal May '23."

We have -- and that comes from Exhibit 300, Columns O and S.

MIG has simply done a calculation subtracting from the May number, the March number, resulting in a series of numbers, none of which are zero, in that next to last column labeled "Difference May '23 to March '23."

And I'm asking whether you have knowledge as to what happened there.

A. What I can speak to is that it was a -- we never had a final number, from my understanding. I don't know about any submission of the old and new that you are referring to. I just know we were working on trying to get to a final number, and it was a national thing. It was -- you know, it started nationally, with -- again, with the task force, and then to create some -- I don't

want to call it baseline, but to create a starting point. And each area looked at their own, and we looked at the West.

Q. Were you ever involved in conversations going across groups, like, say the West and the East?

A. Definitely not the East. We did have a conversation, and I believe you will have testimony from -- I believe it's Monty for Oregon, Washington, but we did have conversation, because that was part of the Western group. We did have conversation that touched California.

Q. How about conversations such with the Upper Midwest?

A. I did not speak to anybody personally about the Upper Midwest. I know I reference that in my testimony because of current differentials to what the study came up with.

Q. And compared to the Upper Midwest and what you did, are you aware that, at least for Minnesota, or at least parts of Minnesota, south and west of there, that National Milk is proposing increases over the model results?

A. Oh, we -- yes. Our -- I'm sorry, not "we" -- National Milk's proposal is above the model for California. Is that what you are asking?

Q. Well, actually I was going a different place. I know that.

A. Okay.

Q. But I was asking: Are you aware that National Milk was also proposing increasing, starting just a little west of the Wisconsin border with Minnesota, Minnesota, then through the Dakotas, and southwest from there, that National Milk is also proposing increases to the model there?

A. I'll be honest, I didn't look at the Upper Midwest. I'm very protective of California, so I -- I stuck to California.

Q. But part of your testimony is that you were, you know, believing that the model fell short in terms of equity with the Upper Midwest, correct?

A. That's correct.

Q. So if National Milk raises the Upper Midwest and then you say there's a concern for equity in the Upper Midwest, hasn't National Milk essentially bootstrapped their way into an argument for needing to increase prices in the West?

A. So our focus was price alignment and -- and basically keeping the relationship. We wanted to make sure that the relationship in California and Northern Nevada stayed roughly the same as to what it was going on somewhat nationally.

And when we went to Federal Order, you know, I had a lot of questions on going to Federal Order, and I kept getting told, even by USDA, that it's really modeled after the Upper Midwest. So we focused on the fact that if the Upper Midwest was going to be X, then the Western Area

needed to be somewhat similar to X, if that makes any sense.

Q. When USDA said it was modeled off of the Upper Midwest, were -- were they meaning in terms of results or order provisions as drafted?

A. From my understanding, I would say just about all of it. There was no order that was -- that would come as close to how California marketed milk than the Upper Midwest.

Q. And so that would make sense that order provisions, for instance, something other than inclusive pooling, would look like the Upper Midwest, correct?

A. Yes.

Q. But by definition, if there is a difference in the Class I utilization between the Upper Midwest and California, that Class I utilization by itself, whether or not the Class I differentials were the same, would result in a different pay price to producers, correct?

A. I'm not sure what you mean.

Q. Well, you have talked about the need to be equitable in terms of pricing between the Upper Midwest and California, correct?

A. Yes.

Q. Okay. How can there be -- well, how do you define equity?

A. Well, how I would define it would be somewhat in the same relationship.

Q. Same relationship meaning what?

A. Meaning the current differential versus the proposed.

Q. Why is that relevant to USDA in rulemaking?

A. With California being a state order for so long, I feel that California kind of got overlooked in a lot of different things because it didn't really relate to the Federal Order. As I stated, when we went to Federal Order, the differential was a pain point, and now we have an opportunity to fix it.

Q. Have you done any study of the impacts on milk production in California, Nevada, if National Milk Proposal 19 is adopted?

A. No, I have not.

Q. You mentioned price alignment as being important.

If hauling costs have increased and milk also moves longer distances, doesn't price alignment necessarily negate recovery of hauling costs for milk that is moving longer distances?

A. Well, what do you mean in your -- in your use of price alignment?

Q. Well, what I think about price alignment doesn't matter.

So let's ask: What do you mean by price alignment?

A. We're -- we're basically trying to make sure that the differentials for our Western Area doesn't fall so far off that it's not capturing what we need. And, again, in relationship to the Upper Midwest, it -- it didn't come

close, so we were -- we were making sure that the relationship stays, just as we did with California and Nevada.

Q. Okay. So I'm glad you clarified. So maybe there's two different price alignments.

At the moment, at least, you are referring to price alignment between Class I differentials in California versus the Upper Midwest, correct?

A. Correct.

Q. Is there another price alignment consideration that you used, which was once you get to your market and have done your price alignment within the Upper Midwest, I thought you testified that you also wanted to retain price alignment between locations within your area?

A. Between which locations?

Q. Well, okay, Reno, Nevada, and Sacramento.

A. Yes. The relationship maintained with -- with what our working group did. We kept the same relationship that exists today and as it's being proposed by National Milk.

Q. And, for instance, also from the Central Valley to Los Angeles you are keeping the same relationship, correct?

A. That is correct.

Q. You have discussed that hauling costs have doubled compared to 2001, correct?

A. I have discussed on our average it has doubled. It's probably way more than that.

Q. Nonetheless, your testimony for what your knowledge is, is that hauling costs have doubled since 2001, correct?

A. That's correct. I can only speak to the data I have.

Q. Okay. Do you agree that the model already includes hauling and hauling increased costs in it?

A. From my understanding there are some hauling costs in there, but from some discussions that I heard, meaning I was in the room with Chuck -- I'm sorry -- Mr. Nicholson, the amount of traffic and various things is not accounted for in the study.

Q. Okay. We'll get to traffic in the Grapevine.

A. Or a full stop if there's snow.

Q. I was thinking last Wednesday when I guess a truck wrecked and closed the I-5 for hours.

Did you read about that?

A. I did not. But there's always something.

THE COURT: Mr. English, remember where you are. This would be a good time for a 15-minute break.

And so please come back ready to go at 9:45.

We go off record at 9:30.

(Whereupon, a break was taken.)

THE COURT: Let's go back on record.

We're back on record at 9:46.

Mr. English, you may resume.

MR. ENGLISH: Thank you.

BY MR. ENGLISH:

Q. Mr. Hiramoto, before the break we were talking about the model and perhaps some things that you viewed as being necessary to change.

So what I have so far is price alignment between California and the Upper Midwest, correct?

A. Correct.

Q. That is one factor.

And then one factor you applied was the need for, in your view, price alignment within the California market, also thinking about Nevada, correct?

A. Correct.

Q. And then one other factor, which we're about to talk about, is deviations because of traffic, correct?

A. Well, depends on your question. I don't know if that's correct or not.

Q. Okay. So we'll leave that aside for a moment.

So other than price alignment between California and the Upper Midwest, and price alignment within the area of California and the operations in Nevada, what other factors were considered for making changes to the model results in terms of your testimony?

A. Well, as I stated in my testimony, there are a lot of difficulties in producing milk for our farmer-owners in the state of California. Traffic is just one of them.

Q. Thank you. We had discussed that.

Are you suggesting that there aren't difficulties in producing milk in other parts of the country?

A. No, sir. I'm suggesting -- or I'm not suggesting

that at all. I'm just saying based on what I see, what I hear from our farmer-owners, what is going on in the state of California, and compared to the model's -- or the study's differential, to me, to us, it doesn't quite align.

Q. How would you describe -- how would you specifically explain to USDA when it has to issue a rulemaking under legal standards, how that translates into actual numbers as opposed to a feeling?

A. Well, luckily for me that's -- that's above my pay grade.

Q. So another way of talking about alignment is slope, that is a slope in changing Class I differentials.

Do you understand that concept?

A. I have heard of the slope, yes.

Q. Given increases in hauling rates, how does maintaining the slope in Class I differentials in California, say for instance, from the Central Valley to Los Angeles, reconcile with what USDA has done in the past for Class I differentials?

A. Well, I can't speak to what USDA has done in the past, that's something I just -- I don't know. So I don't know how to answer your question.

Q. So I think, you know, certainly in answer to a question I asked, you've already suggested, and I think something that you stated earlier in response to a question from your -- from National Milk's attorney, you agree that delivering milk to Los Angeles has special

challenges, correct?

A. Yes, delivering milk to Cali- -- to L.A. County, you said, I'm sorry?

Q. Los Angeles County.

A. Los Angeles, yes. Yes, it does have its challenges.

Q. What about Orange County, does that have its challenges as well?

A. Yes, it does.

Q. And leaving all joking aside, by and large, the best/worst way to get milk down to Los Angeles is down the Grapevine, correct?

A. Yes, sir.

Q. And, you know, probably on the list of highways, other than the Cross-Bronx in New York, that might be one of the worst roads for reliability, correct?

A. I have never -- that's a Skylar question. She's been in both areas. I unfortunately have not been in that area in New York, so I can't answer that.

Q. Let me assure you, you don't want to do it.

But bottom line is, whether it was last Wednesday with the truck accident, you know, a fire, a flood, that's just a terrible route to try to travel to get, whether it's milk or anything else, down to Los Angeles, correct?

A. Yeah. I mean, just about any type of product that's being shipped by truck is going through that highway up and down the state.

Q. So given the fact that the model, from your

conversation with Dr. Nicholson, does not pick up traffic, why wouldn't, with cost changes in 25 years, National Milk say, you know what, we're going to make an adjustment and have the Class I differential in Los Angeles be higher, that is to say to increase the slope relative to the Central Valley?

A. Is that what you are proposing? We'll take it. I can't -- I can't answer that question. Right? It's a working -- it's a working group, and we're -- we're all working together. We're not trying to give an advantage over one region over another.

Q. When selling -- so we discussed somewhat about where your milk -- do you also sell milk, DFA member milk, do you also sell DFA member milk to Class I operations not operated by DFA?

A. We do.

Q. Have you, for such milk in California, negotiated an over-order premium for the sales to that Class I plant -- to those Class I plants?

A. We have.

Q. Is that pretty standard in California?

A. I can only speak for what crosses my desk. I can't speak for Land O'Lakes or CDI.

Q. I am asking in your experience as to what crosses your desk.

A. Yes.

Q. And how about plants in Nevada, are you also able to negotiate an over-order premium for sales to plants not

owned by DFA in Nevada?
A. Yes.
Q. Does DFA in California and Nevada have a fuel surcharge within the over-order premium, or separate from that?
A. What do you mean by "fuel surcharge"?
Q. A provision within the contract that says if fuel prices are higher than some standard number, that there's additional charge for delivering milk to Class I?
A. Okay. Now that I understand that, can you re-ask the original question? Sorry.
Q. Do -- does DFA for its sales of milk to plants not owned by DFA, receive, in the contract, such a fuel surcharge?
A. Yes and no.
Q. Okay. Can you tell me -- if it gets to confidential information, we cut it out -- but can you tell me the difference between yes and no there?
A. Yeah. That's confidential. Proprietary.
Q. To the extent you have said that you receive milk from other suppliers for your Class I plants, are you charged an over-order premium on that milk?
A. Yes.
Q. Let's discuss Nevada.
A. I'm sorry?
Q. Discuss Nevada.
A. Okay.
MR. ENGLISH: And, Your Honor, can I ask, we've

got another map just to help orient people. Some of us have been involved with Nevada/California issues for a long time, but not everybody, and it's not part of --

THE COURT: So this will get the next exhibit number.

MR. ENGLISH: Yes, please.

THE COURT: All right. So our last one was 374. This next one will be 375.

Yes, you may approach. Thank you, Mr. English.

So I'm marking as Exhibit 375, MIG-56, that's 5-6.

(Thereafter, Exhibit Number 375 was marked for identification.)

THE COURT: If you do not yet have a copy and want one, please raise your hand. They are being distributed here in the room.

You may proceed, Mr. English.

MR. ENGLISH: Thank you.

BY MR. ENGLISH:

Q. So let's discuss a couple pieces here.

First, do you understand that the state of Nevada is not part of any Federal Milk Marketing order area?

A. Yes, I have that understanding.

Q. And do you understand that whatever USDA may or may not do, at the moment at least, that there is a federal statute that says that Nevada shall not be part of any Federal Milk Marketing Order hearing?

A. I don't know that verbiage, so --

Q. Let's start with Clark County down in the southern

part of the state.

That's where Las Vegas is, correct?

A. That's where what, I'm sorry?

Q. Las Vegas is?

A. I believe so, yes.

Q. And there are two plants in Clark County, two distributing plants?

A. I know of one. I know of one. Are you referring to Anderson as the other?

Q. Yes.

A. Then, yes. Yeah, sorry. I don't know where Anderson is really at, so --

Q. The one you did know about, is that a DFA plant?

A. Yes, sir.

Q. And is it true that that plant has no route disposition in California and, therefore, is not even partially regulated?

A. I can't speak to that. I'm in the raw milk fluid division, not in the packaged division, so I can't speak to that.

Q. Well, wouldn't you know whether that happens, because if so, that would impact pay prices to producers that deliver to that plant?

A. Technically, yes. But when I am looking at the pay prices, I -- I honestly do not go to the very last page and review all the plants that is listed on the statistical uniform price each month. So I don't know.

Q. But there's also an Anderson dairy plant in Clark

County. I understand you don't know if it's in Clark County, but will you accept my representation it's also in Clark County?

A. Okay.

Q. Do you know whether its route disposition causes it to be partially regulated in California?

A. I don't know anything about that plant. I just know there is an Anderson plant.

Q. Do you know anything about the milk supply for either of those two plants, as to where it comes from?

A. Definitely not Anderson. And what I know of Meadow Gold in Las Vegas is not current information. So I guess the answer is, no, I do not.

Q. So then there are two plants in Northern Nevada: One is Model Dairy, and one is your manufacturing plant, correct?

A. That's correct.

Q. And your manufacturing supply plant is in Churchill County?

A. That's correct.

Q. Where -- and Model Dairy is in Reno?

A. That's correct.

Q. And Reno is in Washoe County?

A. That's correct.

Q. And your Class IV operation in Churchill, does that receive milk only from Nevada producers?

A. That's correct.

Q. And are most of those producers located in or

around Fallon?

A. Sorry, let me correct that. Our Fallon plant does receive milk consistently from the Nevada producers, but it may receive milk out of state. So I just want to be -- I want to clarify that.

Q. And do you know from what jurisdictions it receives milk?

A. Unfortunately, I do not. I -- again, I can only speak to my area. So at times it has received milk from California.

Q. And then for Model Dairy in Reno, Washoe County, do you know that that plant is fully regulated under California Federal Order 51?

A. As of October, yes.

Q. Does that mean there's times when it's not fully regulated?

A. My understanding is it could change. So I ask every month.

Q. When you said a few moments ago not your area, is California area your area, and Nevada, you just know something about; is that --

A. That's correct. We have members in California and members in Nevada, but not all Nevada.

Q. Are there dairy farmers -- and if you don't know, I get it -- but are there dairy farmers in Nevada other than in and around Clark County and in and around Churchill area?

A. Our members are around the northern, so the

Churchill. I want to say there is one that was outside of Churchill, but it -- I think it's in Nye County. I -- it's -- it's escaping my mind, but I think Mr. Stout with Mountain Area can respond to whether or not they have a member in Nevada.

THE COURT: And Nye County is N-Y-E; is that correct?

THE WITNESS: Correct.

THE COURT: Thank you.

THE WITNESS: Sorry, I think it is Lyon County is the other producer, not Nye, Lyon, L-Y-O-N.

MR. ENGLISH: Kind of south and west of Churchill?

THE WITNESS: Yeah, correct.

THE COURT: Thank you.

BY MR. ENGLISH:

Q. Recognizing some of the limitations you put on your knowledge about Nevada, is it National Milk's position that there are insufficient supplies of fluid milk to serve the Nevada market?

A. I don't know the National Milk's position on that subject.

Q. And your increases from the model that are proposed for Nevada are based on the idea that you have made the increases in California and you wish to retain alignment; is that correct?

A. To my understanding, that is correct.

Q. At a time -- so back in the early 2000s, so after Federal Order Reform but -- but before you built your

plant in Churchill, are you aware that milk from Nevada dairy farmers in Northern Nevada moved in raw form to Model Dairy, or moved in raw form -- it was called "over the hill" -- into the Sacramento area?

A. Yes, I am aware of that. What I can't remember is when it did happen.

Q. So once the plant was built in Churchill, did -- to the extent there was milk that moved in raw form into California -- did that stop?

A. Yes. I don't like to add information, but I want to clarify. The reason that it had struggled to move over the hill was the "California Real" seal.

THE COURT: The California what?

THE WITNESS: "Real seal." A lot of the plants adopted the "California Real" seal, which then plants did not want milk outside of California.

THE COURT: So did California Real on the packaging suggest that the milk was produced in California?

THE WITNESS: That is my understanding, yes.

MR. ENGLISH: Thank you.

THE WITNESS: I was trying to avoid any further questions.

BY MR. ENGLISH:

Q. It may work, it may not.

Nonetheless, whatever the reason, one change from time of Federal Order Reform to today is that to the extent milk moves into California from Northern Nevada, it

is doing so in packaged form from Model Dairy and not in raw form from Northern Nevada farmers, correct?

A. Did you give me a time period?

Q. Well, since you built the plant in Churchill.

A. I can't speak for Model, but in raw form, that's very limited. I'm not going to say that it never happened since the plant's been built.

Q. All right. Since the plant's happened, it may have happened in a limited area, but certainly not to the extent it happened prior to the plant being built, correct?

A. That is correct.

MR. ENGLISH: I thank you for your time, sir. I have no further questions.

And I move admission, Your Honor, of Exhibits 374, 375, acknowledging in advance the concern that was expressed yesterday by Ms. Hancock with respect to the information. And to the extent people want to know, there will be the witness who prepared this that people can ask about that at that time. But, again, the references are all there in the document.

THE COURT: Thank you, Mr. English.

Who will next -- I'll deal with your motion to take exhibits in a little bit later.

Who will next cross-examine Mr. Hiramoto?

Thank you, Mr. Miltner.

MR MILTNER: Thank you, Your Honor.

//

CROSS-EXAMINATION

BY MR. MILTNER:

Q. Good morning, Mr. Hiramoto.

A. Good morning.

Q. Ryan Miltner representing Select Milk Producers.

So I have just a few questions, and I'd like to start with your testimony on page 5.

And in the first paragraph on that page you stated, "Washoe County and Churchill County are in Northern Nevada. Currently Washoe and Churchill Counties have the same differential as milk-producing counties directly to the west in California," I think you made that correction.

Which particular California counties were you referring to when you came up with that sentence?

A. It's basically all the counties that's in the Central Valley that's the 1.70 zone.

Q. Okay.

A. I'm going to struggle you asking me to list every county.

Q. I don't need all of them. Give me just one or two, if you have them off the top of your head there, that are available readily.

A. So we have like Sierra, Lassen. L-A-S-S-E-N, sorry.

Q. That's okay.

A. Plumas, P-L-U-M-A-S.

Q. Okay.

A. Sierra, S-I-E-R-R-A.

Is that enough?

Q. Yeah, that's great. Thank you.

You mentioned that those counties were currently at $1.70 zone, correct?

A. Correct.

Q. And Washoe and Churchill are currently at $1.70 zone, correct?

A. Correct.

Q. So if I look at what the model showed for Washoe and Churchill Counties, it was $1.90 and $1.95, respectively, and then Lassen and Sierra Counties were $1.90 and $2.

So if we look just at what the model had for an output for those counties, I'd like to know if that type of alignment within a dime or so among those counties would be -- would provide for orderly marketing, in your opinion?

A. Well, again, if -- if those Northern Nevada and the Northeast, or above Central -- slightly above Central East and Northeast California counties were the same, then I would say yes. But your question is a little too general in the sense that you are assuming the surrounding counties had no changes.

Q. I'm not sure I follow your -- the last part of your answer. Let me rephrase mine perhaps.

A. Okay.

Q. If we focus on just the counties that you are

referring to in your paragraph on page 5, if those counties were all assigned differentials within a dime of each other, would that create issues that would be of concern to DFA? Would that -- would that allow you to maintain competitive equity, as you stated in your paragraph?

A. No, it would not maintain equity of a dime either direction, I believe. And I want to clarify. Not necessarily to DFA, but to the industry.

Q. Explain the distinction you have drawn there between DFA and the industry.

A. Well, again, our work was collaborative, so it wasn't what DFA wanted. That's why I want to make that distinction. You asked would it -- would it -- I'm sorry, you said something about DFA, so I wanted to clarify.

Q. Yeah. And my point of -- of referencing DFA there is that you are testifying on behalf of DFA. I didn't want to put you in a position to speak for anyone other in your organization.

A. Understood.

Q. So -- so anything -- so unless all of those counties are exactly aligned on the -- with the same differential, your opinion is that would be an issue for maintaining competitive equity?

A. In my opinion, correct.

Q. Okay. Why, given the geography and distance across those points, would a dime in difference upset competitive equity?

A. I don't know if I have enough data with me today to kind of -- to answer that question. Bottom line, it comes to how milk is moved currently. And, yeah, I just -- I just don't know how to answer that question. It would -- it would cost -- it more than likely would cause some distress.

Q. Can you give an example of the type of distress that that would cause?

A. What comes to mind is basically route distribution.

Q. Route distribution --

A. Crossing state lines.

Q. Can you give us any more flavor than just a category?

A. Unfortunately, I cannot.

Q. Okay. Thanks.

MR. MILTNER: I don't have anything else.

THE COURT: Who else has cross-examination of this witness before I ask for Agricultural Marketing Service questions?

I see none. I welcome Agricultural Marketing Service to question the witness.

CROSS-EXAMINATION

BY MS. TAYLOR:

Q. Good morning.

A. Good morning. You are scaring me.

Q. Oh, no, I was trying to be nice.

A. You've got that grin. I know the grin.

Q. Is that how my kids feel?
A. I can't speak to that.
Q. I always try to be pleasant and nice.
A. You are always pleasant.
Q. Okay. That's good to hear. I hope my boss is listening.

Thank you for coming to testify today. I am going to -- my first question, is there someone else that's going to talk about Southern Nevada? I know you focused on Northern Nevada.

A. Yes. Somebody from UDA.
Q. Okay. Then I will save those questions for them.

I want to go to page 6. You talk about -- and I'm on the second full paragraph, so it starts "NMPF supports."

A. Okay.
Q. And the second sentence: "Milk and route disposition in both" -- "distribution in both zones" -- California, a buck 60 and buck 70 -- "moves interchangeably between the zones," which is why you proposed just combining those into one 2.50 zone.

Can you just talk a little bit more about that?

A. Yeah. The -- with how milk moves currently and servicing customers, the difference today just didn't really make sense to us.
Q. The $0.10?
A. The $0.10.
Q. Okay.

A. Yeah. It's because milk goes back and forth at times, you know, with -- with hauling and the state trying to become more green, it just -- trying to move milk the right way to capture the right zone is counterproductive in the industry and against how the state wants us to operate. Right?

Q. Okay.

A. I mean, California, unfortunately, is not an ag-friendly state, even though they may claim they are. They care more about tech.

Q. So in California, what I'm hearing then, is move -- milk often moves against the grain of the zones for other reasons, for -- because of state regulation or --

A. Well -- sorry.

Q. No, I mean, I'm not -- I'm not sure how to finish my sentence, but I'm just trying to get onto the record of why that happens in California, so then why combining those zones would be appropriate.

A. So there's -- there's a lot of optimization --

Q. Uh-huh.

A. -- if you will, that we think about. But at the end of the day we've got to get the farmer-owner's milk to the customer. At the end of the day, we've got to get milk to the customer. So we try to look at putting milk in a zone to a customer, in the correct zone, and not go backwards.

And, again, I'm a Federal Order newbie, right?

Trying to understand all that sometimes can -- not can -- it does give me a headache, but -- but we try to do the right thing.

So after being in Federal Order for almost five years, right, a little over four -- well, actually, no, I'm sorry, it's now a little over five --

Q. Okay.

A. -- that having the zone, that 1.60, 1.70 zone just didn't quite make sense.

Q. Okay. And you talked about, it's in your statement, and you talked some with Mr. English about the differentials, and I -- I remember the California hearing fondly, and that the discussion about differentials for California, at that time, and why those weren't changed at the time of the California hearing.

And you talk about how they are not adequate. And once you implemented -- once the Federal Orders implemented, the bottom sentence says, "We scrambled to adjust, adapt, and ultimately arrive at price mechanisms to facilitate necessary milk movements."

Can you expand on that? I guess, can you first start with what was the problem that you found, and then what was this price mechanism solution that you then implemented?

A. So as you heard the back-and-forth with Mr. English, the hauling of milk is a huge problem in California. Right? We have got high gas prices. We have got traffic. We have got weight limits. And on top of

that, we have got the lowest differential.

So moving from state order to Federal Order, moving milk from, let's say, the closest, Kern County, down to L.A. County, it's not -- it doesn't nearly even -- the differential doesn't nearly even cover what it costs to haul, without even talking about the amount of time.

And then with COVID hitting -- so, sorry, this is kind of a, you asked for it, so it's a longwinded answer -- but --

Q. Okay.

A. -- with COVID hitting, then hauling becomes -- became a lot worse. Right? Drivers no longer want to work weekends. Drivers no longer want to go over the hill.

And then just recently we have got -- and no offense to anyone, I want to make that clear -- we have got fast food workers making 20 bucks an hour. Okay? So haulers want a raise. Everybody wants a raise. Right?

So how do our farmer-owners, how are -- how are our farmer-owners expected to keep producing this incredible product that is healthy and helps humans develop and grow and stay sustainable? I mean, they can't even break even.

So the pricing mechanism, the industry basically came together. It's not just DFA, the industry came together and had to have an understanding that even, yes, we went to Federal Order, handlers didn't like what was being suggested by their vendors, us as one of them, but

they came to the realization if they didn't try to at least work with us, then the farmers would go out of business, and, you know, we need them as much as they need us.

So I know I'm not directly answering your question, only because some of it is proprietary, so I apologize.

But we had to come up with pricing that was -- I know we've tossed this word around all day -- "equitable" on both sides. Right? Our dairy farmers, our dairy farmer-owners understand and knows the importance of handlers, and they are not trying to put them out of business. They understand they need to make a buck.

Well, that same respect needs to go the other way. Our farmer-owners, they are not even asking to be rich, they are just asking to be able to -- to at least break even.

Q. And so can you talk about -- and I don't think it's on the record yet -- prior to the Federal Order when California had a state order, the provisions in the state order that helped move milk that didn't get adopted in the Federal Order, and kind of how that did create an issue?

A. Yeah, the -- and I think you are referring to the transportation allowance?

Q. Yes.

A. Yeah, that was a big hole that -- that -- that created issues with moving milk. So we tried to push for it but --

Q. Can you -- I'm trying -- I want to get this on the record.

A. Okay.

Q. How did that work in the state order, that it provided -- that you didn't have the same problem that you say you have now, or that you had when the Federal Order came into effect?

A. Yeah, I wouldn't -- I wouldn't -- okay. So to be clear, I wouldn't say we wouldn't still have somewhat of a problem, but the transportation allowance at least helped cover a larger portion of transportation costs. Okay? It was based on miles, so it depended -- to Class I plants. So depending on where the milk was coming from, as long as it fell within the grid -- and, again, no offense, but if there -- if the transportation allowance was lacking, California -- the state of California was able to call a hearing a lot quicker, and because we're regionalized, than trying to get everybody together in the Federal Order to call a hearing and say, hey, the pricing isn't working.

Q. You discussed some earlier in cross about the amount of milk in California. And Mr. English asked you questions about, is there a lack of milk for fluid use. And I'm wondering if you could speak to whether you see the differentials, do they help you? I don't know how I want to say this. Does it help you decide where to make -- where to allocate your milk to go? I mean, there's a lot of milk in California to which you have testified to, and data shows.

A. Well, I don't believe I said anything in my testimony about a lot of milk in California.

Q. I guess "a lot" is a relative --

A. I think Mr. English said --

Q. -- word. Subjective.

A. At the end of the day, as much as we try to optimize, our hands are forced on where milk is going. I mean, we'll do everything we can to try to maximize, but that's -- that's easier said than done.

Q. When you say your "hands are forced," what does that mean?

A. Meaning the customers are fixed, in our fixed location, and our farmer-owner is at a fixed location. Right? Unless you can move your dairy farms or your handlers to the spot you want them to, then milk is going to move the way milk needs to move.

Does that answer your question? I don't -- maybe I'm not understanding what you are asking.

Q. No, it does. And what I take from that is, you have to supply them --

A. Yes.

Q. -- period?

A. So case in point, I think what you are asking is, currently, right? You want to -- obviously, you would love to take milk in the 1.60 zone and put it in the $2.10 zone. Okay? Well, that's a lot easier said than done. First of all, you got all these miles and traffic you've got to get through the 1.60 to even get to the 1.70 or the

1.80 zone. And then go down to the Grapevine, as Mr. English has even talked about, to get down to L.A. County. And then -- okay, so what are you going to do, spend more gas and more hauling dollars just to pass the milk that's closer to go to 2.10?

So that's my point, is as much as you want to move milk in the direction you would like, our hands are forced by doing what would be more practical.

Does that help?

Q. It does.

And -- and I was looking at the chart, and I recognize you didn't put this together, but in Exhibit 374, but I do think the number differences are -- are accurate.

So I was looking at the column -- the difference between what National Milk proposed and what the model said, for just California. I'm just going to stick to California. And it looks like it ranges anywhere from $0.45 to $0.70 more than the model, what spit out from the model. And I know you went through, what, a number of factors, I think, that the committee that looked at this region took into account for things that you don't think the model accounted for.

And that is why -- as I'm understanding, that those are the reasons why you would like an increase over what the model said; is that accurate?

A. That's -- I think that's fairly accurate. But, again, don't discount the relationship that we try to

maintain, the slope and the relationship between the regions. Right?

Q. Between California and the Upper Midwest when you say --

A. Between California, the Upper Midwest, and the surrounding areas. Because we don't want to do things -- okay. I mean, California, we would love to be the Southeast and have 7 and $8 differential. I mean, honestly, as a newbie, my first question is, why not hit that bar? Right?

But as we go through the committee, and as we go through our discussions, we can't damage the industry by doing something that has unintended consequences. So we have to level set and -- and find reasonableness where it's practical and it makes sense.

Regardless of whether you agree or not with our assessment or what we worked together on, somebody -- I mean, common sense would tell you, there is an issue in California. There's a huge deficit in California. It's not easy to get feed. Gas is -- it just came below $5, while -- and I'm not trying to hurt any region -- but you got mostly Texas with higher differentials and their gas is 2-something? Doesn't make sense.

Anyway. I'll get off my soapbox.

Q. Well, you are on the stand. You get to have a soapbox.

So when we look at the difference between -- or the increase that National Milk has proposed in

California, I think what I'm hearing is that 45 to $0.70, depending on increase, I'm trying to kind of understand why you came up with that number. And what I think I'm hearing is, for that increase, it was more of alignment with what they were doing in the Upper Midwest to keep that aligned.

A. It -- yes. It was alignment, I would say, across the board. Yes, we did -- we did -- and I keep saying it -- and I won't throw Mr. Wilson under the bus -- but when we -- during the Federal Order promulgation hearing and voting in -- actually voting in Federal Order 51, right? I talked to USDA, I go, "Why are we doing this, you know, X, Y, and Z?"

Well, I kept getting told that the Upper Midwest was the most similar, not exact. California is unique. We are on an island, believe it or not, but it is the most unique, and the Upper Midwest was the closest thing. So honestly, in my mind, that stuck.

So every time we're looking at something related to Federal Order, I kind of want to compare to the Upper Midwest, if that helps.

But same point, the slope and the alignment has to flow across or, you know, east to west, west to east, Midwest to the east, Midwest to the west. I mean, it's got to work. Right?

Q. Okay. On the next page you talked about one of the reasons, one of the factors that was considered was your longer hauls that you have in California.

Can you talk about maybe what the average haul is that DFA experiences in California?

A. What do you mean by the "longer hauls"?

Q. Well, you wrote, "increasingly longer hauls," so I wanted to know --

A. Oh.

Q. -- could you define -- maybe not define that, but put some parameters around it. How long is that in California? You kind of talked about it but --

A. Yeah, I don't know if I can put a number. But to kind of give you an example, more and more milk is moving out of the south. The San Bernardino -- I mean, there's not much milk in L.A. County at all. Right?

The urban population is pushing out the dairy farmers. Nobody wants to live next to something that smells. Right? Some of the milk we have in San Jacinto County, J- -- I don't know if I'm going to spell this right, but I think it's J-A-C-I-N-T-O.

Q. You're lucky, our court reporter is from California.

A. Oh, great.

So the dairies there are also starting to dwindle. Right? So milk's going to have to come over the hill. So that's -- that's what I mean by longer hauls. Because California has become less and less ag friendly, and counties are following suit. And with regulation and everything, they are forcing dairy farmers, unfortunately, to kind of all group, group up in the Central Valley. And

there's even issues starting there with, you know, water issues and -- and air quality issues.

So there's going to be a point where, I don't know, it's like watching the movie Escape from New York where all the prisoners are found in New York. I feel bad for farmer-owners where it seems like California wants to shove them in this little corner and try to supply the rest of the state.

Q. You also talked about hauler resistance. And I wondered if you could expand on that.

A. Yeah, it's kind of what I mentioned with the COVID issue. Haulers are being -- the drivers, and sometimes the haulers -- so haulers are being picky on where they want to go. They want to go to a plant that's in-and-out. All right? Well, whether that's a plant that's close or far, just, you know, pick up the milk and leave.

So on the longer distance hauls, because they don't have drivers, or drivers that don't want to haul the longer distance, haulers will kind of say, we don't -- we don't want to do it.

And actually, I think we just had a hauler exit California because they are just tired of it.

Q. Can we turn to page 8?

And you have a chart there. And I know this is not data that you put together, so I will add that caveat for you, me, and the record to reflect.

But I had saw a line in there. I was wondering if you knew, what's the difference between a line trailer and

a farm pickup trailer?

A. That's -- yeah. I don't want to -- I don't want to speak incorrectly. I -- I think I have an idea, but I'm not exactly sure.

Q. Okay.

A. Sorry.

Q. That's okay.

A. There's probably somebody in here that can answer that.

Q. If we could turn to page 4 with your maps. I wanted to talk a little bit about that Southern California region.

A. Okay.

Q. And it looks from the map what you proposed, that $3 zone --

A. Yep.

Q. The 2.60, what county is that, in the green?

A. I believe that's Kern.

Q. Kern County. Okay.

So San Bernardino is the one to the right of that?

A. Yes.

Q. So in the old surface it looks like -- or the current surface, I should say, San Bernardino is 1.80 while L.A. is 2.10. So there's $0.30 to help move some milk into that region. But in what you proposed, it's a flat $3 amongst that region.

I wonder if you could talk about why you got rid of the slope there.

A. Yeah. So $2.10, which I think there's only -- I'm sorry, the $2, which I think there's only one producer still, I'm not sure. But the $2.10 -- or one plant, sorry -- the 2.10, $2, and the 1.80 that you are talking about, it -- again, to the current state it's -- it just didn't make any sense to have that segregation. It's just one area, in our minds.

Q. Uh-huh. So it's all one area kind of like how you think, how you -- you all look at the $1.70, $1.60 zones, is the milk from there is considered kind of like one big unit --

A. Yeah.

Q. -- and you move it where you need to move it?

A. Right.

Q. And you don't need more money to move it into L.A.?

A. Well, it'll take more money to move it into L.A.

Q. So the compromise you all came up with was --

A. Thank you. Yes.

Q. -- to treat it as --

A. Don't ever say we don't need more, we'll need more. Our farmers always need more.

Q. I'm aware.

And that $3, you still move milk, though, down -- am I correct, you are still moving milk down from the Central Valley down into that --

A. Yes.

Q. -- area?

A. Yeah.
Q. And that slope does help get that milk down there that's needed?
A. Yeah. We do our best to stair-step, but, yeah, it still does come from the Central Valley.
MS. TAYLOR: I think that's it from AMS. Thank you.
THE WITNESS: Thank you.
MS. HANCOCK: Thank you.
Your Honor, we have no more questions. We would just move for the admission of Exhibit 373.
THE COURT: Is there any objection to the admission into evidence of Exhibit 373?
There is none. Exhibit 373 is admitted into evidence.
(Thereafter, Exhibit Number 373 was received into evidence.)
THE COURT: Now I'd like to address Exhibit 374, which is also MIG-57.
Is there any objection to the admission into evidence of Exhibit 374?
MS. HANCOCK: Your Honor, if we could just reserve the same issues that we had before, that this witness didn't create the document, doesn't have firsthand knowledge about where all those plants are located. But with that -- with that, I guess, asterisk, I don't know what to call it, but with that reservation, no other objection.

THE COURT: Thank you.

I see no other comments on this exhibit. I do admit into evidence, with that reservation noted, Exhibit 374.

(Thereafter, Exhibit Number 374 was received into evidence.)

THE COURT: I think with the legend that shows where the information came from, and with people's own ability to do the calculations, that there's no harm in it being admitted into evidence at this point, even though we will welcome the future testimony about it.

With regard to Exhibit 375, is there any objection to that being admitted into evidence?

There is none. Exhibit 375, which is also MIG-56, is admitted into evidence.

(Thereafter, Exhibit Number 375 was received into evidence.)

THE COURT: And thank you. Do you want to testify often?

THE WITNESS: No.

THE COURT: Thank you.

Who will be the next witness.

MR. PROWANT: Your Honor, National Milk calls Brent Butcher next.

THE COURT: And while Mr. Butcher is taking the stand, I'm going to take a five-minute break. For all of us, I'm going to check the coffee machine.

(Whereupon, a break was taken.)

THE COURT: Let's go back on record.

We're back on record at 10:54.

While off record, I marked Exhibit NMPF Number 46 as Exhibit 376. 376.

(Thereafter, Exhibit Number 376 was marked for identification.)

THE COURT: All right. Would you state and spell your name for us, please.

THE WITNESS: Yes, Your Honor. My first name is Brent, B-R-E-N-T, last name Butcher, B-U-T-C-H-E-R.

THE COURT: Have you previously testified in this proceeding?

MR. WILSON: No, Your Honor.

THE COURT: I'd like to swear you in.

BRENT BUTCHER,

Being first duly sworn, was examined and testified as follows:

THE COURT: Now, let's make sure the mic is comfortable for the way you want to sit as you are looking at your documents and all.

You may proceed.

DIRECT EXAMINATION

BY MR. PROWANT:

Q. Good morning, Mr. Butcher.

A. Good morning.

Q. Did you prepare Exhibit 378 in anticipation of your testimony here today?

A. I did.

THE COURT: 376?

MR. PROWANT: Oh, I apologize, 376.

THE COURT: 376.

MR. PROWANT: I wrote that incorrectly.

BY MR. PROWANT:

Q. Did you prepare Exhibit 376?

A. I did.

Q. Would you please go ahead and read that into the record for us.

A. Yes.

The history of UDA. Here is who we are, what we do, where we are.

Good morning, or good afternoon. My name is Brent Butcher. I'm the director of fluid sales for United Dairymen of Arizona. Founded on January 1st, 1960, United Dairymen of Arizona is a Capper-Volstead cooperative association, is qualified to market milk on the federal milk market orders, is a member of NMPF, and supports the Class I pricing differential adjustment.

In 1960, UDA consisted of 390 co-op members. Today, our membership consists of only 36 members. Dairy farming in Arizona presents a unique set of challenges that make it a formidable and costly endeavor. The most glaring obstacle is the arid desert client that dominates the region, resulting in scorching temperatures and water scarcity. These conditions pose a significant challenge to dairy farmers who require abundant water resources to sustain operations.

Arizona is facing a severe and prolonged drought that poses serious concerns about water scarcity and long-term water management strategies to address the crisis. These inhospitable elements test the resilience of the animals, farmers, and the critical staff required to operate each dairy. Yet, despite these hurdles, we persist, producing a modest, but crucial supply of wholesome and high-quality milk.

To understand the complexities and difficulties of dairy farming in Arizona is to appreciate the unwavering determination required to sustain this vital agricultural sector in the face of adversity.

UDA's production output remains relatively nominal with a mere 12 million pounds of milk generated daily to meet the demand of our customers and consumers. To put this into perspective, new dairy processing plants have the capacity to single-handedly process volumes that rival Arizona's entire daily production.

UDA is also one of the oldest dairy co-ops in North America, and one of the few that still provide full service to our members. Our manufacturing plant, located in Tempe, Arizona, balances milk for our Class I bottlers, and produces a variety of products like dairy powders, cheeses, butter, powder blends, proteins, and concentrated and condensed dairy products.

The Grand Canyon State has seen significant changes over the past two decades. Most notably, Arizona has seen tremendous population growth. Since 2000,

Arizona's population has skyrocketed from 5.16 million people to over 7.35 million, a 42% increase. The Metro Phoenix area has seen similar growth, and urban expansion creating transportation issues -- sorry -- the Metro Phoenix area has seen similar growth in urban expansion creating transportation issues in delivering milk to bottlers.

Currently, Phoenix is the tenth largest city in the U.S. We bear the burdens of these changes. Our land is becoming more expensive, our roads more congested, and competition for resources like water, energy, and labor, has become tangible, everyday obstacles. All of these structural changes in competition for resources has had a clear impact: Above average increased costs across the board.

More on the UDA background. UDA was a participant on the NMPF task force that addressed the Class I pricing surface. We participated in the discussions of the Western region group, and specifically focused on FMMO 131 marketing area. The objectives of UDA are consistent with the NMPF proposal.

UDA's objectives are:

1. Follow the guidance provided by the USDSS model and make adjustments where local conditions warrant a change;

2. Maintain the current pricing relations among competing handlers, both within the market and within the -- with the surrounding states;

3. Establish a smooth transition of Class I pricing from surrounding areas to maintain a consistent slope of price changes.

We believe the NMPF proposal meets our objectives and should be adopted by the USDA.

Below is a table that I want to highlight two counties. County number one, Maricopa. The current model is $2.35 -- sorry, not the current model -- the current price is $2.35. The model suggests an increase to $2.40, and the proposal is $3, which equates to a 27.6% increase.

I want to highlight Yuma County at the bottom of the page. The current price is $2.10, the model suggests $2.15, and the proposal, $2.90. Percent of change is 38%.

THE COURT: Before you go on, Mr. Butcher, on your table on page 2 of Exhibit 376, are these all of the counties that are within Arizona?

THE WITNESS: Yes, Your Honor.

THE COURT: Thank you.

THE WITNESS: There are only two counties in Order 131 marketing area that have pool plants. The majority are in Maricopa County, Arizona, with two distributing plants located in the Yuma, Arizona. The remaining counties in Arizona have no dairy plants.

The proposed increase in the Class I differential from the current rate in Maricopa County is 27.6%. The proposed increase in the Class I differential from the current rate in Yuma County is 38%. And the evidence will show that the current cost to service the Class I market

has increased more than these percentages.

Other witnesses have discussed the USDSS model and its functionality. UDA intends to highlight areas of local deviations that would require an adjustment to the model results to more accurately reflect the economic conditions in FMMO 131, and these areas are as follows:

Weather and climate. We live in an arid climate. That is our reality out in the desert. And, yes, we have had this climate for as long as UDA has been in existence. Lately, however, we have been experiencing record heat amid decade-long drought conditions. With these hot, dry, conditions come more challenges and different priorities than other parts of the country, including how we utilize water every single day. We have embraced a conservation culture and understand the importance of living a water-efficient life. The Colorado River Basin has been in a prolonged drought. We are experiencing the driest conditions in the basin in more than 100 years, and these conditions are expected to continue well into the future.

The resulting reduced river flows are further stressing the over-allocated Colorado River. The U.S. Secretary of the Interior bases a shortage declaration on the elevation of Lake Mead, which is dependent upon the releases from Lake Powell. In fact, both Lake Powell and Lake Mead are approaching critical elevations and will require unprecedented management actions to protect infrastructure in the lower Colorado River Basins.

A shortage on the Colorado River means a reduction

in the supply available to lower Colorado River water users. This also means UDA pays more for water than it had in the year 2000 and more than almost any other state. These increased water costs also impact our dairymen and their ability to produce milk to service the market. As the impacts of drought persist, there will be additional reductions almost certainly beyond the currently defined shortage levels. Those reductions are likely to make an impact on UDA's ability to meet projected future milk demand.

Transportation, which has been highlighted several times. First, some background on UDA and the process of serving our customers. The majority of UDA's customers and UDA's own plants are located in Western Maricopa County. The vast majority of UDA's members are located in Maricopa County and the collar counties surrounding the Metro Phoenix area. Milk that is produced in the eastern part of the Phoenix Valley must travel farther to our customers, as well as to UDA's plant.

The distance UDA's milk needs to move from farm to customer to service the market is relatively low, with most farm transportation distances within 150 miles of its manufacturing destination. But with urban sprawl and population growth, the amount of time it takes to deliver the milk has been steadily increasing.

UDA uses what are commonly called super tankers for about 60 to 70% of its milk deliveries. We have 35 super tankers which hold 76 to 78,000 pounds of milk.

Super tankers have four axles with larger tires to absorb the extra weight. UDA also has 50 regular tankers that hold 48 to 49,000 pounds of milk. These super tankers cost more than conventional tankers, and maintenance costs can also be greater.

In accordance with our commitment to sustainability initiatives, UDA will continue to expand its fleet with the dedication to continue purchasing more super tankers which reduce overall environmental impacts.

Since 2018, the cost of the super tanker has increased by approximately 35%. Truck drivers need to have heavy haul permits to transport super tankers. On average, a super tanker can weigh as much as 40 to 44,000 pounds more than a conventional tanker. The ongoing highway construction west of the Phoenix Metro area has caused wait times and increased drive times from -- time from the dairies. Due to population growth around the Phoenix Metro area, we have seen drive times continually exceed 30 minutes from 2017 drive times.

During rush hour traffic, we can see drive times increased by one hour or more, depending on road conditions. It normally takes our drivers about two and a quarter to three and a quarter hours to get unloaded and washed at the receiving plants.

However, there are times that we experience delays at some of our customers due to plant construction projects, labor constraints, and labor licensing restrictions, lab equipment and system failures, among a

host of other extraneous factors.

Plant construction projects are more and more common as they expand to meet the new population demand. These construction delays can add an additional one to four hours to get unloaded. With UDA's own trucks, this wait time is lost productivity, and time is money.

With some of our contract haulers we also incur demurrage charges. These demurrage charges have increased --

THE COURT: Would you stop for just a minute to spell that word?

THE WITNESS: Demurrage?

THE COURT: Yes, please. No, I think it's fine. I just -- it's a word I'm not familiar with, so I'm just asking you to spell it.

THE WITNESS: Sure. I'm just trying to find it.

THE COURT: So next to the last paragraph on page 4, second to the last sentence -- or third to the last.

THE WITNESS: Yes. Yes. With some of our contract haulers we incurred demurrage, D-E-M-U-R-R-A-G-E.

THE COURT: Thank you.

THE WITNESS: These demurrage charges have increased by over 60%. When these delays happen, the drivers are forced to wait until they can be unloaded.

Something especially unique to Arizona is monsoon season. Monsoon season typically starts in June and ends in September. This unique season brings higher humidity,

which can lead to thunderstorms, heavy rain, hail, sandstorms, high winds, and increased ponding on roadways. Monsoon season is problematic for our supply chain as road conditions deteriorate and can cause accidents or incidents. Also, the hotter weather conditions in the Phoenix Metro area cause our drive, steer, and trailer tires to crack and break when we see excessive continued heat conditions. These damages and repairs are costly, and the heat we have seen this summer has been extreme.

Fuel and other costs in Arizona. Since 2000, with an accentuation post-COVID 19 effect, we have seen a steady increase in all the peripheral costs of servicing our customers. Going back to 2017, costs like insurance, repairs and maintenance, special permitting, demurrage, wages, et cetera, have increased 38%. Fuel costs are in addition to these cost increases.

Statistics from the U.S. Energy Information Administration show that diesel fuel costs have risen by 150% over the last two decades in the western part of the United States. Since 2017, fuel costs have increased by 80%. Due to increased time in delivering milk to our customers, overall fuel usage is up, increasing our costs.

Changes to the economics of producing Grade A milk. Dr. Erba from DFA provided testimony earlier in the hearing about the current cost to produce Grade A milk in the Mideast. UDA would like to add to that testimony with cost factors we have experienced in Arizona.

The additional requirement created by the FARM

program adds cost to produce Grade A milk. Overhead to meet the program guidelines and the management of such compliance results in additional cost for Arizona producers.

Even just to meet the requirements of the PMO, many costs have increased. Construction costs for housing of laborers, both internally and externally, to keep the farm operational have increased. Construction costs for the cow facility and calf barns have increased. The milking parlor design and automation equipment has increased. The on-farm milk storage area has become the equivalent to what manufacturing plants invest in storage capacity.

Multiple milk silos with the capacity to hold 36 to 48 hours of milk production is commonplace. The constant cleaning and upkeep of equipment has resulted in the increased use of chemicals and repair charges.

The availability of water, as previously noted, has a profound impact on Arizona dairy operation. Surface water for agricultural use as been restricted or, in some instances, cut off entirely. Wells are in use, but the costs of rehabbing them for adequate supply of water, i.e., deeper or relocating wells, has increased.

Due to water availability issues, farms can no longer depend on growing their own feed to supplement their needs. Purchased feed is increasingly the dependent option, and Arizona farmers are facing stiff competition and increased prices to locate feedstuffs. Arizona feed

mainly comes from the Midwest. All aspects of transportation to deliver feed via rail and truck have increased, and the dynamics of locating feed has changed with the vast amount of feed being exported. Now Arizona dairymen are juggling many commodity feed and byproducts to produce a suitable ration, and at most times, not at the best nutritional value to the cows.

The cost of farmland in Arizona is now ranging around 30 to $40,000 per acre. The ability to expand a production facility or build a new one in Arizona has become increasingly difficult. New farms, if anyone is willing, are now locating to more remote areas.

On-farm utility usage, and therefore, utility costs, have also increased. Larger milk pumps are needed to move the milk tonnage through the lines into storage areas. Larger inline chillers are needed to keep milk colder and meet the increasing demands of bottlers for milk. The temperature of milk leaving UDA's farms today is targeted to be 35 degrees. Milk trucks are needing to be flushed out for cooling before loading. Cow comfort costs have increased. Misters, fans, and constructed shaded areas are an absolute necessity.

Dairy farming is considered a capital-intensive business as compared to the full spectrum of businesses in the United States. The consolidation of the banking industry and increases in inflation have created a difficult environment for dairymen to acquire credit. New investments in current operations or new farms starting

out are on the decline.

These costs identified above are more than -- more than exceed the $2.25 cost that Dr. Erba identified. In order to maintain a Grade A milk supply to service the fluid market in Arizona, Class I prices need to increase to the dairymen.

Below is some index information. The tables below highlight the population in annual percentage change, diesel price change, the long-term drought via the standardized precipitation evapotranspiration index --

THE COURT: And of course you know I want you to spell that.

THE WITNESS: Evapotranspiration, E-V-A-P-O-T-R-A-N-S-P-I-R-A-T-I-O-N.

THE COURT: Thank you.

THE WITNESS: Figure 1, Arizona population from 2000 to 2022. In 2000, we had 5.16 million people. In 2022, we had 7 -- or have 7.35 million people. So 42% population growth in the past 20 years from the U.S. Census Bureau.

Figure number 2, the weekly West Coast No. 2 diesel retail price from 2000 to 2023. We have seen 150% increase in diesel cost in the past 20 years. Source is the U.S. EIA Administration for Gasoline and Diesel Fuel Update.

Figure 3, also pulled from the same data, shows the weekly West Coast No. 2 diesel retail price from 2017 to 2023, which shows an 80% increase in diesel costs in

the past six years.

This is the January through March 2023, long-term drought average image.

THE COURT: And that's on page 8 of your testimony.

THE WITNESS: Yes, Your Honor.

In conclusion. UDA implores the USDA to adopt each of the NMPF proposals, with an emphasis on the Class I pricing differential adjustment currently under discussion. The need to affect higher prices on behalf of Arizona dairymen is essential to combat the onslaught of increased production costs in one of the fastest growing population states in America. The adoption of this proposal holds immense potential to address critical challenges. It is a move that not only benefits our hard working dairy farmers, but also supports the economic stability of our communities and ensures a reliable supply of high quality, wholesome milk for consumers at an affordable price.

If Arizona cannot supply its own population, the transportation costs from other states to do so will be borne by the local customer. Further, the proposal aligns with the evolving needs of the dairy industry. A reduction in farmer income will assuredly put more dairy farms out of business, a preventible outcome if this common sense reform is adopted by the USDA.

In closing, I want to thank the USDA for holding this hearing, for allowing me to testify on the issues

that are so integral to sustaining Arizona's milk supply, and for carefully considering the adoption of each NMPF proposal.

And with that, I look forward to your questions.

BY MR. PROWANT:

Q. Thank you, Mr. Butcher. I just wanted to follow up on a few things here before we open you up for cross-exam.

So going first to pages, let's see, III and IV, you are talking about transportation, and you are talking about how fuel costs have risen. And that's actually on page 5, I apologize.

I was wondering if you have, you know, any sort of numbers you can put to that. We just heard Mr. Hiramoto talk about how gas in California is $5.

Has Arizona experienced similar types of prices?

A. We pull from a very similar PADD.

Q. Okay.

A. I don't have the exact cost, but being close to the West Coast, we do have a more increased diesel price than other parts of the United States.

Q. And then continuing on page 5, you mention the FARM program adds costs to produce Grade A milk.

I was wondering if you could just talk briefly about what the FARM program is and how it adds to your overhead, or your producer's overhead.

A. Sure. The FARM program is designed to -- to really care for cow comfort and to have some sort of

oversight on cow comfortability. A lot of our customers require this, so we enact this across all of our dairy farms. And there is overhead to manage these programs and manage these systems and have people on staff to manage our internal FARM program.

Q. Okay. In turning to the next page, on page 6, you mentioned that the milk leaving UDA's farms today is targeted to be 35 degrees, which, that's in excess of the PMO standard, correct?

A. Yes, it is.

Q. And by "in excess," I mean more strict.

A. Correct. Yes.

Q. And we have heard some testimony from other witnesses about somatic cell count and bacteria counts.

I'm wondering if UDA's producers are also having to meet heightened requirements from customers?

A. Yes. Our customers require lower somatic cell counts as well, in addition to lower temperatures, which is why we target 35 degrees. And we also consider protein as well a factor to watch out for.

But, yes, our customers are requiring us to deliver milk that is considerably lower than the current PMO standard on both temperature and somatic cell component.

Q. Thank you.

And then just turning to some of your tables here, or figures. Can you just explain for us what the evapotranspiration index is showing?

A. Yes. So this shows more the long-term drought across the state of Arizona. Maricopa County is, in this image, located in the middle of Arizona. I don't know how to describe the county structure, but it's -- it's -- there is a considerable long-term drought, and as we can kind of tell in the middle of this page --

THE COURT: Now, which page are you on?

MR. PROWANT: Mr. Butcher, I think you might be talking about Figure 4 on page 8.

THE WITNESS: Yes.

BY MR. PROWANT:

Q. And I'm looking at Figure 1 on page 6. I apologize for not being clear. There's -- it's a line graph, and there's a population --

A. Okay.

Q. -- a blue line going up showing Arizona's population growth in the last 22 years. And then there's a green line, which, you know, has been relatively stagnant and went down in 2020. And I'm just wondering what's this green line showing in this evapotranspiration index.

A. There's -- I think there's a little confusion here.

Q. Sure.

A. Is on the index information aspect, down below it says, "via the Standardized Precipitation Evapotranspiration Index," that is referring to the long-term drought image on page 8.

Q. Oh, understood. Okay.

A. But the green line, to address I think your concern, is the percent of annual change in population.

So we can see the population increases in 2000 starting at 5.16. We see the blue line go up and to the right, which indicates an increase in population.

Down below, the other, the other line -- I'm colorblind, so I will take your word that it's green -- shows the annual percentage change. So we can see that we see a spike of almost an 8% change, and then looks like continuing from 2000 to 2019 we see an annual change of 2% population change.

Q. Okay. So the green line is just showing the percentage of population change, and this isn't talking about rainfall or anything?

A. Correct.

Q. The evapotranspiration, that's Figure 4, showing just Arizona's long-term drought?

A. Yes, that's correct.

Q. Okay. Great.

MR. PROWANT: That's all the questions I have.

Your Honor, we'd make him available for cross-exam.

THE COURT: Very good. Thank you.

So since you started to talk about page 8, you were trying to help us locate Maricopa County and --

THE WITNESS: Yes, Your Honor.

THE COURT: If you would go back to that.

THE WITNESS: Yes, Your Honor.

THE COURT: I see the patches are about drought, not about where the population is. So I need a little help.

THE WITNESS: That's correct. So let's -- let's focus on the southwest part of Arizona, which is Yuma County. And then the southwest quadrant, we can see there is -- I believe to be is red, which highlights a long-term drought. If we shift our focus maybe more to the center of the image, which is to the right of Yuma County, we will see Maricopa County, and there is a patch of what I assume is red, or yellow, that highlights a drought in the middle part of Maricopa County in Arizona.

THE COURT: Very good. So this SPEI that's indicated in this chart on page 8, that goes with the Standardized Precipitation Evapotranspiration Index?

THE WITNESS: Yes, Your Honor.

THE COURT: Okay, then. Thank you.

Who has cross-examination questions for Mr. Butcher?

Mr. Rosenbaum.

CROSS-EXAMINATION

BY MR. ROSENBAUM:

Q. Steve Rosenbaum for the International Dairy Foods Association.

If you could turn to page 2 of your report, which is Hearing Exhibit 376.

This is the chart on which you list the current

Class I differentials, the Class I differentials suggested or recommended by the University of Wisconsin model, and the proposed Class I differentials that are part of Proposal 19, correct?

A. Yes.

Q. And when you list the "model," I take it you have taken the average of the two different months that were covered by the University of Wisconsin model; is that correct?

A. I'm unsure of what the -- if it took those averages. I'm unsure.

Q. Okay. Well, they appear to, from my perspective. If others see it differently, I'm sure they can correct that.

And I think you made clear that the only counties in the entire state in which there are pool plants are Maricopa and Yuma Counties, correct?

A. Yes.

Q. So that the proposed Class I differentials for the other counties really have no practical significance; is that fair?

A. That is correct. Yes, sir.

Q. Okay. So let's just focus on Maricopa and Yuma.

In Maricopa, the current Class I differential is $2.35. The University of Wisconsin model suggested a $0.05 increase, correct?

A. Yes.

Q. By contrast, you -- your proposal is an increase

more than ten times higher than the proposed University of Wisconsin increase, correct?

A. Ten times higher? Or I'd say 27.6%.

Q. Well, that's over the current.

But, I mean, the University of Wisconsin is suggesting that the Class I differential go up by $0.05, and you are proposing that the Class I differential go up by $0.65, correct?

A. Okay. I agree.

Q. So in terms of a comparison of what the University of Wisconsin is suggesting is an increase, and what you are suggesting as an increase, you are suggesting an increase more than ten times higher, correct?

A. I believe that the model is what the model is. It's a baseline like we have discussed. It's not the take all, end all. So we have added our own regional or state, really, color, and decided that we needed to increase to account for a variety of cost increases.

Q. And I assure you, we'll be talking about that at some length --

A. Okay.

Q. -- as to your justification.

But I'm just trying to orient ourselves in terms of magnitude of difference between what the University of Wisconsin model suggested and what you have proposed.

And just a simple math, your $0.65 increase is, indeed, 13 times the $0.05 increase that the University of Wisconsin model suggests, just as a matter of simple math,

correct?

A. I would also point out --

THE COURT: Just a minute, do you have anything just to multiply 5 times 13? I mean, do you need some paper and a pen?

THE WITNESS: I haven't done paper math in quite sometime, but I do have a phone.

THE COURT: Go ahead and use it.

THE WITNESS: Okay.

MR. ROSENBAUM: I think 5 times 13 is 65.

THE COURT: But he's entitled to make sure you are not misleading him, Mr. Rosenbaum.

MR. ROSENBAUM: I would not intend to do that.

THE WITNESS: I would agree.

BY MR. ROSENBAUM:

Q. And -- okay. And the increase that you are proposing in Yuma is $0.80 as compared to the University of Wisconsin suggested increase of $0.05, correct?

A. I think we should back up just a touch, because you indicated that it was my decision. I'm not sure if that's an accurate representation if it was really my decision. It was a group consensus.

Q. That's a fair correction.

The National Milk Producer Federation proposal is one to increase the Class I differential in Yuma County by $0.80, as compared to the $0.05 increase that the University of Wisconsin model proposed, correct?

A. Yes.

Q. Okay. And by my math, that's more than -- your -- by my math, the National Milk Producer Federation proposal is more than 15 times greater the increase proposed by the University of Wisconsin model. Is that --

THE COURT: More than or equal to 15 --

MR. ROSENBAUM: More than --

THE COURT: -- times?

MR. ROSENBAUM: -- 15. Sorry.

THE COURT: Right.

BY MR. ROSENBAUM:

Q. It's 15.8 to do the actual math.

But does that sound right to you?

A. It sounds -- it sounds right and reasonable.

But I think we should also highlight that that increase still doesn't cover the cost increases --

Q. Well --

A. -- themselves.

Q. -- as I say, we'll talk about those in a minute. Once again, I'm just trying to orient ourselves what you are seeking versus what the University of Wisconsin model indicated.

The -- and just to, once again, to orient ourselves, there are -- all of the manufacturing plants in the state are in -- are in what county?

A. Maricopa and Yuma County.

Q. Okay. And are all the Class I plants also in those two counties?

A. Yes.

Q. Okay. And are the -- are there two Class I plants in Yuma?
A. I believe so.
Q. And are they owned by the Hettinga family?
A. I believe so.
Q. Okay. And are those plants supplied by your cooperative?
A. On occasion we might, but we have no contractual obligation to send milk down there.
Q. And are they -- are you the only co-op in the state?
A. I believe we are, yes.
Q. Okay. So by definition, then, they -- their supply -- they have a non-co-op supply?
A. I believe that's correct.
Q. Okay. All right. So let's talk a bit about dairy in Arizona.
I have to say, your testimony might be characterized as something of a tale of woe.
A. It's pretty desolate. And I think as I highlighted, we started with 390 dairy farmers, to date down to 35, so --
Q. And I'm going to focus right on that to start with.
A. Okay. Perfect.
Q. So you had 390 members in 1960 as you state, correct?
A. Yes.

Q. And now you say you are down to 36, right?
A. Yes.
Q. Okay. So let's look a bit about milk in Arizona.
MR. ROSENBAUM: And, Your Honor, I would have a document I would like to have marked.
THE COURT: I'm going to mark this next one as 377.
(Thereafter, Exhibit Number 377 was marked for identification.)
THE COURT: Thank you, Mr. Rosenbaum. And what other number should I reference, if any?
MR. ROSENBAUM: I think the practice has been when I have marked a document for the first time, we just call it IDFA-377 as well. That's how --
THE COURT: IDFA-377. All right. Good.
Now, I'm going to go off record so that we can distribute this, and the witness can get a look at it. And we'll go off record now at 11:37.
(An off-the-record discussion took place.)
THE COURT: Let's go back on record.
Back on record at 11:38.
And Exhibit 377 is also known as IDFA-377.
Mr. Rosenbaum, you may proceed.
BY MR. ROSENBAUM:
Q. If I could have you turn to the sixth page of this document, please. That's -- which is Table -- and let me just start by introducing the document. It's called Milk Production, Publication of the U.S. Department of

Agriculture, Agricultural Marketing Service. And this is dated February 13, 1961.

So if we turn to page 6, which is a table, contains Table 7, milk cows and milk production on the farms by states by various years. I would like to focus on Arizona, of course, and specifically the number of millions of pounds produced in Arizona in 1960, which is the year you -- that UDA was formed, and the year you reference in your testimony.

Do you see that in that year, the state, the entire state, produced 461 million pounds of milk?

A. Yes.

MR. ROSENBAUM: Your Honor, I would now like to mark another exhibit, which I would ask be Exhibit 378.

THE COURT: Yes. Thank you, Mr. Rosenbaum. Thank you for giving me this.

All right. The one that is now being distributed will be Exhibit 378.

(Thereafter, Exhibit Number 378 was marked for identification.)

THE COURT: Mr. Rosenbaum, shall I also call it IDFA-378?

MR. ROSENBAUM: Yes, I would -- yes, Your Honor.

THE COURT: All right. And it's being distributed here in the room. If you need a copy, please raise your hand.

And, Mr. Rosenbaum, everyone's situated. You may proceed.

BY MR. ROSENBAUM:

Q. This document is -- has as the same name as the previous exhibit. It's called Milk Production. Once again, it's a publication of the U.S. Department of Agriculture. It's now being done by the National Agricultural Statistic Service. And this document is dated February 22, 2023.

And if you would turn with me to page 7 -- excuse me -- page 8, which is a document that has the heading Milk Cows and Production States and United States 2021 and 2022. And I would like to focus on the state of Arizona, of course, and the 2022 figure, which is the most recent poll year figure available, obviously, since we're in 2023.

And what I see here is that in 2022, there were 4,772,000,000 pounds of milk produced?

Is that your reading as well?

A. Yes.

Q. So that milk production increased more than ten times in Arizona between 1960 and 2022, rising from 461 million pounds to 4,800,000,000; is that correct?

A. Yes.

Q. Okay. And correct me if I'm wrong, but I believe around 90% of that 4,772,000,000 pounds is UDA milk; is that right?

A. That's probably a little high. I would probably peg something closer to the 80% range.

Q. Well, I'll tell you how I got there.

A. Okay.
Q. Because I got there just -- I took your number from your statement that says, on the first page I think -- yeah, UDA production is a mere 12 million pounds of milk generated daily. I took 12 million and multiplied it by 365 --
A. Yes.
Q. -- and I got a number over -- a number over 4 billion.
THE COURT: Let's go off record just a moment.
(An off-the-record discussion took place.)
THE COURT: Let's go back on record.
We're back on record at 11:44.
Mr. Rosenbaum, you directed our attention to Exhibit 376, page 3, and you may continue.
BY MR. ROSENBAUM:
Q. Yes. So to give you the precise numbers, I multiplied 12 million, the 12 million pounds a day that you referenced in your testimony, by 365, and I got 4,380,000,000.
A. Sure. We see fluctuations that range due to seasonality of milk. So the 12 million is really a generalized average of how much milk we typically produce. However, we have to acknowledge that there are fluctuations, and we see that number tick down as well.
Q. Okay. In any event, a large majority of the milk is produced by UDA, correct?
A. I agree with you, yes.

Q. Okay. And so what I'm seeing is a tenfold decrease in farmers, but a tenfold increase in production, correct?

A. Yes, off the numbers.

Q. Now, that would obviously suggest that your members have a lot more cows than they used to back in 1960, correct?

A. We do. And there's a multiple of reasons for this, as I testified, is we're not seeing many dairy farmers that want to locate in Arizona. We had over 126 days of heat in excess of 100 degrees just in 2023. Dairy farming is very hard in Arizona.

So what we have done, and what we see, and we follow the -- you know, very similar national average, we're seeing farms reduce, cow numbers increase, one -- and we're seeing that a little more drastically in Arizona because our farms are typically larger -- but it's really, it's an act of desperation so that perhaps we can gain some efficiencies of scale to survive another month, and that's why we're seeing larger numbers.

Q. And just to compare how you are doing versus the country as a whole, if we take Exhibits 377 and 378, and juxtapose Table 7 in Exhibit 377 with page 8 in Exhibit 378, we have already established that during that timeframe Arizona milk production increased tenfold, correct?

A. Sorry, you spoke a little quick there, so I'm not entirely following which --

Q. I'm comparing the 461 million pounds produced in 1960 to the 4,472,000,000 pounds produced in 2022 in Arizona, milk production in Arizona has gone up more than ten times, correct?

A. I'd have to run -- do the math.

Q. Well, 461 times 10 would be 4,600,000,000, but you're actually --

A. So slightly over.

Q. 4,772,000,000. So you are a little above ten times as high, correct?

A. Yes.

Q. As opposed to the national averages, if we compare them, which at the bottom of Table 7 in Exhibit 377, we see that total U.S. milk production in 1960 was 122,920,000 pounds and -- state that again, I'm off -- total production in the United States in 1960 was 122,920,000,000 pounds, and in 2022 it was 226,462,000,000 pounds.

Do you see that?

A. I do.

Q. So that Arizona milk production increased tenfold during this timeframe, whereas total U.S. milk production didn't even double, correct?

A. It -- it appears that way. And I would also probably highlight the population change as well in Arizona. That could be a contributing factor.

MR. ROSENBAUM: Now, I would like to mark the next document as Exhibit 379.

THE COURT: I agree, 379.
(Thereafter, Exhibit Number 379 was marked for identification.)
THE COURT: Thank you.
So I'm marking this newest one as 379, and I'm marking it also as IDFA-379.
MR. ROSENBAUM: Now --
THE COURT: Hold off just a moment. The copies are being distributed within the room, Mr. Rosenbaum.
You are good to go, Mr. Rosenbaum.
BY MR. ROSENBAUM:
Q. Mr. Butcher, I searched for published information as to how many cows the average dairy farm had back in 1960 in Arizona, and what I found is -- it doesn't appear to be a published number. There is -- it was hidden from me.
But I did find this recent article, which is what Hearing Exhibit 379 is, which was written, published December 7, 2021, and the author is the General Manager of the Arizona Milk Producers, a woman named Tammy Baker.
Do you see that?
A. I do.
Q. And do you know Ms. Baker?
A. I can't recall.
Q. Okay. Are you familiar with the Arizona Milk Producers? Is that an organization in the state?
A. I would assume so, but I'm not familiar with that.
Q. Okay. The first -- what I'm going to call your

attention to is the first sentence, which states, I'll just quote it, "Arizona's dairy industry blossomed in the state with the introduction of irrigation and alfalfa in the early 1990s. In fact, by 19" --

THE COURT: Now, does that say 1900s?

MR. ROSENBAUM: I'm sorry, I misspoke. In the 1900s.

THE COURT: But isn't that interesting they are talking about blossoming in the beginning of the 1900s. So that -- but go ahead.

BY MR. ROSENBAUM:

Q. "In fact, by 1957, Arizona dairy was a $25 million business, with 372 dairy farms and an average herd size of 88 cows."

Do you see that?

A. I do.

Q. Does that sound about right for what the size was back in 1960?

A. I don't know.

Q. Okay. Okay. I mean, according to -- if you look back at Hearing Exhibit 377, Table 7, if you look at cow numbers in Arizona in 1960, there were 50,000.

Do you see that?

A. I do.

Q. And you had 390 members, correct?

A. Yes. That was the information that was given to me, yes.

Q. So even if all dairy farmers were UDA members at

that point in time -- I don't know whether they were or not -- but the 50,000 cows divided by 390, that would give you 128 cows per farm.

Do you see -- just simple math. Do you see that?

A. I don't dispute that. Okay.

Q. And to the extent that there were farmers who were not DFA members, that 128 number would go down, right? Because some of those cows would belong to the non-members, correct?

A. I don't know.

Q. Okay. Well, just as a matter of simple math, if you increase the denominator, the result is going to be bigger, right? Smaller, excuse me. Increase the denominator, the result is smaller, correct?

A. It could be. I still -- I don't --

Q. Okay.

A. -- I don't know how to answer that. I'm sorry.

Q. Well, let me just --

A. I mean --

Q. So we're at least clear on what I'm trying to say.

A. Sure.

Q. If you take the 50,000 cows, which is what USDA tells us there were in Arizona in 1960, and you divide that by the 390 UDA members in 1960, that would give you an average of 128 cows per member, correct?

A. I agree with you on that, yes.

Q. And if the --

THE COURT: Now, I'm sorry, Mr. Rosenbaum, I'm

trying to keep up with you.

MR. ROSENBAUM: Yes.

THE COURT: So I'm looking at the Table 7 --

MR. ROSENBAUM: Yes.

THE COURT: -- and I'm seeing 50,000 cows.

MR. ROSENBAUM: 50,000 cows, exactly.

THE COURT: And did you say 60,000 cows?

MR. ROSENBAUM: No, I have always meant to say 50. If I said something different, I misspoke.

THE COURT: Okay. Thank you. All right. Keep going.

MR. ROSENBAUM: So -- I think I said in 1960. That may be where I used the 60. But in terms of cow numbers, it's 50,000.

BY MR. ROSENBAUM:

Q. And we get to 128 cows per farm by dividing the 50,000 cows by the 390 UDA members, okay?

A. Yes.

Q. And in that fourth grade math, 390 is the denominator, correct?

A. I will agree with you.

Q. I'm not --

A. It was like my teacher said, you are not going to have a calculator with you all the time, but, you know, now we do, so --

Q. Yes, exactly.

So if, in fact, there were some additional dairy farmers out there who were not members of UDA, they had

dairy cows of their own, that would increase the denominator, which would mean that the number of cows per farm would be somewhat less than 128, correct?

A. I -- I would be inclined to agree with you. I still haven't done that math in quite some time.

Q. Okay. Now, today we have, if we look at -- back to Exhibit 378, as of the end of 2022, we have 197,000 cows in Arizona, correct?

THE COURT: Now, you are on page 8?

MR. ROSENBAUM: I'm on page 8 of Hearing Exhibit 378. In the column called "Milk Cows for Arizona for 2022," I see 197,000 milk cows in Arizona in that column.

BY MR. ROSENBAUM:

Q. Do you agree with that?

A. Yes, I do.

Q. Okay. And then if we -- we actually do have a figure in this document, on which we didn't have for 1960 --

A. In which document, sorry?

Q. Same document we're on still. If you turn to page 18, that's a document called -- a page called Licensed Dairy Herds, and this document says there were 80 licensed dairy herds in Arizona in 2022.

Do you see that?

A. I do see -- yes, I do see that.

Q. And so if we simply divide the 197,000 dairy cows in Arizona in 2022 by the 80 dairy farms, licensed dairy

farms -- licensed dairy herds I should say, that's the term used by USDA -- in 2022, then we end up with 2,462 dairy cows per herd. Simple math, one divided by the other.

THE COURT: There is no such thing as simple math, Mr. Rosenbaum.

MR. ROSENBAUM: I don't have the algebraic formulas that some people are using for their testimony.

THE COURT: But you have a head start on us.

BY MR. ROSENBAUM:

Q. In any event, 197,000 divided by 80 would give you the number, average number, of cows per herd.

Do you agree with that approach?

A. Without running my own analysis and equations, I mean, that would -- would not know precisely, but I don't think it's unfound what you are saying.

Q. And that would suggest that there are -- and strike that.

And you don't challenge my representation as seeming way off, that 197,000 cows divided by 80 herds gives you an average of 2,462 cows per herd?

A. I don't know the exact average size herd we have on each farm, but I believe it would be relatively close to that number.

Q. Okay. And -- all right. And I mean, Arizona, it's fair to say, you are home to massive dairy farms, correct?

A. Depends on what you mean by "massive," but there

are some pretty big farms out in West Texas and Idaho. So I -- and California. I don't know what you mean by "massive" though.

Q. Well, and I'm not suggesting those aren't massive, too. They are massive, too.

A. Okay.

Q. You are at the upper edge of the -- upper end of the spectrum in terms of average dairy size, right? In Arizona?

A. My area is really -- my current specialty is really focused in Arizona, so I -- I don't know how to answer that question because I'm not as familiar with a lot of other states. Like I said, I know there are some large farms in the West Texas area and Idaho region. But outside of this geographic region, I'm not an expert in --

Q. And I know you have mentioned 2022 being a drought year for the state particularly, a drought year for the state?

A. I think I said a prolonged drought for 100 years.

Q. Okay. For 100 years.

A. I think that's what the testimony said, yes. We're in a pretty prolonged drought with -- I mean, we can see with the Lake Powell, Lake Mead elevation levels that it's been problematic for some time.

Q. But actually, cow numbers are still growing, right? In the state, the cow numbers today are higher than 197,000 than they were in 2022, aren't they?

A. That's right. And what I said, the comments just

a few minutes ago, it's hard to find dairy farmers in Arizona. No one wants to go work in 115-degree heat. So our farms are getting larger, and it's an act of desperation, like I said. Urban sprawl and urban population has been pushing our farms out further and further away. So we have some members acquire other farms to gain some efficiencies of scale and to hopefully survive another month.

Q. But total cow numbers are up, correct? I can -- let me -- there's no reason to ask you to speculate.

A. Okay.

MR. ROSENBAUM: Let me ask that the next document be marked as Exhibit 380.

THE COURT: Yes. It will be 380. Thank you. Marking this as Exhibit 380.

(Thereafter, Exhibit Number 380 was marked for identification.)

THE COURT: I'm also marking it as IDFA-380. And let's go off record while we distribute.

(An off-the-record discussion took place.)

THE COURT: We're back on record at 12:04.

Please be back and ready to go at 1:05 p.m., and we will then address Exhibit 380. Mr. Rosenbaum will continue his cross-examination.

Right now we go off record at 12:04 p.m.

(Whereupon, the lunch recess was taken.)

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WEDNESDAY, NOVEMBER 29, 2023 - - AFTERNOON SESSION

THE COURT: All right. Let's go back on record.

We're back on record at 1:06 p.m.

Mr. Rosenbaum, you may proceed.

MR. ROSENBAUM: Thank you.

BY MR. ROSENBAUM:

Q. When we were breaking for lunch, I was -- I had just gotten through marking as Exhibit 380 a document entitled "Milk Production Produced by USDA, National Agricultural Statistic Service," dated October 27, 2023, which is, obviously, very recent.

And if you turn to page 3 of this document, there is a heading called "Milk Cows and Production, 24 Selected States, September 2022 and 2023."

And calling your attention to state of Arizona, do you see that this indicates that as of September 2023, last month, there were -- month before last rather -- there were 201,000 dairy cows in the state, correct?

A. Yes, sir.

Q. And that represents roughly a 2% increase from the 197,000 cows that are listed in Hearing Exhibit 378 as the number of dairy cows in Arizona for 2022, correct?

A. Yes.

Q. Okay. Now, you have mentioned how population has grown.

Has that -- that's led to a boom in land values basically; is that right?

A. Yes, sir, I believe so.

Q. Okay. And has that -- I mean, has that been an economic boom to some of your members, they were able to sell their farms if they so chose at prices substantially in excess of what they had paid for the land?

A. I think they have that option, but we would hope that they would not due to the farming situation -- the dairy farming situation in Arizona. But that probably is an option to them.

Q. Has that, in fact, been an option people have exercised?

A. I don't know.

Q. Okay. Have any of them sold out areas close into the major cities and then built new dairy farms further out?

A. I believe some have, but I -- I don't know precisely who has or who hasn't. But I -- it is common that we are starting to see some neighborhoods with urban sprawl creep next door to some of our dairy farms.

Q. Okay. Now, let's talk about Grade A and Grade B milk for a second. All right?

A. Okay.

Q. First of all, there is zero Grade B milk in the state; is that correct?

A. Yes. Now, we may have a -- on occasion a rejected load. I don't know the final disposition of a rejected load. But, yes, we should have zero Grade B.

Q. Okay. And -- and you have a manufacturing plant, correct?

A. Yes, we do.
Q. And you make a number of products there, correct?
A. We make a variety of different products as I outlined, some powders, a little bit of cheese, different types of butter, some protein products, and condensed products as well.
Q. Okay.
MR. ROSENBAUM: Your Honor, I would like to mark the next document as Exhibit 37- --
THE COURT: 381. 381 is our next one.
And while we're getting those distributed, let's go off record at 1:10.
(An off-the-record discussion took place.)
THE COURT: We're back on record at 1:11.
Mr. Rosenbaum, you may proceed. I have marked the document you are about to talk about as Exhibit 381, and I have also labeled it IDFA-381.
(Thereafter, Exhibit Number 381 was marked for identification.)
BY MR. ROSENBAUM:
Q. Mr. Butcher, I downloaded this document from the web, and the URL is at the -- I copied the URL into the document. It's a little faint, but it's at the top middle of the first page, so if anyone wants to find it there they can.
Do you recognize the document?
A. I do.
Q. And is this a document on the website of your

company?

A. I believe it is, yes.

Q. Okay. And the document is entitled "Product List and Specifications."

Is this, indeed, a list of the products that your company makes?

A. I believe this is very accurate, yes.

Q. So when -- let's just take as an example the -- if you turn to the third page, these are not numbered, but it's the third page. It says "nonfat dry milk." And then underneath that product description it says, "Grade A, low heat NFDM."

NFDM is nonfat dry milk, correct?

A. Yes.

Q. So does the term Grade A in this document indicate that the milk used to make this product is from Grade A certified farms?

A. I haven't heard Grade A certified farms, but the milk it comes from would be Grade A.

Q. Okay. It -- when you talk about Grade A and Grade B, would this be an example of a Grade A product the way you use that term?

A. Yes, I would agree with you.

Q. Okay. So this is one example, we'll show some more, but this is an example of a product that is not obviously fluid milk, but it is -- meets Grade A requirements, correct?

A. Yes.

Q. Okay. And your ability to sell this product with this designation is dependent upon it coming from Grade A farms, correct?

A. I would say yes.

And let's also keep in mind that I'm -- my title is the director of fluid sales, so I have very little interaction on some of the powders, just for clarity sake.

Q. Okay. Now, we go on to the -- two more pages, we see milk protein concentrate, and that, too, is described as a Grade A product.

Do you see that?

A. Yes, I do.

Q. Okay. And then two more pages we have Grade A buttermilk powder, another Grade A product, correct?

A. Yes, sir.

Q. And moving on a couple pages, we have Grade A condensed buttermilk.

Do you see that?

A. Yes, sir, I do.

Q. Also, Grade A, correct?

A. I would believe so, yes.

Q. All right. And then, keeping going, flip a page, we see condensed skim, also Grade A?

A. Yes, sir.

Q. So is it reasonable to say that the costs incurred to maintain Grade A status is a cost that relates to products that are not merely fluid milk?

A. Can you state that question one more time?

Q. Yes. You sell all these product as being Grade A, correct?
A. Yes.
Q. And you have identified certain costs that you say are the costs of being Grade A, correct?
A. Yes, sir.
Q. And so these are costs that relate not just to fluid milk products, but also to nonfluid milk products?
A. I would agree with you, yes.
Q. All right. Now -- and I mean, you -- I assume your farmers have no intention of going back to being Grade B?
A. I would also be inclined to agree with you. I don't think -- I can't recall if we have had Grade B milk in the past, though.
Q. Okay. And do you actually require your members to be Grade A? Is that sort of a condition of membership?
A. Yes.
Q. Now, so you talk about a number of costs, and I'm really going to ask, just so you know where I'm headed, just sort of two questions relating to these costs.
One is, is it a cost that relates actually to maintaining Grade A status; and B, whether it's a cost that is only related to fluid milk. Okay?
A. Okay.
Q. So let's -- I mean, for example, you mention construction costs for housing laborers, correct?
A. Yes, I mentioned that.

Q. Okay. And you actually, I think, mentioned the PMO in connection with that, if I'm not mistaken, on page 5. You mentioned the PMO explicitly, the Pasteurized Milk Ordinance.

(Court Reporter clarification.)

MR. ROSENBAUM: Sorry, the Pasteurized Milk Ordinance.

BY MR. ROSENBAUM:

Q. And you see the paragraph, "Even just to meet the requirements of the PMO, many costs have increased," and the very first one you mention is the construction costs for housing of laborers.

Do you see that?

A. I do see that.

Q. Okay. PMO is a somewhat lengthy document. I have had the fortune, or misfortune, however, to read it several times in my life. I don't recall construction costs or housing for laborers being covered by the PMO.

Are you -- do you have a different view?

A. I'm not an expert in the PMO. I have glanced over the PMO a few times on a variety of issues, so I can't say with certainty that if it is or isn't included in the PMO.

Q. Now, you -- you go on to talk about feed costs, correct?

A. Yes, I do.

Q. Once again, under the heading "Economics of Producing Grade A Milk," correct?

A. I would have to find it, but, yes, I do remember

speaking to that.

Q. Okay. I mean, I take it that -- I mean, do the -- do feed costs relate to whether the milk is Grade A or not?

A. I don't know if it has a direct correlation. I don't know. I'm not a PMO expert.

Q. And -- and is there anything about feed costs that are different when the milk is used for fluid milk purposes versus manufactured product?

A. I'm not a dairy nutritionist, so I -- I -- I simply don't know that answer.

Q. Okay. By the way, you mentioned somatic cell components.

Do you -- and you make cheese, correct?

A. We make a very small quantity of cheese, very small.

Q. Let me ask you more generally. Do you -- do you export any manufacturing -- start that again.

Do you export any manufactured products?

A. When you say "export," do you mean outside of the United States?

Q. Exactly.

A. We do. On the fluid side, we do not. But I believe a lot of our powders are exported outside of the United States.

Q. Do any of them go to Europe?

A. I don't know the exact locations of where they go.

Q. Okay. Do you know whether there are foreign

countries that have set somatic cell count requirements stricter than the PMO, which anyone who wants to export to those countries has to meet?

A. Personally, I don't know. Having listened to previous testimony, I have heard about it, but I -- I do not know much more other than that.

Q. Okay. Now, another thing you mention is the -- is FARM, F-A-R-M, the FARM program, correct?

A. Yes.

Q. Okay. Is that -- is compliance with that document a prerequisite to being Grade A?

A. Grade A, I don't know, but a lot of our customers require our farms to be FARM compliant.

Q. And do -- okay. And do those include customers of your -- any of your manufactured products?

A. Manufactured as in the nonfat dry milk and the skim milk? I don't know.

Q. Now, let's talk about some of the other costs you mentioned. Okay. One of the -- so there are really maybe two, three costs of transportation, I guess I would say.

One is obviously the cost of the tankers themselves, correct?

A. Yes.

Q. Another is what you have to pay the driver, correct?

A. That's one of the them, yes, sir.

Q. And then another would be fuel, correct?

A. Yes, that's an additional cost.

Q. And maintenance, right?
A. Yes, another additional cost.
Q. Okay. Now, did you have discussions with any of the -- any of the -- either of the two University of Wisconsin professors who worked on the University of Wisconsin project to come up with, I think, what you have described as being the model?
A. Did I have personal conversations with any of the authors?
Q. Yes.
A. No, sir, I did not.
Q. Are -- not necessarily one-on-one, did you participate at all in any conversations with them?
A. No, sir, I did not.
Q. Okay. I mean, did -- is it your understanding that their model was designed to capture those four components of transportation costs?
A. I don't know the parameters or the data that they captured, since I was not involved in -- in a lot of that. But I also don't know what it didn't capture, like the excessive heat that we have or, you know, the roadway exceeding 140 or 150 degrees where we see tires pop. So I don't know what that model did or did not capture. That's why I wanted to provide a little bit of clarity around costs of repairs and maintenance and permitting and demurrage, because I'm not sure what that model did or did not.
Q. Okay. You have no reason to think, for example,

they didn't capture the cost of super tankers?

A. I don't know if they -- they did or didn't.

Q. I mean, did anyone -- is anyone reviewing the model and thinking, well, you know, we're going to ask for more, go back to them and say, hey, we think you must have underestimated what tankers cost? Did you look at these super tankers? Did anyone -- did anyone do that that you are aware of?

A. Specifically the super tanker costs?

Q. I'm giving that as one example.

A. Okay. Since I was not actively involved in the beginning of this process, it's hard to understand the conversations and discussions that were had around modeling and pricing. So it's -- it's difficult to understand what is included in -- in them, in what they modeled.

Q. I mean, it would have been easy just to ask them, "Hey, did you know that there are these super tankers that cost a lot more? Did you include those costs in modeling?"

Did you suggest that that be done?

A. No, sir, I did not.

Q. Do you know if anyone did that?

A. No, sir, I do not.

Q. Okay. So I mean, it's fair to say that a number -- well, before I move on to that, in terms of fuel, does your cooperative charge its customers a fuel surcharge when the price of diesel rises above some

designated level?

A. I think we have to take a step back, because contracts have varying lengths. We may have some contracts that -- that may be as short as one, two, three years, and then we may have some contracts that are in excess of 20 years. So it's something that we are starting to consider and adding in some of our contracts, but it's very difficult to change or modify contracts when we may have some long-term contracts in place.

Q. Do you have contracts with fuel surcharges?

A. We have recently reviewed this, and I can't recall if it was added or amended in the contract. But it's something that we are beginning to review.

Q. And I mean, fuel is sort of a volatile cost, right? Correct?

A. Depends on the term "volatility." But this year I would probably say fuel has actually been relatively stable. We have seen WTI costs typically hover around the $75 per gallon range. But historically, you know, just like a lot of commodity prices, we do see some volatility.

Q. Over time certainly fuel costs have gone up and down relatively significantly compared to other things, correct?

A. I'm sorry, did you say they went down?

Q. Have gone up or down --

A. Okay.

Q. -- over time, more frequently, more rapidly than other costs; is that right?

A. I would say that we have seen -- at least as the testimony is concerned, we have seen them increase for the past 20 years, so -- but I don't disagree that there are times that they do come down. But historically the trend line is showing that they are -- they are continuing to increase.

Q. I mean, we have had periods recently where the price of gas, of crude oil at least, we know has varied between, I don't know, $70 and $130 something like that, correct?

A. We have had that. We've also had, if we remember April of 2020, when fuel went negative for the first time with COVID. So we have seen -- we have seen volatility. I'm definitely not disagreeing about the volatility aspect. But I think on the long-term trend basis, we continue to see that fuel continues to increase.

Q. I mean, considering how rarely we adjust our differentials, the first time in many years for most of the orders, isn't that the kind of cost best addressed by being adjusted through contractual agreements with your buyers as opposed to locking some assumption in place for decades?

A. It's one way to consider it. I think there's a multitude of ways that you can look at fuel costs. If -- if the contracts allow, and you can have an addendum or an amendment, I think it's something worth considering. If you don't have that option, then I think, you know, we probably need to address that in the Class I price

differential, which is what we are doing today.

Q. Just by the way, somewhat relatedly, since you talk a lot about -- a lot of your testimony is about basically farmer cost of producing milk, correct?

A. Some of my testimony is, yes.

Q. I mean, have Class I differentials ever been based upon that?

A. Sorry, been based upon what?

Q. Farmer cost of production.

A. I think the cost of production, and also when we discuss the Grade A milk, I think there's a -- probably a direct correlation between the cost to produce Grade A milk. So I think some of those costs would probably be associated.

Q. Other than to the extent that the cost related to producing Grade A versus Grade B milk, have Class I differentials ever been based upon cost of production issues?

A. I -- I can't say. I just don't know.

Q. Now, you mention that sometimes because of issues at your customer's plant, your drivers have to wait longer than normal to unload the milk, correct?

A. Yes, sir, that's correct.

Q. Does -- do you charge your customers for that?

A. No. We -- I don't believe we charge our customers for longer waiting time issues. There are times that UDA gets charged by the hauler on that when it's -- when that occurs, but I do not believe that we charge our customers

for that. And -- sorry.

Q. Do you know one way or the other? I mean, is that part of your responsibility?

A. Sorry. Could you repeat that question?

Q. Do you -- I -- let me ask. Are you -- are your job responsibilities such that you would know?

A. As far as delays on our customers, unloading delays? Yes, I'm made aware of that because it impacts our supply chain. Typically when they have delays, something has gone wrong at the plant, so that plant could have labor issues, or they have a pipe issue, or some sort of quality issue. There's just a variety and a multitude of reasons that we can see. Or some of our customers experience delays. So I am made aware of hauling delays.

Q. But are you personally aware of whether or not any of your contracts contain clauses that would cause your customer to have to pay something as a result of such a delay?

A. I do not believe we charge our customers for delays like that. We, UDA, typically incurs probably some demurrage costs around that.

Q. Has there been a time when there was insufficient milk to supply your fluid milk customers?

A. Specifically our fluid one -- or sorry -- Class I customers?

Q. Yes.

A. We do start to get very tight in the late July, August, and early September time period, where we'll start

to see our milk deliveries delayed to some of our Class I bottlers. And after those months, after we pass those, you know, hotter months, we typically see our milk level and time, delivery times, get back on track with a lot of our customers.

Q. Have you ultimately been able to supply them enough milk to meet their Class I needs?

A. That's a little bit of a tough question because there are times we're delayed and they want a little more milk for Class I bottling operations, and they may have to wait a little more to get that milk timely. So we -- there are sometimes delays of our milk production getting to some Class I bottlers. It doesn't happen a lot, but it does happen a few times throughout the year.

Q. All right. You mention water, so I have a few questions about water.

First of all, you mention --

A. On what page, sir?

Q. Well, I'm looking at page 3. I'm referring to page 3, more accurately. And you -- you talk about a reduction in supply available to lower Colorado River water users.

Do you see that?

A. Which paragraph?

Q. That's the third paragraph under weather and climate on page 3 of Hearing Exhibit 376.

A. Yes, sir. I see that.

Q. Okay. So are your farmers themselves Lower

Colorado River water users?

A. I believe so.

Q. Okay. Do you know how much of their water they get that way as opposed to from well water?

A. I don't know that, the exact amount, no.

Q. And when you say UDA pays more for water than it had in 2000 and more than almost any other state, are you referring to literally what UDA pays for water to operate its manufacturing plant?

A. Yes, sir, that's what that sentence is referring to.

Q. Okay. Now, you are not suggesting, are you, that the costs of operating your manufacturing plant are relevant to the appropriate size of Class I differentials, are you?

A. Sorry. Could you repeat that question one more time?

Q. Yes. You are not suggesting that the costs of operating your manufacturing plant is relevant to what the Class I differentials should be, are you?

A. I don't think I'm making that argument in this paragraph.

Q. Okay. And water costs, to the extent that they do relate to farms as opposed to your processing plant, that's a cost of producing milk, correct? In general, not specific to Class I; is that right?

A. Yes. Because we see a lot of our -- due to our supply chain, we move milk around from various farms to

various Class I bottling plants.

Q. If we can go back to the page 2 where you have your proposed changes. There are -- as you discussed I think at the beginning of the examination -- there are Class I plants in Maricopa County and in Yuma County, correct?

A. Yes.

Q. And the only -- the only Class I plants in Yuma County are the two plants owned by the Hettinga family, correct?

A. I believe that's correct. Yes.

Q. Which is not -- not supplied by UDA, correct? Those plants are not supplied by UDA?

A. On occasion they will ask us for milk, but there's nothing consistent that heads down there from UDA.

Q. Okay. So right now Yuma is at a $0.25 lower Class I differential than Maricopa, correct?

A. Yes.

Q. And under the University of Wisconsin model, that $0.25 difference would have been maintained, correct?

A. Yes.

Q. Under your proposal, that difference is reduced to $0.10, correct?

A. Under the NMPF proposal, yes.

Q. Okay. And that -- that would mean that those plants would pay more into the pool, and that would be shared by your members, correct?

A. I don't know.

MR. ROSENBAUM: That's all I have at this time.

THE COURT: Who next has cross-examination questions for Mr. Butcher?

Thank you, Mr. Miltner.

MR. MILTNER: Thank you, Judge Clifton.

CROSS-EXAMINATION

BY MR. MILTNER:

Q. Ryan Miltner representing Select Milk Producers.

I wanted just to follow up on the last questions that Mr. Rosenbaum asked, if I could. Actually, I want -- let me ask you something before I get into that.

On the second page of your statement where you provide a little bit of background on UDA, you state --

A. Sorry, did you say in the second page or the --

Q. Second page, yeah. Page 2 of Exhibit 376.

So you're reciting UDA's objectives, and the second is to maintain the current pricing relations among competing handlers, both within the market and with the surrounding states.

Can you expand on that and just let me know what -- a little more detail about what you are trying to preserve there and maintain?

A. Sure. So I wasn't directly involved in the creation of the current or the proposed Class I price differentials, but I think having been brought to that group a little later, the goal was to attempt to keep those current pricing relations and to keep that slope consistent as possible.

Q. Okay. Now, turning to the questions Mr. Rosenbaum had asked about Yuma County in particular.

Those two plants in Yuma, do you know where their packaged sales are?

A. I do not, no.

Q. Okay. Do you know if one or both of those plants move packaged milk back into the Phoenix area for retail sale?

A. I don't know if they do or not.

Q. You have not seen any Sarah Farms labeled milk in any stores in the Phoenix area?

A. I currently live just west of Fort Worth, Texas, personally.

Q. Okay. I don't think they get to Texas.

A. Maybe not.

Q. If it does, it would come from El Paso.

So let me ask this. If you look at the current differential relationship between Yuma County and Maricopa County, Mr. Rosenbaum pointed out that that's currently $0.25.

You agree with that?

A. Yes, sir, I do.

Q. And as proposed by National Milk, that that -- that spread is narrowed to a dime, and so if there were the packaged sales in Maricopa County from the plants in Yuma, that really doesn't preserve that competitive relationship, does it?

A. I don't know if it does or not.

Q. You would expect that if that plant had $0.15 of additional raw milk costs compared to its competitors in Maricopa County, that would change the competitive relationship, would it not?

A. I think there's a potential it could.

Q. And I believe you stated that the only other fluid plants in Arizona are in Maricopa County; is that correct?

A. Yes, sir, that is correct.

Q. Do you know if a lot of packaged fluid milk comes into Arizona from other states?

A. I don't know that. I don't know.

Q. So I now want to look at the differentials in Arizona versus the border states in California. And if I look at, say, Riverside County --

A. I don't have a map or this pricing in front of me.

MR. MILTNER: Can we provide the witness Exhibit 300, Your Honor?

THE COURT: Yes. Easily done.

MR. MILTNER: I will get my computer.

THE COURT: You will need the yardstick.

MR. MILTNER: 301, Your Honor.

THE COURT: You still need the yardstick.

MR. MILTNER: If you will bear with me a second while I get that spreadsheet open on my computer.

THE COURT: So for those not in the room, we are looking at 301, which is also labeled MIG-29.

BY MR. MILTNER:

Q. I wanted to look at Riverside County, California,

which is Row 191.

Do you have that page available?

A. Yes, sir, I do.

Q. Okay. So for the purposes of our transcript, let's just go across there. Riverside, California's current differential is $2 in Column I.

Do you see that?

A. Yes, I do.

Q. And if we move over to the Wisconsin average, the model average, Column L, it's $2.40, correct?

A. Yes.

Q. And then finally, the proposed differential under Proposal 19 is $3.

Do you see that?

A. I do see that, yes.

Q. Okay. Now, Yuma County, we said earlier, was $2.10 currently. So Riverside would be $0.10 less than Yuma County today, correct? Did I get that reversed? Yuma County is $0.10 higher than Riverside?

A. Yuma looks to be $0.10 higher currently.

Q. Okay.

A. Based off this exhibit that's right here.

Q. Okay. Now, if we look at the proposed differential with Yuma proposed at $2.90 and Riverside proposed at $3, it's still a $0.10 difference, but it's flipped, so there's a $0.20 per hundredweight change in the relationship between those two adjacent counties.

And I wondered if -- if you think that that

maintains the current pricing relationship between those two -- those two counties, given that they are order counties between California and Arizona?

A. I can't say how the $0.10 difference would impact either county. I would probably leave the final decision up to, in this instance, to the USDA to see what they would recommend.

Q. Do you know as -- and I would characterize that personally as a $0.20 difference because it's flipping. You said 10.

But would you agree that that's a $0.20 change from current to proposed?

A. Let's review that, sorry, one more time.

Q. Sure.

A. Because I -- I'm seeing the proposed here at Yuma County as $2.90, and then on the Riverside I'm seeing the proposed as $3 per hundredweight, so I'm showing just a $0.10 delta.

Q. It's a $0.10 delta, but it's reversed, right? So I'm looking at this, and I'm seeing currently Yuma $0.10 higher than Riverside --

A. And, sorry, what column are you looking at in Riverside?

Q. I'm actually -- it's -- you'd have to look at --

A. Is that column --

Q. It would be -- yes, it would be Column I.

A. All right. So there's a $0.10 difference right there, with Riverside being $2 per hundredweight

currently, and Yuma being $2.10. So it's positive right now, Yuma by $0.10. So in here, in this instance, the proposed is $2.90 for Yuma, and we're saying Riverside is $3 proposal.

Okay. I can see the $0.20 delta.

Q. Okay. So I think we're both -- in both instances there's a $0.10 difference between the two, but the -- it changes, right? It flips. So it's a -- the --

A. Yes.

Q. Okay. We're on the same page, then.

If the -- if the goal, if UDA's objective, which you state were consistent with National Milk's, was to maintain current pricing relationships, what consideration and what discussion was had about that particular, you know, area, and not maintaining the relationship therein? I wondered if that was discussed at all.

A. I was probably brought in after those discussions, so I inherited a lot of these pricing -- pricing protocols without some direct input from myself. But then I would probably, once again, say I would probably rely on the USDA to maybe make that final determination on what that -- if that is an even slope.

Q. And if we were to -- if we wanted to look at, for instance, San Diego County, San Bernardino County, Imperial County, same answer, you probably came in later in the game to be able to offer thoughts on the specifics on those -- those relationships.

A. Yes, sir, that is correct.

Q. All right.

MR. MILTNER: Thanks. That's all I have. Thank you.

THE WITNESS: Appreciate it.

MR. MILTNER: Thank you.

THE COURT: Who next has questions for this witness?

I see no one. I invite the Agricultural Marketing Service to ask their questions.

CROSS-EXAMINATION

BY MS. TAYLOR:

Q. Good afternoon.

A. Hello.

Q. Thank you for coming to testify today. I just had a few questions. I haven't -- let me see here. I think you might have touched on this with Mr. Miltner, and I apologize if I might not have heard the whole answer as we were having a separate little discussion on something else in your exhibits.

But currently, I think you were just discussing the current difference in differentials between Yuma, Maricopa, and what you have proposed it to be, so you are going from a current difference of $0.25 to a proposed difference of $0.10; is that correct?

A. Yes, ma'am, that's what it looks like.

Q. Okay. And so I was just wondering if you could explain -- again, I'm sorry if you covered this before, but I want to make sure I get it -- why National Milk is

recommending that that spread be reduced?

A. So I was brought in after that fact, so I inherited a lot of these numbers --

Q. Okay.

A. -- so it's hard for me to opine on why some of these numbers were chosen.

Q. Okay. I heard that answer. I guess I just didn't hear the question earlier. Okay.

You talked some in your testimony about the super tankers that I guess are becoming more prevalent in Arizona.

A. Yes, ma'am.

Q. And you say they cost more.

And I was just wondering if you had data to put on the record as to those costs that seem -- that, through your testimony, seem to be unique to the Arizona region.

A. You know, I convened with some of the finance team that we have on staff, but I don't know if I captured the exact cost of the difference between a regular tanker and a super tanker. I just know that they said that the cost is greater to procure buy super tankers than regular tankers. And that's something that we're -- I think also I testified on, that we're going to continue to purchase the super tankers, you know, for the foreseeable future as well.

Q. Because they do offer you some efficiencies in other areas despite the cost?

A. Yes. We can move more milk with less miles, and

we also produce less CO2 emissions. So it's a part of our sustainability program as well.

Q. Okay. And earlier in the hearing, which weeks ago at this point, we had some discussion on the UW model with Dr. Nicholson, and I know we're looking forward to a discussion with Dr. Stephenson on the transportation aspect of that model, because I think there's still questions about what was or was not accounted for on the transportation side of things.

So when it comes to these Arizona unique transportation aspects that you talk about, super tankers being one of them, is it your impression that those were factors that were not included in the model, not accounted for in the model?

A. I don't -- I don't know if they were or if they weren't. I know there's maybe only a handful of states that have super tankers, so I just don't know what was included in that model.

Q. Okay. Well, you talked about demurrage charges. And I just want you to make it clear on the record, if you can explain what those are.

A. Sure.

Q. I mean, you've said the term numerous times, but I don't know there's been, like, a definition.

A. No, great question.

With some of our contracted haulers we have an agreement in place that states if our hauler must wait X amount of hours after arriving at their final destination,

that they have the ability to charge UDA a -- what we call a detention or demurrage charge on an hourly basis. So depending on how long the tanker waits to get unloaded, we may see those charges from some of our contracted and spot haulers as well.

Q. Okay. And I apologize, it might be in your statement. Did you mention, does UDA only use contract haulers or do you have some of your own? You mentioned you purchase them. I don't know if you mean UDA will be purchasing these tankers.

A. I believe we use all contract haulers; however, we do own the assets, the tanks.

Q. Okay. Okay. You talk some about difficulty -- I think there was a question with Mr. Rosenbaum about difficulty meeting Class I demand. And you said sometimes in late July through October, orders, you would be delayed in fulfilling those orders. I think that's the -- how you couched that; is that correct?

A. Yes, that's fair. We typically see our milk decline, obviously, with the excessive heat that we experience. So, you know, we try to keep our cows as comfortable as possible, but when the temperatures are exceeding 115 or 120 degrees, our milk production just tends to drops during those hotter months, which means we're obviously producing less milk.

And we have a -- I believe a year-round school system in Arizona, so we start to see school milk tick up in late -- you know, late June and early July, after a --

we call it the mid-summer break for school milk. And that really taxes our supply chain because our milk numbers are significantly lower in the summertime.

Q. Okay.

A. And if I can also note, we then see less milk coming to our own campus because we have to supply milk to, you know, our customers first.

Q. And you couch it as a delay in fulfilling orders because of this dynamic.

But are there times where you just don't have the milk? You call it a delay. I mean, does it roll over, or eventually maybe there's just milk you aren't actually able to provide? Do they have to go somewhere else? Do you import milk in from outside the area?

A. We do not import milk from outside the area. It's just a few weeks of the year we get really tight on milk, so it's a very -- just a very tight timeframe of we're managing our customer's demands while trying to supply them with enough milk to run their plant.

Q. Okay.

A. And there's obviously some seasonality with that as well. You know, I mean, so we have to look at seasonality of milk and the demand of milk and kind of adjust that or account for that in some of our supply chain activities.

Q. Okay. And I did want to talk about, a little bit, on the demand side of the equation. I know you talked a lot with Mr. Rosenbaum over increases in milk production

in Arizona since the '60s. And there's been -- your chart talks about population increases, and I think there's, if I counted correctly, six fluid plants Arizona; is that correct-ish?

A. Sounds right. I don't know the exact number, but it sounds -- sounds correct.

Q. Do you know how much of any of those are relatively new? I'm just trying to see if, you know, there's some new demand in the state -- I'm assuming yes since the '60s. But how relatively new, that maybe you guys are all still trying to meet on the milk production side?

A. Yeah, we have had a significant investment in Arizona several years ago, so we are seeing a lot more Class I bottling or Class I demand from a very new facility that's in our area.

Q. And so even with that growth in milk production, there's still some -- as an old colleague used to call it -- unmet demand perhaps? Or trying to -- I know that's not a real term, so I always chuckle when I hear or need to say it, but, you know, you are still trying to make sure your milk production and growth in the state is able to meet the new demand in the state?

A. Correct. I think that's fair. Yes.

Q. Okay. On page 6, you mention Dr. Erba's testimony earlier in the hearing about other costs and how he -- he quantified that as $2.25. I think there's other costs you talked about maybe on the farm increases.

Do you have any data, UDA data -- you say yours is more -- I'm just wondering if you have any specific numbers to put into the record?

A. What I did is I -- I -- I pulled and spoke with a lot of our farmers to understand some of their cost pain points and some of their cost structures, but I don't know the -- every farm's exact cost structure.

MS. TAYLOR: I think that's it from AMS. Thank you.

THE WITNESS: Thank you.

THE COURT: Redirect?

And, Counsel, would you again identify yourself.

MR. PROWANT: Yeah, sorry, Your Honor. Bradley Prowant on behalf of National Milk.

REDIRECT EXAMINATION

BY MR. PROWANT:

Q. Mr. Butcher, I just want to follow up on a few of the points that have been raised on cross and in questions with AMS.

So you mentioned that you -- you supply fluid milk plants as well as your manufacturing plant in Tempe.

Does any of UDA's raw milk leave the state of Arizona?

A. No, it all stays within the state.

Q. Okay. And so you noted that supplying your fluid customers can get tight in the summer months.

Do you do any sort of balancing, then, as a result with -- at any time during the year with your

manufacturing plant?

A. Yeah. So we have what we call a Class IV plant where we make powder and butter, which helps balance a lot of our customers, obviously within the Phoenix Metro area. And so there are times where we see our powder and butter manufacturing increase, but also simultaneously in the summer months we see very little, if any, milk go through our own plant. So -- so we are always seeing fluctuations in what to expect into our own campus.

Q. So your manufacturing plant provides the balancing for the state of Arizona; is that what you are saying there?

A. Yes, I think that's very fair.

Q. Okay. So in the summer months when the fluid milk is tight, your manufacturing plant, it sounds like there might be times where it's not running at all; is that fair?

A. Very, very little milk could be going through there. Yes.

Q. Or at least what it is running, it's costing more on a per unit basis than if it was running full.

A. Correct. You are running very less milk through that balancing operation, which means your cost to manufacture that product increases because of the less volume going through there.

Q. And we heard a lot of talk about the growth in dairy farms on a per cow basis since the '60s.

But even with that growth, it sounds like UDA is

still barely able to meet fluid demand; is that fair?

A. It's definitely tighter through certain parts of the year than others, especially in that heat, that excessive heat that we see. It does become -- it does tax our raw milk supply chain.

Q. Okay. There were some questions about the relationship between counties in California and Yuma County as it relates to the proposed differentials by National Milk. You just testified that none of the milk that UDA -- none of the raw milk from UDA leaves the state of Arizona.

So in that sense, none of your milk is going to Riverside County, correct?

A. Not that I'm aware of. So I would say no.

Q. Okay. So any difference in the differentials isn't creating a competitive advantage with Eastern California, correct?

A. Could be, yes. Could be.

Q. Go ahead.

A. I'm not an expert when it comes to the counties in California to Arizona. I really focus just on Arizona, since our milk doesn't leave the state, our raw milk doesn't leave the state.

Q. And then just generally, your experience, you know, there was a lot of talk about the difference between Maricopa and Yuma and the proposed differentials. In your experience with the group that was developing these proposed differentials, was it your perception that anyone

was trying to create a competitive disadvantage by use of raising or changing these differentials?

A. So like I mentioned, I was brought on later in this aspect, so I wasn't privy to a lot of the conversations or the discussions that they had. But having been involved in a few of those discussions, not many, I think there was a clear and concise goal and a collaborative effort to try and keep the transition smooth all the way down to the Southeast. I think that was a -- the main goal was to smooth out the Class I differentials, but there was no emphasis on competitive advantages or disadvantages.

Q. You didn't, for example, talk to someone about there being plants in Yuma that UDA doesn't supply, so we want to somehow try to financially harm them.

A. No, I did not have any of those conversations.

Q. Okay. And it wasn't your perception that was the intent or the goal with Proposal 19?

A. Correct. I don't think that was the goal or the intent.

Q. Okay. Turning to page 3, you had a question about water, and you wrote here that UDA pays more for water, and that was in reference to your manufacturing plant.

A. That's one area where we pay water -- more for water. I don't know the exact farm cost, what they pay for water. I just -- having had discussions with some of our farmers, they said they are paying more for water --

Q. Right.

A. -- as well.
Q. Right. So was the point with saying that UDA pays more of to its manufacturing plant just sort of an example of how water in Arizona is sort of a scarce resource that's becoming more expensive and that impacts people such as dairymen?
A. Yes, that's correct.
Q. Okay. And those dairymen are the ones producing fluid milk for use in Class I?
A. Yes, sir, that's correct.
MR. PROWANT: That's all I have. Thank you.
We would move for admission of Exhibit 376.
THE COURT: Is there any objection?
There is none. Exhibit 376 is admitted into evidence.
(Thereafter, Exhibit Number 376 was received into evidence.)
THE COURT: Mr. Rosenbaum, I'm looking at 377, 378, and 379, 380, and 381.
MR. ROSENBAUM: Yes, Your Honor. I would move all of those into evidence.
THE COURT: Is there any objection?
MR. PROWANT: Your Honor, we object to 379.
Your Honor, recognizing that this hearing has different evidentiary standards, there are still some, and under 7 CFR 900.8(d)(4), in order to accept an exhibit into the record, there needs to be a satisfactory showing of authenticity, relevance, and materiality of the

contents therein.

Mr. Butcher testified he doesn't know who this author is, he's never seen this document before, he can't attest to any of the contents or the authenticity of this document. The proper proponent of this document would be the author or someone with firsthand knowledge of the contents therein.

So we would object to 379 on that ground.

THE COURT: Mr. Rosenbaum, your response?

MR. ROSENBAUM: Well, Your Honor, I think that the document states who the author is, that it's an organization, Arizona Milk Producers, discussing the facts relating to milk production by Arizona Milk Producers. The general manager is the author of the document, and we think it would be self-authenticating on that ground.

THE COURT: Does anyone else want to be heard before I rule?

Mr. Miltner.

MR. MILTNER: Your Honor, I had just a couple quick questions for the witness given redirect from his counsel.

THE COURT: All right. I promised someone that we would take a break about now, so let me take a ten-minute break, and then we'll come back and I'll hear that.

MR. MILTNER: Very good. Thank you.

THE COURT: So let's go off record around 2:13.

Please be back and ready to go around 2:25.

(Whereupon, a break was taken.)

THE COURT: Let's go back on record.

We're back on record at 2:28.

Mr. Rosenbaum, did you want to say something before Mr. Miltner asks questions?

MR. ROSENBAUM: Well, Your Honor, I don't believe Your Honor made a ruling on my request that my exhibits be entered into evidence.

THE COURT: You're correct.

MR. ROSENBAUM: So whenever you want to take that up, Your Honor.

THE COURT: Thank you. Thank you, Mr. Rosenbaum.

I'm in the middle of taking that up. The only objection was to Exhibit 379.

And, Mr. Miltner, you may ask additional questions of the witness.

MR. MILTNER: Thank you, again, Judge Clifton.

RECROSS-EXAMINATION

BY MR. MILTNER:

Q. So in response to a few questions on redirect from your counsel, you indicated that UDA does not move any milk across into California; is that correct?

A. That's correct. Yes.

Q. And apologize, I left something at my seat. I'll return in just a second.

I want to talk about the two plants in Yuma County for just a moment. And if -- if that plant, if either of those plants in Yuma County were selling packaged milk into California, into -- it really doesn't matter which

county, but we talked about Riverside County --

A. Okay.

Q. -- and if the price relationship between those two counties changes between what we have now and what is in Proposal 19 --

A. Between Yuma and Riverside?

Q. Correct.

-- regardless of whether UDA is supplying that milk or not, it would affect the competitive relationship for that handler; would you agree with that?

A. By $0.10?

Q. Whatever the difference might be.

A. There's going to be a difference. Since there is a difference between Riverside and Yuma, there's going to be a difference. I don't know how much milk is produced in Riverside and where that ends up. I just don't know.

Q. Okay. But as to that handler, they are indifferent as to where their milk comes from, correct?

A. I don't know where that facility that those Class I bottlers get their milk from. I don't know if it's Arizona, or I don't know if it's from California. I don't know.

Q. But the regulated price to that plant is the same whether they buy from UDA or someone else, correct?

A. Yes.

Q. So if the price they pay relative to a competing plant in California is changed, if the relationship between those two competitors is changed by Proposal 19,

that does have a competitive effect, would it not?

A. I think there's going to be a potential $0.10 difference. I think the goal of the group, though, in California and the other others in our region, was to create a smooth slope as much as possible. I think that was the goal. But in this particular instance of a $0.10 difference, it could impact it.

Q. Or $0.20 difference?

A. Depending on how you look at it.

Q. Okay. And I'm glad you phrased it that way because I do want to point out that at least my intent in asking these questions is to draw out the effect of the proposal on competitive relationships without making any statement as to whether that was the intent or goal of any participant.

But regardless of how we got to what's in Proposal 19, it does have effects, correct?

A. It is a proposal still. I don't think it's written in stone. But it could have further discussions and implications.

MR. MILTNER: That's all I have. Thank you.

THE COURT: Thank you, Mr. Miltner.

Does anyone else want to be heard on the objection before I make my ruling?

MR. HILL: Brian Hill, USDA, Office of the General Counsel.

Your Honor, it is no secret that the USDA has objected to the admission of documents of this type

earlier in the hearing, to the great consternation of much of the parties. We're not going to break our streak here. We are going to object for the same reasons we have objected before and for the same reasons that NMPF has stated just now. Thank you.

THE COURT: Thank you, Mr. Hill.

Does anyone else want to be heard before I rule?

All right. I'm ready to rule.

So how I would characterize Exhibit 379 is it's a very interesting promotional material. If I were to admit this into evidence, no one would be able to cross-examine the author about, for example, the last sentence on page 1 which refers to "an adequate supply of milk in Arizona."

Now, that's not been determined, to my knowledge, by testimony here. So the primary reason that I saw Mr. Rosenbaum use it was to get some statistics to support the proposition that the cow herd, the plentiful cow herd within all of Arizona, is growing, and so is the supply of milk. Now, he was able to establish that with his other data.

I do reject, as an exhibit, Exhibit 379. My view of rulings on the admissibility of exhibits is that both admitted exhibits and rejected exhibits remain part of the record, and that is so that whether an error has been committed, can be reviewed.

So I reject 379 as an exhibit for the reasons stated by counsel for NMPF and from the Office of the General Counsel of the United States Department of

Agriculture. And as I say, it will remain part of the record and available for review, just as the admitted exhibits are.

Now, with regard to the others, there was no objection. I admit into evidence Exhibit 377, which is also IDFA-377.

(Thereafter, Exhibit Number 377 was received into evidence.)

THE COURT: I admit into evidence Exhibit 378, which is also IDFA-378.

(Thereafter, Exhibit Number 378 was received into evidence.)

THE COURT: I admit into evidence Exhibit 380, which is also IDFA-380.

(Thereafter, Exhibit Number 380 was received into evidence.)

THE COURT: And I admit into evidence Exhibit 381, which is also IDFA-381.

(Thereafter, Exhibit Number 381 was received into evidence.)

THE COURT: Mr. Butcher, thank you, and you have been through quite a bit.

THE WITNESS: Thank you so much for having me. I appreciate it.

THE COURT: You're welcome. It was very interesting testimony, including during your cross-examination, and I thank you. You may step down.

Dr. Cryan.

Let's go off record.

(An off-the-record discussion took place.)

THE COURT: Let's go back on record.

All right. We're back on record at 2:42 p.m., and while off record I labeled three exhibits. I labeled AFBF-5 as Exhibit 382.

(Thereafter, Exhibit Number 382 was marked for identification.)

THE COURT: AFBF-5A as Exhibit 383.

(Thereafter, Exhibit Number 383 was marked for identification.)

THE COURT: And AFBF-5B, as in boy, as Exhibit 384.

(Thereafter, Exhibit Number 384 was marked for identification.)

THE COURT: Dr. Cryan, would you state and spell your name for the record?

THE WITNESS: My name is Roger Cryan, R-O-G-E-R, C-R-Y-A-N. I'm the chief economist for the American Farm Bureau Federation, and I am here to first deliver our direct testimony in support of our own proposal, Proposal 22, to update the Class I differential, and then to deliver direct testimony in response to Proposals 19 and 20.

THE COURT: Thank you.

THE WITNESS: I can begin whenever you say you are ready.

THE COURT: All right. Very good. Have you

testified previously in this proceeding?

THE WITNESS: I have.

THE COURT: You remain sworn.

ROGER CRYAN,

Having been previously sworn, was examined and testified as follows:

THE COURT: Now, are you on the clock with regard to Exhibit 382?

THE WITNESS: As I understand I have an hour to deliver the three pages of 382.

I believe that 383 is a response to other proposals, is a separate clock, but I can be corrected if Mr. Wilson has another idea.

MS. TAYLOR: That's the way we have done it.

THE WITNESS: Okay. Thank you.

THE COURT: You may proceed.

THE WITNESS: This testimony was pre-submitted in September. The American Farm Bureau Federation has nearly 6 million members in all 50 states and Puerto Rico, including many thousands of cooperative and independent dairy farmers. Many of these dairy farmers are directly affected by the pricing provisions of the Federal Milk Marketing Orders, or FMMOs. These dairy farmers play a crucial rule in the development of AFBF dairy policy. Every Farm Bureau position and proposal is based explicitly on that policy, developed through a grassroots process in which farmers make the decisions at every step of the way.

AFBF submitted nine proposals for consideration in this hearing, and appreciates the opportunity to address the four that were accepted by USDA, as well as the clear direction on what may be needed to advance the rest.

The fundamental focus of AFBF's proposals is the reduction or elimination of negative producer price differentials and the depooling that they cause. We believe that an orderly pool is the key to orderly marketing and ensuring Federal Milk Marketing Orders continue to benefit farmers, cooperatives, processors, and consumers. The key to an orderly pool, in turn, is above all, the proper alignment of the four class prices.

This statement covers AFBF Proposal 21 under Category 5, Class I and Class II differentials.

Proposal 21. The American Farm Bureau Federation proposes to update the Class II differential based on current drying costs. The Class II differential was developed during Order Reform to reflect the cost of drying and rewetting milk to reflect the higher value of Class II milk without incenting processors to dry and rewet Class IV milk for Class II uses. The AFBF accepts this logic and proposes to update the Class II differential to $1.56. This cost-based element of the Class II price formula is out of date and no longer meets the purpose of incenting the availability -- of incenting the availability of Class II milk per USDA's logic at the time of order reform.

Some processors argue that powder is not rewetted

for most uses so that the minimal cost of rewetting is not an appropriate consideration for this calculation. For this reason, to be conservative and for simplification, we propose to incorporate only the cost of drying in setting the Class II differential. Ideally, this would be based on a recent mandatory and audited cost and yield survey. In the interim, however, this could be updated using the current Make Allowances for nonfat dry milk (NDM) together with the current nonfat solids yield factor and updated butterfat and nonfat solids tests for milk in the FMMOs.

The cost of drying skim milk can be calculated then as $0.1678, which is the nonfat dry milk Make Allowance, times .99, which is the yield factor, times 9.4121, which are the average pounds of nonfat solids in a hundredweight of skim milk, times the -- equal -- that would equal the $1.56 for the cost of drying.

This 9.4121 factor is based on the 2022 average nonfat solids test in the FMMOs, which was 9.03%, divided by the average skim milk test, which is 100%, minus 4.06%, which is the average butterfat test. This relies on the butterfat test for all markets and the nonfat solids test for component markets.

Using the butterfat test for only component markets would raise the differential calculation since the skim butterfat markets have the lowest butterfat tests, so this calculation is conservative.

The original $0.70 Class II differential was

nominally based on the cost of drying condensed milk and rewetting it, presumably because dried and reconstituted Class IV milk substituted for Class II skim condensed milk first, and the differential should not be higher than the cost to convert that relatively standard Class II ingredient form into a Class IV form.

Based on the last mandatory audited survey of nonfat dry manufacturing -- dry milk manufacturing costs by the California Department of Food and Agriculture, the energy cost of drying skim milk were about $0.035 per pound in 2016. Given that the energy costs of manufacturing butter were about $0.01 per pound, we'll assume that $0.025 of the NDM costs are direct energy costs of the drying process.

Skim condensed milk contains about three times the skim solids as skim milk, so producing a pound of NDM from skim condensed milk may require roughly a third of the direct energy. This suggests that the cost of producing a pound of NDM from skim condensed milk may be roughly 0.8 cents per pound lower than the Make Allowance calculated for drying skim milk, which would yield a Class II differential of 1.49 per hundredweight.

THE COURT: That's $1.49 per hundredweight?

THE WITNESS: Exactly. $1.49 per hundredweight.

THE COURT: Thank you.

THE WITNESS: And then I have a reference to the language in the rulemaking for order reform that laid out the $0.70 calculation.

However, we believe that the simple update using the presumed cost of nonfat dry milk processing achieves the original purpose of the Class II differential without incenting uneconomic drying of Class IV milk for price purposes alone. There's no logical reason not to include condensing costs when assessing the cost of using Class IV milk for Class II uses through drying, and even the simple addition of powder to a processing vat.

Condensing costs would be faced by a Class II processor acquiring milk and using it directly, or condensing it as part of the process of drying it and using it to pay the Class IV price.

Much of Class II use was once part of Class I, based on the idea that it faced similar balancing challenges as Class I. This substantial innovation when Class II was created was to separate it from the location element of the Class II differential.

THE COURT: Of the class?

THE WITNESS: Of the Class I differential.

However, there is a reasonable justification for Class II differential as high as the minimum Class I differential, which is now $1.60 per hundredweight, and is proposed by NMPF to rise to $2.20 per hundredweight. In effect, based on the historical logic of the Class II differential, we would argue that the Class II differential should be the lower of the minimum Class I differential and the cost of drying per hundredweight.

The impact of the proposed change to $1.56 will be

to increase the minimum order value of Class II milk by $0.86 per hundredweight, increasing the average pool value in every market and reducing the likelihood of negative PPDs and attendant depooling. There were 14.2 billion pounds of Class II milk pooled in 2022, so that in a static analysis, the value of pooled milk would be increased by $122 million. The $1.56 differential is lower than the lowest Class I differential of $1.60, so combined with the return to the higher-of Class I price formula maintains Class I prices above Class II in every month.

We support Proposal 19, in principle. This proposal would significantly raise Class I differentials, further ensuring that the Class I price should be consistently above the Class II price at any location.

And I have a citation for milk component tests from AMS and the last California Manufacturing Cost Annual Survey from 2016.

And then the order language, which is as simple as changing the -- striking "advanced" for Class IV, because we have also proposed the elimination of Advanced Class I and II pricing; and replacing the $0.70 differential with $1.56, both for skim milk and for butterfat.

This change to the Class II differential should be made whether or not the advanced pricing is eliminated for Class II skim milk, although the changes are mutually reinforcing if undertaken together.

Although AFBF opposes any increase in

manufacturers' Make Allowances under the current conditions, we further propose here that if such increases to the nonfat dry milk manufacturing allowance or adjustments to product yield and milk composition are made through this proceeding, that a corresponding increase in the Class II differential be made as well.

In addition, if automatic updates to the Make Allowances for nonfat dry milk are implemented through this proceeding, the Class II differential should be updated in lockstep.

This language referencing the Make Allowance and yield was with language referencing the Make Allowance in yield. However, they may be incorporated into the Class IV milk and nonfat solids formula language.

In addition, any one-time or regular updates to the component value of the Class IV milk price formula should be used to adjust the component test factor in the equation above.

That is my testimony, my direct testimony on our Proposal 21. And in the interest of moving things along, I will move directly into testimony in response to Proposals 19 and 20, if that's all right.

THE COURT: It is. Thank you.

THE WITNESS: Thank you.

I will not repeat what I have just said before about Farm Bureau's policy process. I will say we pre- -- I just testified in favor of Proposal 21. We also generally support NMPF Proposal 19, which would increase

Class I differentials across the country, and we entirely oppose the Milk Innovation Group's, the MIG Proposal 20, which would reduce the current base Class I differential from $1.60 to zero.

I have a summary in the document of our Proposal 21. I will not re-read that, except to read a note, followed up from some other discussions earlier in this proceeding after the original testimony was submitted. I have a note about the impact of higher Class II prices on depooling.

It has been suggested that higher Class II prices -- well, increasing the Class II prices --

THE COURT: Now, let me stop you. You are on page 2.

THE WITNESS: I'm on page 2.

THE COURT: And as you have said, what you are now reading is in bold, "Note about the impact of the higher Class II price on depooling"?

THE WITNESS: That's right.

THE COURT: Okay.

THE WITNESS: Thank you, Your Honor.

Increasing the Class II prices in connection with eliminating advanced pricing will not cause class price misalignments. It could increase the likelihood of depooling Class II milk when the Class II price is above the uniform price, for several reasons, including most specifically the fact that much Class II use is at distributing plants. Class II milk is much less

subject -- sorry -- is less subject to depooling based on price relationships than other classes. Most importantly, denying the full value of Class II price -- of Class II, the full value of the Class II price -- let me restate that. Correct that.

Most importantly, denying the full value in the Class III -- Class II price undermines overall producer value and increases the likelihood of the uniform price being lower in Class III or IV, which is the larger and more likely problem, by far, with respect to price misalignment and depooling.

THE COURT: Now, let us make that correction on the original. So we're in Exhibit 383, we're on page 2, and we're in the last sentence of the paragraph that has in bold, "Note about the impact of higher Class II price on depooling."

So you have only changed a couple of words, but point out to me, Dr. Cryan, which those are?

THE WITNESS: After where it says "full value of Class II price," I would like to change that to "full value in the Class II price." So "of" would be struck and "in the" would be inserted.

THE COURT: Yes, it has been done. Thank you.

THE WITNESS: Thank you very much. Thank you, Your Honor.

Regarding Proposal 19: AFBF supports NMPF's proposal to update Class I differentials to reflect changes since 1998. AFBF agrees with NMPF that Class I

prices need to be undated. Over-order prices are "ephemeral," and regulated Class I prices are more durable, as Jeff Sims testified. In effect, the ebbs and flows of local and regional market conditions can wash away a sound long-term price relationship, which may be hard to re-establish.

Federal Milk Marketing Orders from their earliest days recognized that short-term events in market conditions could lead to the destruction of long-term supply and demand stability. Farm policies broadly aimed at providing some certainty and stability for farmers in the face of natural extreme volatility.

THE COURT: Now, your voice is perfect. I just want to make sure the speed is perfect.

THE WITNESS: Okay.

THE COURT: You're a little fast. If you will slow down.

THE WITNESS: The current Class I differentials are largely based on a 1998 analysis of the current supply and demand -- of current supply and demand volumes and plant locations. Even those differentials updated for Southeastern markets in 2008 were only partially reflective of the conditions at that time, because they had to remain aligned with the rest of the country where differentials remained unchanged.

NMPF's proposed increases are quite moderate, perhaps too moderate. The Class I differential consists of two parts: A minimum element reflecting the additional

minimum Class I value necessary to provide a hundredweight of Grade A milk to the fluid market --

THE COURT: Would you read that again?

THE WITNESS: The Class I differential consists of two parts: One, a minimum element reflecting the minimum additional Class I value necessary to provide a hundredweight of Grade A milk to the fluid market; and two, the location-specific value over and above this reflecting the relative difficulty at a defined cost of attracting an additional hundredweight to a particular location relative to location with the lowest such cost -- relative to the location with the lowest such cost.

THE COURT: So it should say "relative to the location"?

THE WITNESS: I think it should actually say "locations" because there's more than one county.

THE COURT: All right. Let's make that change. We're at the bottom of page 2 of Exhibit 383. We're in the last full paragraph, the last line of that paragraph.

And tell us again, Dr. Cryan, what to change.

THE WITNESS: I would change "relative to location" to "relative to locations." So I would insert an "S" after the last time "location" is used in that sentence.

THE COURT: Thank you.

THE WITNESS: Thank you.

The current minimum Class I differential is $1.60 based on longstanding economic logic, though based on

outdated cost assessments. This was not updated -- I'm not sure that's correct. I believe it was updated at the time of order reform in 1999.

This document has been put together over -- over two months, so I -- I apologize for that. I believe that is incorrect. This was updated in 1999. It's discussed in more detail in our comment on Proposal 20.

THE COURT: So are you certain that you want to strike some of these words? Do you want to say that it was updated?

THE WITNESS: I would strike the entire sentence.

THE COURT: Entire sentence. All right.

THE WITNESS: Because this was not updated.

THE COURT: So the bottom of page 2, we would begin with "this was not updated" and strike that entire sentence which carries on over to page 3?

THE WITNESS: That's right. That sentence was incorrect. It was updated. The minimum Class I differential was $1.04 before order reform, and it was $1.60 afterwards.

THE COURT: Now, do you want to leave the next sentence in --

THE WITNESS: Yes.

THE COURT: -- as it relates to the first sentence of the paragraph?

THE WITNESS: Yes, I do.

THE COURT: All right. Good.

THE WITNESS: The current location-specific values

are based on that 1998 analysis and are badly out of date given general inflation, if nothing else, and shifting milk supply locations. Strike "that analysis."

THE COURT: All right. We're going to strike just two words there, "that analysis."

THE WITNESS: Yep.

It is critical to understand that the relative Class I differentials also define the producer price differentials so that the -- so the -- so that the setting -- those words should be swapped.

THE COURT: All right. So we'll do that. We'll swap "the" and "that." Do you see where it is?

THE WITNESS: Yeah.

THE COURT: All right. It is done.

THE WITNESS: So that the setting of a Class I differential in any county not only defines the price of Class I milk in that county relative to the rest of the country, but also defines the price of producer milk relative to the rest of the Federal Order market. In fact, the setting of the Class I --

THE COURT: Slow yourself down a bit, Dr. Cryan, please.

THE WITNESS: In fact, the setting of the Class I differential for each county with the plant receiving pooled milk on an order will affect the minimum producer price for every other county receiving pooled milk.

The new analysis by Dr. Nicholson is done with a more detailed version of the model used in 1998 and is

based on 2021 data. This provides a critical update to the current Class I differentials, based on the same principles applied to the development of those differentials. See Exhibits 301 and 302.

Testimony by Stephen Zalar (Exhibit 308) and Joe Brinker (Exhibit 358 -- 357) both presented clear evidence of rising milk hauling costs. This is the critical cost element of the Nicholson model, and this rising hauling cost along with the shifting locations of milk production and dairy product demand provide the critical foundation for the update and increase in the relative Class I differentials. Rising hauling costs are also demonstrated by studies conducted by USDA.

And then I cite studies that have been conducted over time by the Minneapolis Milk Market Administrator's Office and the Seattle Milk Market Administrator's Office, with links to the full history of those studies.

The Nicholson model's milk movement results -- the Nicholson model's milk movement results represent an efficiency maximizing lowest cost distribution of milk, which is what an ideal market solution would produce. The actual market would achieve a slightly less efficient result. The model's relative milk value results represent the efficiency-maximizing/lowest-cost relative costs of delivering milk from current milk production areas to consumption areas covering every county in the country. The actual market solution will have a slightly higher spread across the country, which means that the model

results are a relatively conservative foundation for the Class I price surface. This is the most reasonable and scientific foundation for establishing relative milk values across the country.

NMPF witnesses indicated, and examination of the numbers confirmed, that the model results are the foundation of the NMPF proposal. However, it is appropriate to make some adjustments based on real-world circumstances, as NMPF has attempted to do.

And I cite an exhibit and some cross-examination of witnesses who agreed with that, that the foundation was -- was the model.

We also question whether use of the average of May and October model results was an appropriate starting point rather than the October results alone, which are effectively the higher of the May and October results as presented in some markets such as the Southeast, and to a lesser extent the Northeast. Producers and processors face the greatest balancing supply challenges in the summer and fall. It is arguable that this should have been the foundation for setting Class I location differentials.

AFBF proposed introduction of seasonal Class I differentials. This proposal was rejected, but the greater difficulty of serving some markets in the late summer and fall is well demonstrated by the comparison in the May and October results from the analysis by Dr. Stephenson or Dr. Nicholson, whoever did it, and

shared by NMPF. These seasonal challenges in the absence of seasonal Class I pricing may be best addressed within the current hearing by using the October results in setting Class I differentials.

Again, we recognize that there should be some adjustments to specific location differentials based on details that better reflect fairness and efficiency than the abstraction of the model. The model reflects an engineering solution adopted for a centralized management of the whole milk system. It is the reasonable foundation for the overall analysis of efficient milk movement, but this is the sort of linear optimization economics done by central planners in the Soviet Union. Not that there's anything wrong with that. It does not account for competition -- it does not account for competition among processors across the natural market, such as the metropolitan area, rather it solves by allocating milk in a way that fluid milk from only one plant would be delivered to a particular location, and cheese from only one plant would be delivered to that same location. This sort of variation from the initial proposals were necessary in 1999 to establish the current differentials, and they are appropriate in this proceeding.

Some participants appear to believe that NMPF and its committee have attempted to stack the deck in their favor. We don't believe that that has been demonstrated. But we also believe that the AMS Dairy Program has the capacity to fairly evaluate these options.

AFBF trusts that the resulting decision from USDA will be based on the model results and the rest of the hearing record and will define and implement Class I differentials based on fair and appropriate adjustments to those results, including due consideration of the proposed adjustments by NMPF.

I'd like to go over the maps that we have shared. I don't know if we do something? Is it connected?

THE COURT: Oh, in order to put them on the screen?

(An off-the-record discussion took place.)

THE WITNESS: Wonderful. Perfect.

THE COURT: Now, those of us who are looking at a paper copy are looking at 384, which is also AFBF-5B, like boy.

And, Dr. Cryan, you will be looking at your computer rather than the screen; is that true?

THE WITNESS: Well, let me restart the slide show.

This was -- we put these together for our own benefit to understand a little bit better what was being done, but we think they provide a visual perspective. We are putting out a market Intel report this week, and some of these slides are being used in that.

These are the current Class I differentials. I should point out that the color scales are not the same across these -- these slides, so they take a little more examination to compare. These are the current Class I differentials, International Milk's proposed Class I

differentials --

THE COURT: Now, before you go on, when you say "these are the current Class I differentials," you are looking at Figure 1.

THE WITNESS: Figure 1 is -- are the current Class I differentials.

Figure 2 are National Milk's proposed Class I differentials, again, with a different color scale, but it shows a rela- -- a similar -- similar shape in many ways to the current ones. They are -- they are essentially an update.

The Figure 3 shows the difference between the current differentials and NMPF's proposed differentials. These red counties are not decreases, they are all increases, but it shows the kind of -- it's a heat map that kind of shows the gradation from smaller increases to larger increases. And, again, we think it's -- you know, the busiest parts of these maps have always been east of the Mississippi, so it's not surprising that these have come out this way.

Here's a comparison of National Milk's proposed differentials with the average of the May and October estimates. As you can see, every county is within between $0.75 lower and $1.15 higher, so I think that's a pretty good indication that the model is really very fundamentally the foundation for their proposals.

And we also have a slide that says difference between NMPF proposed differentials and May model

estimates and --

THE COURT: Now you have gone on to the next slide.

THE WITNESS: Yeah.

THE COURT: I'm with you now.

THE WITNESS: And the fifth slide out of six, they don't all have figure numbers.

And the last one is the difference between NMPF proposed differentials and October model estimates. They -- the -- they are -- they are all within our reasonable range, one or the other. So we just -- we thought that was useful perspective, a useful visualization of the proposal.

Again, we -- we have no reason to argue with any particular county adjustment that National Milk has made, and I believe that testimony by quite a number of the witnesses has demonstrated logical justifications for a lot of these in particular.

As I said earlier, when you have a metropolitan market where the engineering model would suggest that market should be divided up between -- between centrally managed plants. But in the real world we have competition, and so the plants around a city market would tend to compete in the same market, and it's a reasonable thing for that metropolitan market to be smoothed out.

So that's the maps. I'm done with the maps. Thank you, Your Honor.

Now I'll address Proposal 20.

THE COURT: So now we have gone to Exhibit 383, page 4, in the middle.

THE WITNESS: That's right. Return to page 4 in the middle.

Proposal 20: AFBF opposes MIG's proposal to reduce minimum Class I differential -- the minimum Class I differential from $1.60 to zero, and suggests that it should instead be increased.

The current Class I differential surface lays on the foundation of the minimum Class I differential of $1.60. That minimum should be updated up, not down. The minimum $1.60 Class I differential was established on sound bases during Federal Order Reform. This is particularly laid out in the proposed rule issued on January 30, 1998. Its underlying logic was sound and its application was conservative.

The proposed rule laid out very effectively three cost elements that justified the $1.60. However, there is also a logic for its overall size, which is that the Class I differential must be large enough to allow for consistent hierarchy of class prices. Either or both can justify the current 160 -- $1.60 minimum, or more, but not less.

And I cite the 1998 proposed rule.

Since Proposal 20 opens the scope of the hearing for considering the size of the minimum Class I differential -- that is it technically proposes to reduce it to zero, not to eliminate it -- it would propose -- we

would propose, rather, that it be increased based on the same logic upon which it was originally proposed in 1998.

There is justification for substantial increases based on increases in all the costs that entered into the original USDA cost estimate of $1.60. Increases in Grade A production costs, increases in marketing and hauling costs, and the greater challenges of getting manufacturers, especially cheese plants, to give up milk for supplemental fluid needs, all argue for a higher minimum Class I differential per the original rule. And then there's a citation again.

The same logic could have supported adding another $0.60 or more to the Wisconsin model results as the starting point rather than the model results based on a minimum $1.60 Class I differential.

MIG's proposal to reduce the minimum Class I differential from $1.60 to zero seems like a rhetorical exercise designed to make the status quo, or Class I differentials near the status quo, to appear like a reasonable compromise relative to NMPF's proposal to fully update and increase Class I differentials.

Taken on their face, the arguments to eliminate the minimum $1.60 Class I differential established in the 1998 and 1999 Federal Order Reform decisions are rooted in a dismissal of the elements of that $1.60 laid out by USDA at the time. Specifically, USDA found costs associated with: One, meeting the Grade A standard; two, balancing supplies at bottling plants; and three, providing a basic

incentive to supply bottling plants over and above other plants.

MIG's proposal is fundamentally a dismissal of the Federal Milk Marketing Order itself, which has been built on these objectives.

THE COURT: Would you re-read that sentence? You left out one word that I think's important.

THE WITNESS: Sure.

MIG's proposal is fundamentally a dismissal of the Federal Milk Marketing Order system itself, which has been built on these objectives. Each of these three elements is important to the FMMO system, in addition to the fact that the Class I price alignment depends fundamentally on the maintenance of a substantial minimum Class I differential.

THE COURT: Now, you read that differently from the way you wrote it.

THE WITNESS: I did?

THE COURT: Yes.

THE WITNESS: The second time?

THE COURT: No, no. You've only read this last sentence once. So read it again with meaning.

THE WITNESS: Each of these three elements is important to the FMMO system, in addition to the fact that class price signal -- that class price alignment depends fundamentally on the maintenance of a substantial minimum Class I differential.

THE COURT: Thank you.

THE WITNESS: You're welcome. Thank you.

We will consider each of these four issues, the three elements laid out by USDA in 1998 and the overall issue of a sufficient Class I differential to maintain basic price alignment.

Regarding the Grade A incentive. FMMOs have provided and continue to provide a sound incentive to producers to maintain Grade A status. Claiming that there's no longer a need for a minimum Class I differential because nearly all milk is Grade A is akin to claiming there's no longer a need for stop signs and traffic signals because there are few accidents at intersections. The minimum Class I differentials should not only be maintained, but increased in line with the increased costs of meeting the Grade A standard and consistent with NMPF's proposal based on the logic presented by NMPF and selectively summarized in our discussion of Proposal 19.

In the proposed rule for order reform, USDA set the minimum Class I differential at $1.60 per hundredweight based on several enumerated costs, beginning with the cost of maintaining Grade A standards.

Per that decision: There are several requirements for producers to convert to a Grade A dairy farm and then maintain it. The Grade A dairy farm -- a Grade A farm requires an approved water system (typically one of the greatest conversion expenses), specific facility construction and plumbing requirements, certain

specifications on the appearance of the facilities, and required equipment and facilities, and adhere to certain management practices. Often this will result -- often -- I'm sorry -- often this will require additional labor, resource, and utility expenses. It has been estimated that this value may be worth approximately $0.40 per hundredweight. And that's from Federal Register, Volume 63, page 4908.

Grade A standards have only become more exact -- more exacting in the meantime through a state federal process of review and revision -- through a state federal process of review and revision, culminating at the biannual National Interstate Milk Shippers Conference.

And then I cite the Grade A Pasteurized Milk Ordinance, which is the output of that conference, as well as the document from US -- from AMS Dairy on milk for manufacturing processes and its production and processing recommended requirements, all of which are useful for understanding the additional costs associated with maintaining Grade A standard.

Of course, the "labor, resource and utility expenses" with dairy farmers cited above rise along with those of milk processors, non-feed costs in the production of milk, which are closely identified with labor, resource, and utility expenses, plus the cited infrastructure costs have risen by 68% between 1998 and 2002, according to USDA estimates.

THE COURT: Between 1998 and?

THE WITNESS: 2022.

THE COURT: Thank you.

THE WITNESS: Thank you, Your Honor.

Based on above and applying the same 68% increase to the $0.40, $0.40 per hundredweight cost of maintaining Grade A supplies, AFBF conservatively estimates the present costs of maintaining Grade A standards at $0.67 per hundredweight, an increase of $0.27 from the status quo.

And I cite the USDA Economic Research Service Cost of Production Estimates, including links for the most recent estimates in the historical data.

Regarding the balancing incentive.

THE COURT: Now, just so people can keep up, we're still in Exhibit 383, we're on page 6, and we have just begun a new heading.

THE WITNESS: New heading that says "Balancing Incentive."

Balancing incentives are a critical element of the minimum Class I differential because supporting balancing is a critical function of the FMMOs themselves.

USDA's order reform decision also stated: "Traditionally, the additional portion of the Class I differential reflects the marketing costs incurred in supplying the Class I market. These marketing costs include such things as seasonal and daily reserve balancing of milk supplies, transportation to more distant processing plants, shrinkage, and administrative costs,

and opportunity or 'give-up' charges at manufacturing milk plants that service the fluid Class I markets. This value has typically represented approximately $0.60 per hundredweight."

And I have the citation, again, for the proposed rule.

Most of these are the same costs associated with the operation of plants producing such products as cheese, dry whey, butter, and nonfat dry milk powder.

The operators of cooperative supply plants often sacrifice plant profitability of their manufacturing operations in order to provide Class I and II milk supplies. The costs of this supply rise as energy costs and per-pound processing costs rise, and each cost should be offset in the Class I price.

Shipping milk from distant sources imposes an even larger cost of balancing Class I markets. Transportation costs also rise with higher energy prices, as was acknowledged in the 2020- -- in the 2006 tentative partial decision on transportation credits in the Southeast and Appalachian markets.

Manufacturing costs estimated from recent surveys tend to reflect costs of plants running near capacity. Processing costs of balancing plants are higher and should be reflected in the Class I price. In addition, some part of the costs of plant operation are associated with maintaining certification to supply milk to Grade A fluid milk plants, costs that are required of a plant before it

may be pooled in the Federal Order system.

Very conservatively -- that should probably say "the" same percentage increase in the cost of butter and powder manufacture --

THE COURT: Now, what word do we want there? After "very conservatively"?

THE WITNESS: Instead of "rite," it should say "the."

THE COURT: "The same percentage increase"?

THE WITNESS: Yes.

THE COURT: All right. So we're going to make that change now. Page 6, what is it, I don't know, about eight lines up, first word, instead of "rite" --

THE WITNESS: Right.

THE COURT: -- it's "the." We're with you.

THE WITNESS: Thank you very much.

THE COURT: If you'd begin again with "very conservatively."

THE WITNESS: Certainly. Certainly.

Very conservatively, the same percentage increase in the costs of butter and powder manufacture, which is the primary form of market balancing through manufacturing that is applied to Class III and IV Make Allowances, should also be applied to the $0.60 supply cost. Increases in the Make Allowance or manufacturing cost data since 1998 should already be applied to the $0.60 supply cost.

This -- the current --

THE COURT: You said "should already be applied"?

THE WITNESS: Yeah, I probably should not have said "already," because I think I'm talking about what we're looking at right now, so let me not say that.

THE COURT: Okay. Read that sentence again.

THE WITNESS: I'll read the sentence again.

Increases in the Make Allowance or manufacturing cost data, since 1998, should be applied to the $0.60 supply cost. The current total Make Allowance for Class IV milk is $2.17 per hundredweight of milk at the 3.5% butterfat test. This is -- and that's based on the standard test in the current formulas, not the updated formulas. This is up more than 31% from the per hundredweight Make Allowance at the time of order reform, which was $1.65. Applying this increase to the $0.60 handler fluid supply cost would be an increase of $0.19. Similarly, any increase in the Class IV Make Allowance should be applied to this factor as well.

And I have the citations.

THE COURT: All right. And now we have gone to page 7.

THE WITNESS: Page 7.

Manufacturing plants are larger and more dependent on running full for profitability. This means that give-up charges are higher than ever, and the cooperative and the few other handlers who take on balancing responsibilities are facing ever higher costs to do so.

In addition, shifts in milk production and

manufacturing consolidation have led to longer hauls to Class I plants. Studies by the Minneapolis Market Administrator and its Chicago predecessor concluded that the weighted average hauling charge in the Upper Midwest market in May 1998 was $0.17, $0.176 per hundredweight, and the weighted average hauling charge in the Chicago regional market in May 1999, the first year for which data was compiled for that market, was $0.111 per hundredweight.

The first data for the consolidated Upper Midwest market was for May 2001, and the average hauling rate was $0.171 per hundredweight.

By May 2006, the average weighted average for the consolidated Upper Midwest market was $0.235, $0.065 higher than five years earlier, and 6 and $0.12 higher than the figures for the predecessor markets.

In 2022, this average hauling cost had risen to $0.4153 per hundredweight, an increase of 143% from 2001, or $0.24 per hundredweight.

Similarly, studies by the Seattle Market Administrator showed average hauling rates rising from $0.4339 per hundredweight in 2000 to $0.517 per hundredweight in 2005, then to $0.95 per hundredweight in 2022, an increase of 118%, or $0.52 per hundredweight.

Based upon these studies, and the rest of this hearing record, we would conservatively propose an additional $0.25 per hundredweight in the average Class I assembly costs be applied to the minimum Class I

differential, for a total increase of 44% in the Class I differential associated with the incentive to serve the Class I market.

THE COURT: Just read again the last line of that paragraph.

MS. TAYLOR: Your Honor, could we ask him to slow down.

THE COURT: Oh, yes. And slow yourself down, Dr. Cryan.

MR. HILL: Specifically on the numbers. I mean, you are shooting through those numbers, and they are hard to keep up with.

THE WITNESS: Okay. Okay. I'll read the last sentence.

Based on these studies, and the rest of this hearing record, we would conservatively propose an additional $0.25 per hundredweight in average Class I assembly costs to be applied to the minimum Class I differential for a total increase of $0.44 in the Class I differential associated with the incentive to serve the Class I market.

And then, again, I -- I share the citations for the milk hauling studies in the Upper Midwest market and then the Pacific Northwest market from the Market Administrator's offices.

The next heading is the "Incentive to Serve Class I Customers." The last element of the minimum Class I price, per the proposed rule, was the additional

competitive factor, estimated at $0.60 per hundredweight, based on -- based upon two price comparisons. The proposed rule reported that Grade A milk received an average premium above Class III in 1995 and 1996, of $0.86 in Minnesota and $0.89 in Wisconsin. By 2022, those premiums were $0.62 and $0.84, respectively. See Table 1.) His is lower than the numbers on which the original $0.60 was based, but not substantially, and certainly not zero.

These continuing premiums are indication of the necessity of a minimum Class I differential to draw milk to the pool to meet Class I needs, and that they meet the -- and they meet the objectives of the Act. There is no call to reduce this element of the minimum Class I differential.

And then I have Table 1. Table 1 is a -- essentially an updated version of Table 7 from the proposed rule, the order reform. That table is on page 4908, 4909 in Volume 63 of the Federal Register. And I believe those numbers are comparable to those -- to the numbers on Table 7.

Altogether, increases in the foundation for these three elements justify, not a reduction of the Class I differential, but an increase of approximately $0.60.

THE COURT: I'm going to stop you for just a minute. I just want everybody to stand up and stretch for two minutes, and then we'll continue on, still on page 8.

We'll go off record at 3:33. Just two minutes.

(An off-the-record discussion took place.)

THE COURT: Let's go back on record.

We're back on record at 3:35. We're on page 8 of Exhibit 383.

Dr. Cryan, do you remember where you were?

THE WITNESS: I do.

THE COURT: You may resume.

THE WITNESS: Regarding class price alignment and pooling incentive.

(Court Reporter clarification.)

THE WITNESS: Finally, perhaps most fundamentally, reducing the minimum Class I differential to zero would effectively destroy the basic proposition that Class I prices should be consistently higher than other class prices, which is critical to the operation of Federal Order milk pools.

In connection with the return to higher-of pricing and the elimination of advanced pricing, the Class I differentials are the key to encouraging pooling and ensuring a pool draw for manufacturing plants who are ready to serve the Class I market.

Milk prices and milk production costs are all up substantially since 1998. The Class I and II differentials are a fixed element in milk price formulas that need regular updating. Basing this on three additional elements is a reasonable approach; however, if the traditional analysis did not support an increase, an increase would still be appropriate to sustain the

critical alignment of class prices. (See the above-referenced cost -- Milk Cost of Production Data, which includes all milk prices.)

Conclusion. The minimum $1.60 or more is a critical practical element in FMMO pricing and pooling. The $1.60 minimum is not only still justified, but could be increased based on increased costs associated with maintaining Grade A standards of hauling milk and balancing weekly seasonal supplies.

The argument made by MIG and pre-submitted testimony by Ms. Keefe that too high a Class I differential will lead to overproduction is spurious. It is not too high in the current market regime in which manufactured milk products clear in an open international market and do not back up into government stocks.

The purpose of the Class I differential is to ensure a fluid milk supply and orderly marketing of milk overall. A higher Class I differential will do that. It will not cause overproduction, per se, which doesn't really exist as long as processing capacity can keep up.

In pre-submitted testimony for MIG, Dr. Stephenson claims that because of the average shadow cost for manufacturing milk is higher than the average shadow cost for fluid use, that the minimum Class I differential is not justified. This is a misinterpretation of his own model, which assumes all milk can simply move through hauling and processing without any significant differentiation among uses. In fact, we have higher

prices for Class I because there are many challenges to serving Class I use that isn't captured in the model, including the critical need for steady supplies on a daily and seasonal basis, higher quality standards, and the inability to store fluid milk for significant amounts of time.

I'm also curious as to how the fact that Dr. Stephenson's plant nodes have limited capacity affect these results. Fluid plants there are typically running with slack capacity, while many manufacturing plants, especially cheese plants, are running full, and their plant capacity almost certainly puts more constraints on his model for manufacturing milk, which could lead to higher average shadow costs per additional hundredweight of milk in many manufacturing locations, depending on how he defines that value.

It is often suggested that fluid milk demand is declining because of the Class I differential. Even in Miami the Class I differential represents about $0.50 per gallon. The $1.60 minimum Class I differential represents less than $0.14 per gallon.

And in every part of the country, the Class I differential is a single consistent element of the milk price. If there was a demand impact, it would be a one-time shift in demand, not a long-term decline. Rather, fluid milk demand has been undermined by a shift away from breakfast cereals and the nutrition community's inappropriate and unfortunate encouragement of consumption

of unappealing skim and lowfat milks rather than whole milk.

Ultimately, MIG's proposal to cut the Class I differentials by $1.60 across the board is a proposal to overturn class price alignment, create chaos in Federal Milk Marketing Order, and effectively destroy the Federal Milk Marketing Order system.

The destruction of the FMMO system may lead eventually to stable market structure, but it would be one that could closely resemble that of the current broiler chicken industry, which integrated processors seize tight control over farmers' prices and farmers' operating methods. Similar results have been seen in the United Kingdom and Australia, where large retailers set the milk price at the long-term detriment of farmers and consumers.

The FMMO system as it stands today provides a framework in which farmers can control their own destiny through cooperative organization, and through independent reliance on the terms of trade established by the orders and enforced by the Market Administrator.

The FMMOs create a fairer world for dairy farmers in the short run and a market in which farmers are better encouraged to serve American and international consumers in the long run. Dr. Stephenson argues that we are "shackled" to the 1937 Act. Rather, the Act provides USDA and the dairy -- and the industry enormous flexibility to adjust and modernize the FMMOs, as we are here to do today.

Congress has stepped in more than once to call for a full overhaul in 1996, and to notably ensure the sufficiency of Class I differentials in 1985 and 1999. The system undoubtedly needs updating, as we have argued throughout. However, proposals that would tend to overthrow the entire system, such as Proposal 20, need to be considered not on fine detail, but on the overall impact it would have on the system.

I'll address some other issues based on things that have come up in the course of the hearing.

One is regarding the cause of increased depooling. In someone's earlier testimony, there was a suggestion that the reason depooling is up in the Federal Milk Marketing Order system is because of the addition of the California market to the system. However, depooling data for Federal Order 30 shows the same pattern as that in the FMMO system overall. California is not causing the decrease (sic) in the depooling except to the extent that it's decreased the volume of milk --

THE COURT: Yeah, I don't know what happened to the volume. Start again. Please go to the bottom of page 9 and start again with that sentence "however."

THE WITNESS: However, depooling data for Federal Order 30 shows the same pattern as that in the FMMO system overall. California is not causing the increase in depooling. The rise in depooling is a result of declining Class I use and the falling relative value of the Class I differential relative to the underlying milk prices.

And I will make a note now that there is an extent to which California is contributing to additional depooling simply because there is more milk in the system, not because California is -- is subject to depooling in excess to other markets.

And there's a graph there showing the pattern of depooling in the system overall and in Order 30 alone, which shows the same -- same patterns. That data is from AMS.

Regarding exchanges. There's been a suggestion that eliminating advanced higher-of Class I pricing creates an unbearable loss of risk management opportunities if the CME Group does not implement the Class I futures and options complex. The CME Group witness earlier in the hearing indicated the exchange would be open to considering any new contract that would serve its customers, which would be, of course, the simplest and the most obvious solution to milk handlers' concerns. However, if the CME Group declined to offer this product, there are other exchanges that could clear dairy contracts, including ICE and the Minnesota Grain Exchange, or companies that could facilitate swaps such as ever.ag, formerly dairy.com.

THE COURT: And how is ever.ag shown in your testimony?

THE WITNESS: It is shown E-V, all -- all small letters, E-V-E-R, dot, A-G. And dairy.com is all small letters, D-A-I-R-Y, dot, C-O-M.

Regarding the difficulty of Class I and Class II handlers and managing price risk, dairy farmers and many other farmers, despite operating on a significantly smaller scale than even a "small" dairy processing business, which has up to 1150 employees according to the Small Business Administration, manage myriad price risks for their feed purchases, their energy costs, their milk sales, their crop sales, et cetera, through the use of an inter- -- through their use of an interlocking collection of government risk management programs, contract pricing swaps, and hedging on futures and options exchanges.

If the CME Group, or any exchange, were to establish the long overdue set of Class I milk futures and options contracts, such risk management for processing operations that are several times as large as a "large" dairy farm are not an unreasonable expectation of doing business. The price risk faced by Class I handlers is much simpler than what many farmers face, and the distance of Class I futures and options would make it simple to solve.

Finally, AFBF believes that the Edge proposal to create a new Class I each lies outside of the scope of this hearing.

And that concludes my direct testimony. I have no cross for myself. So I offer my -- no direct examination for myself -- so I offer myself for cross-examination.

THE COURT: Thank you, Dr. Cryan. This is

extremely meaty, as you might know. What are the limitations on your amount of time with us today?

THE WITNESS: I can stay all night.

THE COURT: Oh, dear.

THE WITNESS: I'll be here tomorrow.

THE COURT: You will? Well, that's good news. All right. The only reason I say that, Dr. Cryan, is that I don't want to stay all night.

THE WITNESS: I understand.

THE COURT: All right. Who would like to go first with cross-examination, or do you need like five minutes to move around before you start that five minutes? Yes.

Let's take a five-minute break. Please be back ready to go at -- let's see, five minutes, 3:55 be back.

We go off record at 3:48.

(Whereupon, a break was taken.)

THE COURT: Let's go back on record.

We're back on record at 3:55. Who will be first to cross-examine Dr. Cryan?

MR. ROSENBAUM: I will, Your Honor.

Steve Rosenbaum for the International Dairy Foods Association.

THE COURT: You may proceed.

CROSS-EXAMINATION

BY MR. ROSENBAUM:

Q. Dr. Cryan, I have some questions relating to Proposal 21, your proposal to increase the Class II differential from its current $0.70 to $1.56.

First of all, have you done any analysis as to the adequacy of the current milk supply to satisfy Class II needs?

A. No, I have not.

Q. Are you aware that USDA has turned to that specific question in some of its past decisions addressing whether or not the Class II differential should be increased?

A. I'm not.

Q. So in terms of methodology, what you propose to do is to set the Class II differential equal to what you calculate to be the cost of drying skim milk, correct?

A. Yes.

Q. And, indeed, that's the formula that appears on page 2 of your statement, which is Hearing Exhibit 382, correct?

A. Right.

Q. And you acknowledge that that's not actually the methodology that was used by USDA when it last raised the Class II differential to $0.70, correct?

A. The -- that's correct.

Q. And it's not -- and there are two exceptions, if you will. One is you have -- you're no longer going to consider the cost of rewetting based upon the argument that, in fact, you don't have to rewet in many cases, correct?

A. That's correct.

Q. And are you aware that that represented roughly

$0.13 of the $0.70?

A. That sounds about right.

Q. Okay. And so the other difference in methodology is that, as we just covered, initially at least, you are going to rely upon the cost of drying skim milk, whereas back in order reform, USDA looked to the cost of drying condensed milk, correct?

A. That's right.

Q. Now, you provide a calculation that suggests that that difference is actually minimal, in that you assert that, you use that method, you would have a differential of $1.49, only $0.07 less than your $1.46, correct?

A. That's what I wrote.

Q. Okay. Do you -- are you aware that when, if you look at the numbers before USDA and order reform, there was actually quite a vast difference in the impact of using cost of drying condensed milk versus skim milk?

A. I did not see that in the -- in the record.

Q. Okay. The -- at the time, well, let me -- I mean, the cost of drying skim milk is basically the Make Allowance for turning skim milk into nonfat dry milk, correct?

A. That's right.

Q. Okay. And would it surprise you to learn that, in fact, if you do the math, back when order reform took place, the use of starting point of condensed milk resulted in a Class II differential that was only 47% of what the cost would have been had it used the cost to dry

skim milk?

A. I would be surprised.

(Court Reporter clarification.)

BY MR. ROSENBAUM:

Q. You would what?

A. I would be -- did you ask me would I be surprised? Yes, I would be surprised.

Q. Okay. So let's talk a bit about -- and I am not going to get into a philosophical fight over whether what USDA did back then was really to set the Class II differential based upon these costs or there were other considerations at play. We'll deal with them in our own testimony. But let's just talk about the question of switching from using Class II fresh milk to make Class II products as opposed to substituting powder. Okay?

A. Okay.

Q. And is it -- is it your view that it would -- and I think the answer is yes -- but is it your view that it would be a bad thing to set the Class II differential in a manner that would encourage substantial displacement of Class II milk with Class IV powder?

A. I believe the powder plays an important balancing role in the market, and if the -- if the use of powder is effective with respect to product quality and -- and economics of production, it's a reasonable thing. I don't think it's a bad thing. I think it's a -- I think it's -- it's a reasonable thing.

But I also think that the Class II differential,

there wasn't really a reason not to include condensing costs in the -- in the calculation of that Class II differential.

Q. You say there's not a reason?

A. There was not really a reason.

Q. But that's what they did, right?

A. That's what they did.

Q. Okay. So I mean, I thought you were trying to set the Class II differential in a way that would not be so high as to encourage substitution of powder. Is that -- am I mistaken about that?

A. The idea was to avoid encouraging uneconomical substitution of skim milk for powder.

Q. Okay. So -- so in the real world, if you are a stand alone, let's say, yogurt plant, Class II product, correct?

A. Right.

Q. You are not under -- probably under any circumstance actually going to be drying your own nonfat dry milk, right?

A. I -- I'm not familiar with that. I -- I don't know whether any yogurt makers have driers or not.

Q. Not aware that they do, correct?

A. I don't know that they do and I don't know that they don't.

Q. Okay. Certainly there are many companies out there, including cooperatives, of course, that do have driers and they make nonfat dry milk, correct?

A. Yes.
Q. So is it fair to say that if you were to be concerned about substitution of powder for Class II milk in making Class II products, that you would want to address how a Class II handler would go about achieving that substitution if it wanted to do that; is that fair?
A. I'm not sure I understand the question.
Q. Well, I mean, you know, you could say the question is what's the cost of using that Class II milk versus drying it. But of course, if you don't have a drier, that's not actually -- that's not the real world, right, for a Class II handler? What the real world is for them is, do I take the fluid milk and use it, the fluid raw milk, and use it for my Class II product, or do I buy powder from somebody and use that instead? Isn't that the real world choice for the typical Class II standalone handler?
A. Yes.
Q. Okay. And do you know what the shelf life is of nonfat dry milk?
A. It's a Grade A product. It's relatively limited.
Q. Months, if properly stored?
A. I'm not sure. A couple months probably. I don't know.
Q. Okay. Is it -- okay.
Would it surprise you if it's -- that people actually store it longer than that?
A. No.

Q. Okay.
A. No.
Q. And so the -- and -- and it is fair to say that the -- and we can look at some numbers -- but the price of nonfat dry milk in the market does vary considerably over the course of a year often, 10 or 15% at least?
A. What varies?
Q. Varies, yes.
A. What does?
Q. The cost of nonfat dry milk, just the market value of nonfat dry milk.
A. And the Class II and Class IV milk move in lockstep, especially if you eliminate advanced pricing of Class II.
Q. Well, that's a second subject. We have had our argument about that already.
But if we just look at historical records of the -- just nonfat dry milk prices per pound, which is obviously it's a surveyed product, it's part of the survey that sets minimum milk prices, we can look at them every month and -- more than once a month, for that matter -- and you can see that they do vary considerably over the course of a year, correct?
A. They do vary.
Q. Okay. And so the real -- in the real world, if you have more than doubled the Class II differential, the real world thought process for a Class II handler is going to be, presumably, well, can I buy nonfat dry milk at a --

when the market is flush and the price is low, and how does that compare to what the Class II differential would be at the time I later make my yogurt or ice cream or cottage cheese, and which is better for me? I mean, isn't that the thought process that people would go through?

A. I believe they would, and I believe that a manufacturer that chooses to manage their inventory and their price risk through -- through stocking inventories of powder is helping -- is helping balance the market in ways that other processors are not, if they simply demand fluid milk every day.

Q. I mean, that goes, I guess, to a question I asked you earlier, which is maybe you don't care whether or not people make Class II products from raw milk versus milk powder, in which case, the substitution is not really relevant.

Is that where you are coming from?

A. I believe there are products where it -- it can be done without sacrificing product quality, and I think there are products where it can't be done without sacrificing product quality.

Q. And of course, there may be, of course, circumstances where it can be done, and whether you are going to do it is going to depend upon the price of one versus the other, correct?

A. The price -- the price affects decisions, right.

Q. And you are more than double --

A. Because there's some point at which price affects

decisions. There will be some -- again, there will be some products where you could raise the Class II differential to $3, and they are still not going to use powder. But there's -- but there's other products where -- where the difference in the product, the difference in the outcome is -- is negligible, and they will make that decision. And, again, that -- that contributes to the market balancing.

Q. And, obviously, the balance, the economic balance of the choice will be different and more in favor of substitution of powder if the Class II differential is more than double, all other things being equal, correct?

A. For some -- for some processors, for some products, yes.

Q. Now, I think -- I think in your discussion about Proposals 19 and 20 there was some discussion of sort of a relationship among the prices in the different classes; is that right, as that being meaningful? You were, it's a different context obviously, but you were talking about, you know, the need for Class I price to be higher for the reasons you articulate, correct?

A. Yes.

Q. I mean, so right now, the Class II differential is less than half the lowest Class I differential, correct?

A. Yes.

Q. The minimum Class I differential being $1.60 and the Class II differential being $0.70, correct?

A. Uh-huh. Right.

Q. And obviously we don't know what USDA is going to do with Class I differentials. We have different views as to what they ought to do. But clearly to raise the Class II differential to $1.56 would potentially create a relationship between Class I and Class II prices that are quite -- quite different than their current relationship, correct?

A. It would be closer, but if the minimum Class I price, the minimum Class I differential is $2.20, then there remains a substantial space, $0.60 space between.

Q. On a percentage basis, they're much closer at that point, correct? On an absolute basis, not so much difference?

A. I don't know if $0.60 versus $0.90, is that -- is that much closer? But, yeah, it's closer.

Q. Well, I'm just saying right now it is less than half, and if the minimum Class I differential went up to 2.20, half of 2.20 is $1.10, and you are going to be at $1.56, so that's quite a bit higher.

A. You can -- you can look at the numbers any way you would like.

Q. Well, that's -- I won't -- I'm trying to -- yeah. The way I'm looking at it is to answer the question, are you maintaining historical relations between Class II prices and Class I prices, and I think the answer is no.

A. If we eliminate advanced pricing for Class II and Class I, they will be close. If we don't eliminate class pricing for either, they will continue to move and be

separated. They will continue to have a proper alignment.

And the -- I think it's worth noting again, I probably didn't make it clear enough in my testimony, that Class II was, at one time, part of Class I. Most of the many products in Class II, such as cream and other -- other soft perishable products, were part of Class I in the early days of the Federal Orders. And the separation was just in the recognition that over time Class II -- many Class II products became traded on a, you know, wider area, and more -- there were more and more national -- nationally marketed Class II products, so there was a shift to sort of a single Class II price across the whole country.

But fundamentally, Class II was part of Class I because there are similar balancing issues in Class II as there are in Class I.

Q. Do yogurt plants not operate on a more consistent basis than Class I plants?

A. Do they not operate?

Q. I think double negative. Mistake. Try again.

(Court Reporter clarification.)

BY MR. ROSENBAUM:

Q. Do yogurt plants tend to operate on more of a seven-day a week basis than Class I plants?

A. I don't know, but I'm sure they operate on certainly much more of a weekly basis than manufacturers need to because of the perishability of the product.

MR. ROSENBAUM: That's all I have. Thanks.

THE WITNESS: Thank you.
THE COURT: Thank you, Mr. Rosenbaum.
Mr. Miltner, thank you.
MR. MILTNER: Thank you.

CROSS-EXAMINATION

BY MR. MILTNER:

Q. Dr. Cryan, I think Mr. Rosenbaum covered several of the questions I had to ask. I think I may have just a couple.

As an economist, where do you draw the line between what is an uneconomical substitution and an economical one?

A. If -- if -- if the price signals are such that it's profitable to do something that makes no sense just on the basis of the -- of those signals, those, you know, external regulated signals, that's -- that's uneconomical.

Q. So if we think about the yogurt producer for instance --

A. Uh-huh.

Q. -- I suppose, should the -- should Federal Order pricing default or direct that processor to using fresh milk or should they be ambivalent as to whether they use Class II products or Class IV products to manufacture?

A. I think they should make the decision on the basis of their demand, their product. I mean, if -- we're following the same principle that was incorporated into the -- into the decision in 1998 to try to have the Class II price as high as it can be without -- without

unnecessarily incentivizing substitution of powder.

But again, if -- if -- if the processor chooses to use powder based on seasonal fluctuations in price, then that contributes to the market balancing in ways that are probably good for the market. Probably help address some issues of volatility in supply and demand.

Q. Have you done any analysis, even rough analysis, to determine if there's a price point or a differential point at which uneconomic substitutions might be incentivized?

A. No. I haven't looked at case studies, for example, to consider the extent to which processors are already buying skim condensed for -- for -- for hauling advantages or so forth. I haven't looked at that.

(Court Reporter clarification.)

THE COURT: And that was, you have not looked at what Mr. Miltner asked you about?

THE WITNESS: That's right.

THE COURT: Understood.

MR. MILTNER: Thank you.

BY MR. MILTNER:

Q. I was hoping you might elaborate a little more on why you chose to propose a differential that's calculated in a manner different than that which USDA used previously.

A. In principle, in order to substitute powder for -- for milk, the milk has to be dried, or condensed and dried. The -- there certainly could be cases where the

norm is already to buy condensed milk, in which case the issue could be just drying. And if that is the case, there's a balance to be considered, whether at -- again, it's not -- for those -- some of those cases it's not necessarily a problem for the market if there's some balancing being done with powder. But even if -- even if the condensing costs are backed out, it still justifies an increase in the differential.

Q. And I guess maybe you partially answered what I was hoping you would address.

Is there a reason why, when you were making a determination to update the differential, that you chose to look at the entire cost of drying as opposed to just using -- starting with condensed?

A. We're just going back to first principles about Class II as a class that requires balancing for fresh products, similar to Class I, and that -- that $1.56 was a reasonable differential based on drying costs.

Q. I'm not going to try to walk you through arithmetic.

A. And I won't do arithmetic.

Q. So accept for a moment my math so we don't have to go through the arithmetic.

If we -- if we merely took USDA's logic from setting the current differential and you -- you substituted out the Make Allowance for nonfat that was in place in 1999 and used that which is current, but you did so based on the drying of condensed rather than nonfat, in

other words, you started with condensed, I figured that the differential would go up to about $0.82.

I wondered if you have done any -- any analysis about updating the differential using USDA's methodology, what's articulated in the order reform decision?

A. I have not, but I would be happy for anybody to put good evidence of condensing costs on the record so that USDA can make that consideration.

Q. Okay.

A. There's still an economic logic that a processor that uses powder instead of milk at some point is paying for condensing. The question is, are they -- are they paying for condensing anyway because it saves them money on the shipment, or are they -- are they -- or is that simply part of the process of drying?

Q. I think I asked a question like this, I hope I don't repeat it identically, but is there a numerical point at which you believe the differential gets to high?

A. I think -- I think it -- I think $1.56 is a good number. I think if the -- if the Make Allowance go up, then the Class II differential should go up with it. But I think as long as it doesn't -- as long as it's not so high that it incentivizes, that it creates a profitability simply to replace Class II milk with Class IV powder, then it's not too high.

Q. But you don't have an opinion on what -- when that trigger is pulled?

A. We -- we propose the $1.56.

Q. Okay.

A. That seems like a good number. It seems like it's the principle of the original decision in 1998 was to get the price as high as it could be without creating an -- sort of a standalone incentive to dry instead of using -- using milk directly. That's the same logic that $1.56, by our figure, is the highest you could go without tipping it over to where folks will just dry because they can make more money simply because they are drying, that their costs are reduced by using powder instead of fresh milk.

Q. Not to put words in your mouth, I hope, but $1.56 is close to that tipping point?

A. I mean, I -- I -- there's a -- the president of the Teacher's Union will never admit that there's a bad teacher, and I don't know that there's ever such a thing as too high a milk price.

Q. You are talking to a school board president, you know that?

A. Yeah. So, you know, maybe -- maybe if it was much higher than $1.56, it would be too high.

Q. And on the off chance any of my teachers get ahold of this transcript, they are all fine educators.

A. I'm sure they are.

Q. If -- if the highest Make Allowances that have been proposed in this hearing were adopted, it would add about $0.11, 10 to $0.11 to powder, which --

A. Would add 10 to 11?

Q. Yeah -- well, no, the Make Allowance itself would

increased by 10 to $0.11 for powder.

A. Per hundredweight of milk or per --

Q. Per pound.

A. Per pound. Yeah. Yeah. Okay. That's a lot. That's a lot, isn't it?

Q. Which would be -- which would -- at $0.11 and 9-point something pounds of powder per hundredweight, that adds $1 to the differential under your analysis?

A. So be it (indicating).

Q. Okay. I noticed the hand shrug as well, which doesn't get picked up on the transcript.

So that's the result, right?

A. I'm shrugging.

THE COURT: That's not a shrug. That's like --

MR. MILTNER: So be it.

THE WITNESS: So be it, yeah.

THE COURT: -- so be it, yes. That's an Italian thing.

THE WITNESS: The -- the Class II differential should bear a relationship to the Make Allowance. If the Class IV skim Make Allowance -- if the Make Allowance for Class IV skim milk goes up, then so should the Class II differential, whether we're talking about basing it on full drying costs or basing it on drying condensed. It's -- it still should be higher, and it still should track when Make Allowances go up.

BY MR. MILTNER:

Q. And as you have proposed it, it would track the

full drying costs, so a change in the Make Allowance is essentially a -- the Class II differential would move essentially one for one with the Make Allowance on powder as you have proposed it?

A. As we have proposed it.

Q. Okay. Thank you, Dr. Cryan.

MR. MILTNER: That's all I have.

THE WITNESS: Thank you, Mr. Miltner.

CROSS-EXAMINATION

BY MR. ENGLISH:

Q. Hello. My name is Chip English with the Milk Innovation Group.

Hello, Dr. Cryan.

A. Hello, Mr. English.

MR. ENGLISH: Could we, before we start, provide him with the Exhibit 44 from --

THE COURT: Did you say you need water?

MR. ENGLISH: I didn't say it.

Exhibit 44, Your Honor, was producer milk and components by class and order, January 2008 through April 2023.

THE COURT: Thank you. You may proceed.

MR. ENGLISH: Thank you, Your Honor.

And I note, I am re-organizing on the fly for two reasons: First, we -- this is not a complaint, just we received the testimony at 10:30 this morning, and so we're scrambling to put things together; and second, two preceding questioners went to Class II, I have that at the

end, but it makes more sense for me to re-organize and put it now, so I'm re-organizing and starting with Class II.

THE WITNESS: And I apologize for not getting that in sooner, but it was --

MR. ENGLISH: You know, if it had been at 8:00 a.m., I wouldn't have looked at it any earlier, Dr. Cryan, so I understand. And, again, it was not a complaint. I was just explaining why I was re-organizing, and maybe that means people need to bear with me. And I apologize.

BY MR. ENGLISH:

Q. I want to start where you just ended with Mr. Miltner, and I think it ties together with the last sentence of your testimony.

I think what I heard you say, in answer to the question from Mr. Miltner is, if IDFA's proposal is adopted, or any proposal is adopted, National Milk's or IDFA's, but if IDFA's proposal is adopted to increase, for instance, the Make Allowance for Class IV, that it is your intent for that to have an immediate impact on your proposal for Class II.

A. Correct.

Q. Is that correct?

A. Correct.

Q. So your proposal for Class II today as proposed in the Hearing Notice is using the existing Make Allowance, correct?

A. That's correct. Because it's our position there

should be no change in the Make Allowance unless there's an audited and mandatory survey of processing costs.

Q. And based upon that, you are proposing $1.56.

A. Class II differential.

Q. Correct.

A. That's correct.

Q. And in answer to your questions from Mr. Miltner, you were saying that, well, no, if the Make Allowance changes, I would expect that to increase based upon the Make Allowance change, correct?

A. That's correct.

Q. And have you done a calculation based upon whether if National Milk's proposal were adopted --

A. No.

Q. -- or you have not?

A. No.

Q. But Mr. Miltner had you, I believe, using the $0.11, which is the IDFA proposal, correct?

A. I am not familiar. I'm not sure. I have looked at it all. But that was weeks ago and in a different world.

Q. It was something, though -- it would increase this $1.56 by a $1; is that correct?

A. That sounds about right, but I -- I -- I can't say for sure. But let's say it does, let's say.

Q. All right. So then assuming that happens under your proposal, as with the sentence at the end, rather than $1.56, it would be $2.56, correct?

A. That sounds like it hits the ballpark, yeah.
Q. Now, in answer to your question from Mr. Rosenbaum, you said, well, it's still less than the Class I, but it's going to be higher than some Class I, isn't it, if it's $2.56?
A. Yes.
Q. "Yes"?
A. That's what the calculation would come out. I don't think it's unreasonable to limit the Class II differential to the minimum Class I differential. It seems -- that seems like a reasonable limit in order to maintain the hierarchy of prices.
Q. But you have now basically said under these circumstances you are not going to maintain the hierarchy, correct?
A. If -- if a full -- if the Class II differential was raised above the Class I differential, you have the -- you do have the risk of Class II being higher in certain locations. And it does seem like a reasonable thing to cap the Class II differential at the Class I differential.
Q. So is that a modification to your statement that it would be -- that there would be a cap?
A. That's not a modification or a proposal, but it's a consideration for USDA. Our proposal is our proposal.
Q. So Class II milk processors are not necessarily mandatory pool participants, are they?
A. Say it again.
Q. Class II processors are not necessarily mandatory

pool participants, are they?

A. Not necessarily.

Q. If the Class II is -- product is manufactured at a Class I plant that is a regulated plant, then that Class II is mandatorily regulated, correct?

A. In effect, yes.

Q. But there are standalone Class II milk processors, correct?

A. There are.

Q. And those processors can pool or not pool opportunistically, correct?

A. That's true.

Q. And that happens, correct?

A. I believe so.

Q. It happens today at a differential, the existing differential of $0.70, correct?

A. It does. It happens partly because of the misalignments of prices based on advanced pricing and average-of, and it happens more under the current regime than it would happen under our proposals.

Q. Well, I do not want to revisit advanced pricing and go back, you know, a month or so in testimony, or eight weeks.

But regardless of advanced pricing, if you go to $1.56, with or without advanced pricing, you are going to have opportunistic pooling, correct, of Class II?

A. Potentially if there's a big enough gap between Class III and Class IV, yeah, you could. The blend price

could fall below the Class II price.

On the other hand, the higher Class II price would increase the value in the pool, which would tend to make depooling of Class III or IV less frequent.

Q. Class II is enough of a percentage to have that happen, in your opinion?

A. Beg your pardon?

Q. Class II provides enough volume of milk on orders to provide that, in your opinion?

A. Some markets.

Q. Which markets?

A. I'm sure you have the numbers in front of you. There are markets where Class II is 25%.

Q. Are you aware of order provisions in Orders 30, 32, 126, 131, that expressly provide for month-to-month unit pooling for Class II plants with Class I plants?

A. More of unit pooling? When you say month-to-month, are you saying that they can't drop in and out every month or are you saying that they can?

Q. I'm saying they can drop out.

A. Okay.

Q. I'm going to go to a different order in a second.

But are you familiar that in Orders 30, 32, 126, and 131, they can -- a Class II plant can associate with a Class I plant, and as long as it announces the day before the month that's following, it can, in that following month, either be on the pool or off the pool?

A. Okay.

Q. Are you aware of that?
A. I'm not aware of the specific provisions in the specific orders. I'm aware of unit pooling, and it would seem like a reasonable thing that in some markets it's a monthly election.
Q. I will admit in Order 1 it's an annual election.
A. Okay.
Q. Is that -- does that resonate with you or do you not know?
A. If you say so.
Q. Do you know also that there are standalone ice cream facilities that routinely do not pool?
A. That makes sense.
Q. Do you know that there are standalone yogurt facilities that routinely do not pool?
A. That the plant does not pool, or that the milk -- they don't receive pooled milk?
Q. They do not receive pooled milk.
A. Okay.
Q. Do you know that?
A. I don't know that.
Q. You said that there are some orders with 25% Class II.
Do you know what order that is?
A. Off the top of my head it seems to me the Mideast order has pretty high Class II use, and Arizona has pretty high Class II use.
Q. Would it surprise you that Order 131 doesn't

exceed 20% Class II, 20% of Class II?

A. 131?

Q. Yes.

A. That's still a pretty high share.

Q. Now, there are, of course, as we discussed a moment ago, pool distributing plants that are Class I that have Class II utilization, correct?

A. That's correct.

Q. Like fluid creams, correct?

A. Correct.

Q. Such as half and half, correct?

A. Correct.

Q. Whipping cream, correct?

A. Presumably, yeah.

Q. Soft products like sour cream, correct?

A. Yep.

Q. And so any Class II utilization in those plants will have a cost increase due to your proposal, correct?

A. Yes. Assuming there isn't already a premium.

Q. So Proposal 21, in addition to other proposals to increase prices for Class I, will operate to squeeze even more revenue from Class I plants, correct?

A. Sure.

Q. And will -- and even if the Make Allowances are not increased, it will more than double the Class II differential, correct?

A. That's the math. Two times $0.70 is $1.40. That's more than $1.40.

Q. And if it is the case that, per your proposal, if the IDFA proposal is adopted, and as a result the Make Allowance for Class IV goes up, and therefore the Class II goes up another $1, you're really looking at almost a fourfold increase in the Class II differential, correct?

A. More than three, yeah.

Q. You have further justified, based upon the issue of depooling, quote: "A fundamental focus of the Farm Bureau's proposal is the reduction or elimination of negative producer price differentials and" --

THE COURT: Slow down, please. I can't even think what you just said.

BY MR. ENGLISH:

Q. A fundamental focus of AFBF's proposals is the reduction or elimination of the negative producer price differentials and the depooling they cause. Correct?

A. Yes.

Q. Have you done any economic analysis of how your proposal will impact negative PPDs?

A. No. If we have a hearing in January, I'll bring it.

Q. Isn't this your time to testify on this proposal?

A. It is.

Q. Similarly, have you done any economic analysis of how your proposal will impact depooling?

A. Same -- same answer.

Q. If you want to the eliminate depooling, how does

increasing Class II keep a standalone Class II facility in the pool?

A. It doesn't by itself. I mean, that change would -- would lead, as I said in my testimony, it would lead to some Class II plants depooling more, so Class II milk to be depooled more frequently. It would also tend to add money to the pool to discourage Class III and IV depooling.

Q. To the extent there's a standalone plant, increasing the Class II differential by more than doubling it or more than tripling it would certainly lead to more thinking about the depooling, correct, for those Class II standalone facilities?

A. Would lead to more thinking about it?

Q. Well, you are saying you don't know whether it's going to happen because of all these other issues.

A. And I have already said that it's going to be -- it's going to -- it will lead to Class II plants depooling more often. I would assume they think about it before they do it.

Q. So let's look at Exhibit 44, which I have asked to be put in front of you.

A. Okay.

Q. Let's turn to page 21.

A. Okay.

Q. And I'm just going to do a few examples.

But page 21, let's look at report year 2021, June, Upper Midwest, and look across to the column for Class II,

total pounds.

And do you agree that is 221,046,598?

A. Yes.

THE COURT: Would you give us the number again?

MR. ENGLISH: 211,046,598.

THE WITNESS: 221.

MR. ENGLISH: Or 221, thank you.

(Court Reporter clarification.)

BY MR. ENGLISH:

Q. The month of June 2021.

And let's look one column over to Class III -- or let's look at the Class III total pounds, so three columns over.

THE COURT: Start again.

BY MR. ENGLISH:

Q. Let's look three columns over, same line, June 2021, Class III total pounds, for that month, was 711,830,344, correct?

A. Class III, total pounds, 711 million, right.

Q. Yes. Do you see that?

A. Uh-huh.

Q. Was that a "yes"?

A. Yes.

Q. The court reporter doesn't like "uh-huhs."

A. Yes.

Q. So let's look one month down in July of 2021.

A. Right.

Q. And the same two columns, the Class II total

pounds are now 95.9 million pounds, correct?

A. Yep.

Q. While the Class III pounds are now 1.464 million, correct?

A. That's correct.

Q. So the Class II pounds have dropped more than double, while the Class III pounds have increased, have doubled, correct?

A. Uh-huh.

Q. "Yes"?

A. Yes.

Q. That certainly suggests to you that there was depooling of Class II between the month of June and July, correct?

A. Right. If you go down a couple more months, there's massive depooling of Class IV as well. So presumably these are months when the Class IV -- when the Class IV price dropped -- I'm sorry, the Class IV price went up relative to the Class III price, so that the real issue was -- was less the Class II differential and more the gap between III and IV.

Q. Well, but if you increase the Class II under your theory, under those scenarios, you have actually increased the opportunity that at the time there that Class II won't want to pool, right? Because you have said, well, look, you are going to have to pay even more than the Class IV, the Class IV is lower than the Class III, why would you bother pooling, correct?

A. If the Class II is higher than the blend, you expect it to be higher than the blend, you would not pool, that's correct. But I think that's happening already based on advanced pricing and the fact that we have got Class II tracking on Class IV. So when -- when Class IV goes up, Class II goes up, and there's incentives to depool as it is.

I mean, you are demonstrating already there's already depooling of Class II milk.

Q. Okay.

A. I don't know that it's based on the differential. I think it's based on the relationship between Class III and Class IV.

Q. But if you are going to increase the add-on to the Class IV, that difference between Class III and Class IV, you are -- is going to exacerbate these issues if the Class II differentials go up, isn't it?

A. I don't know how much that's going to tip the balance. I don't know how much it's going to tip the balance because I don't have those price numbers in front of me. I -- I can only assume from the massive depooling of Class IV in the following months that it was a -- that it was a shift in the Class IV jumped above Class III, and in this market in particular, which is a very high Class III, where the blend is based on Class III, that -- that Class IV and Class II both were incentivized to depool based on that Class III/Class IV relationship.

Q. Well, to the extent a Class I processor with

Class II use is competing against a standalone plant, the opportunity for those plants that are standalone to depool will put them at a competitive advantage relative to the Class I plant with that usage, correct?

A. Yep. Yes.

Q. How is that equitable or fair?

A. That's an issue that already exists.

Q. But it's about to get worse if you increase the Class II differential, correct?

A. It's an issue that already exists.

Q. I spoke briefly about some other products that are manufactured at Class I plants, and we agreed that fluid cream is one of those products that are produced at a Class I plant, correct?

A. Yep. Typically.

Q. Has American Farm Bureau Federation done any study of the impact of increasing the Class II differential on the ability of fluid cream products to compete against nondairy fluid cream products?

A. No, we have not.

Q. Are you aware that there are a significant number of fluid cream products that, you know, may be chemical based, may be, you know, nondairy based, but that are competing with fluid cream?

A. I'm not aware -- I'm not aware of the range of creamers. I mean, I assume you are talking about so-called nondairy creamers that are full of dairy ingredients like casein.

Q. They may have a casein in them, but they don't -- the casein isn't going to be Class II, is it?
A. Right. No.
Q. Okay. So there's fluid cream products that are produced at Class I plants that are subject to regulation for which you would increase -- double the Class II differential, and they compete against nondairy creamers, correct?
A. I don't know how -- how close to the competition there is. I don't know how close to the substitute there is. I don't know whether Cremora and fresh cream are really something that people switch between.
Q. Regardless, you haven't done -- American Farm Bureau Federation has not done any study --
A. We have not.
Q. -- on this issue, correct?
A. We have not.
Q. American Farm Bureau Federation doesn't own or operate any Class II plants, does it?
A. Not directly, no.
Q. Indirectly?
A. Well, the Illinois Farm Bureau has a close relationship with Prairie Farms, for example, and I believe there's some other cooperative creameries that have been supportive in their initiation -- in their initial establishment by Farm Bureaus, by state Farm Bureaus.
Q. But does Farm Bureau actually operate a plant?

A. No, we do not.
Q. Do you actually sell any Class II products?
A. No, we do not.
Q. All right. Re-organizing, like I said, I just thought it made sense to cover Class II since that's what the two prior cross-examiners did.
So now I will turn to Class I.
THE COURT: Now, before you go there, may I return that particular original --
MR. ENGLISH: Yes.
THE COURT: -- to the Agricultural Marketing Service?
MR. ENGLISH: Yes. Yes, Your Honor, I'll do it if you would like.
THE COURT: All right. So let's take a moment to return that Exhibit 44 to the Agricultural Marketing Service.
Would you like to go off record or just make a proposal and have Mr. English respond on record?
MS. TAYLOR: I don't mind either way.
THE COURT: Let's stay on record.
Okay. Let me ask you, Agricultural Marketing Service, we only have ten minutes left.
MS. TAYLOR: Right.
THE COURT: Part of that we need to use to determine what happens tomorrow. This would be a good time for us to interrupt Mr. English, if he's willing.
MR. ENGLISH: I am more than willing. It makes

sense, and I will use those extra five minutes to see if I can shorten it by even more than the five minutes that we are losing.

MS. TAYLOR: I think that would be a good efficient use of our ten minutes today, and that way you won't be interrupted. We'll start fresh in the morning.

If that's okay with Dr. Cryan.

THE WITNESS: Yes.

THE COURT: Excellent. Thank you.

And, Mr. English, I so appreciate your perspicacity and nimbleness and willingness to make all of this work.

MR. ENGLISH: Thank you, Your Honor.

THE COURT: All right. What is on the agenda for tomorrow?

Well, Dr. Cryan, we need to finish. Does he go first.

MS. TAYLOR: So we have Mr. Geoff Vanden Heuvel who will be here tomorrow. I think he flies in this evening, doesn't look like he's in the room. He will be here tomorrow to go on in the morning sometime. Maybe I'll chat with him when I see him in the morning, and Dr. Cryan, to see if it is best to put -- I'm not sure what's in his statement. I don't have it. He says it's rather short. Put him on first or -- and then put on Dr. Cryan. I don't know Mr. Vanden Heuvel's time constraint. That's why I kind of preface that.

But we do have him to get on sometime tomorrow

morning, finish Dr. Cryan's cross, and then Dr. Capps, Dr. Oral Capps, is scheduled to start tomorrow afternoon. And I'm sure that will take up all of tomorrow afternoon, into Friday, and I'm hopeful we will finish him sometime on Friday.

THE COURT: And how is his last name spelled?

MS. TAYLOR: C-A-P-P-S.

And then Friday would be -- depending on when he finishes, we could proceed with any additional National Milk witnesses that are here. So we do plan to go to 5 o'clock on Friday.

THE COURT: Yes. Now, I'm wondering which of -- so who did we not get to today? We had Hiramoto. We had Butcher. We haven't done Mike --

MS. TAYLOR: Herting.

THE COURT: -- Herting.

MS. TAYLOR: And Brad Parks, who was on my list from National Milk yesterday.

THE COURT: And I wrote down Kang?

MS. TAYLOR: Oh, see, I missed a bunch of names. I'll let Ms. Hancock speak for National Milk, obviously.

THE COURT: Okay. So who was disappointed that they didn't get on today?

MS. HANCOCK: I'm sure none of them were disappointed. But, Your Honor, I mean, we'll have to jockey some people around. But, I mean, it doesn't look like we're getting to them tomorrow, so we'll just have to figure it out.

We have had some people who have had to leave, some people who are here and can be available if for some reason we move faster.

THE COURT: Great. Thank you. All right. I think that's enough for the on-the-record.

Would anyone object if we go off record now?

There is no objection. I'll see you all here at 8 o'clock tomorrow mourning, and we go off record at 4:54.

(Whereupon, the proceedings were concluded.)

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STATE OF CALIFORNIA)
) ss
COUNTY OF FRESNO)

I, MYRA A. PISH, Certified Shorthand Reporter, do hereby certify that the foregoing pages comprise a full, true and correct transcript of my shorthand notes, and a full, true and correct statement of the proceedings held at the time and place heretofore stated.

DATED: January 7, 2024

FRESNO, CALIFORNIA

MYRA A. PISH, RPR CSR
Certificate No. 11613