

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

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

VOLUME XXXIV

TRANSCRIPT OF PROCEEDINGS

November 10, 2015

Myra A. Pish, CSR No. 11613  
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 ) Docket No. 15-0071  
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Milk in California )  
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BEFORE U.S. ADMINISTRATIVE LAW JUDGE  
JILL S. CLIFTON

Tuesday, November 10, 2015

9:01 a.m.

Piccadilly Inn Airport  
5115 East McKinley Avenue  
Clovis, California 93727

TRANSCRIPT OF PROCEEDINGS

VOLUME 34

Reported by:  
Myra A. Pish CSR  
Certificate No. 11613

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APPEARANCES:

U.S. DEPARTMENT OF  
AGRICULTURE:

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LAUREN BECKER, ESQ.

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LAND O'LAKES, INC.:

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Hanson Bridgett, San Francisco  
BY: MEGAN OLIVER THOMPSON, ESQ.

DAIRY INSTITUTE OF  
CALIFORNIA:

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BY: CHIP ENGLISH, ESQ.  
ASHLEY VULIN, ESQ.

LEPRINO FOODS:

SUE TAYLOR, Vice-President  
Dairy Economics and Policy

DEAN FOODS COMPANY:

ROB BLAUFUSS  
Senior Manager of Dairy  
Risk Management and Economics

CALIFORNIA PRODUCER  
HANDLERS ASSOCIATION:

Stoel Rives  
BY: NICOLE HANCOCK, ESQ  
VICTOR LAI, ESQ.  
BAO VU, ESQ.

SELECT MILK PRODUCERS:

MILTNER LAW FIRM, INC.  
BY: KRISTINE REED, ESQ.

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1 TUESDAY, NOVEMBER 10, 2015 - - MORNING SESSION

2 JUDGE CLIFTON: We're back on record on November 10, 2015.  
3 It's a Tuesday. It is approximately 9:01 in the morning. We  
4 are in Fresno, California, and this is Day 34 of the milk  
5 hearing.

6 My name is Jill Clifton. I'm the United States  
7 Administrative Law Judge who is assigned to take in the  
8 evidence at this case, I would -- or in this case I should say.  
9 I would like to have my fellow United States Department of  
10 Agriculture employees come forward at this time and enter their  
11 appearances for the day. I would like them, for them to be  
12 followed by teams of proponents and opponents and other  
13 participants. Also, if you are here to testify today, I would  
14 like you to come at the end of all the others to state and  
15 spell your name as the others will do.

16 MR. RICHMOND: Good morning, my name is William Richmond,  
17 R-I-C-H-M-O-N-D, I'm with USDA Agricultural Marketing Service,  
18 Dairy Programs in Washington, DC.

19 MR. CARMAN: Good morning, Clifford Carman, C-A-R-M-A-N,  
20 Assistant to the Deputy Administrator, Dairy Programs,  
21 Agricultural Marketing Service, USDA.

22 MS. FRISIUS: Good morning, Meredith Frisius,  
23 F-R-I-S-I-U-S, here with USDA Dairy Program.

24 MS. BECKER: Good morning, Lauren Becker, B-E-C-K-E-R, I'm  
25 an Attorney in the Office of the General Counsel for USDA.

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

4 MS. MAY: Good morning, Laurel May with USDA, AMS Dairy  
5 Program. I'm a rule maker in the Order Formulation and  
6 Enforcement Division.

7 MR. HILL: Good morning, I'm Brian Hill with the Office of  
8 the General Counsel, Marketing Regulatory and Food Safety  
9 Programs Division.

10 MR. BESHORE: Good morning, Marvin Beshore, M-A-R-V-I-N,  
11 B-E-S-H-O-R-E, Attorney for the Dairy Farmer Cooperatives  
12 supporting Proposal 1, California Dairies, Inc., Dairy Farmers  
13 of America, Inc., and Land O'Lakes, Inc.

14 MS. OLIVER THOMPSON: Good morning, Megan Oliver Thompson,  
15 Megan is M-E-G-A-N, I'm an Attorney with the law firm  
16 Hanson Bridgett, H-A-N-S-O-N, B-R-I-D-G-E-T-T, also Counsel for  
17 the Proponents of Proposal Number 1.

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

20 MR. ERBA: Eric Erba, California Dairies, E-R-I-C, E-R-B-A.

21 MR. JABLONSKI: Gary Jablonski, G-A-R-Y, J-A-B-L-O-N-S-K-I,  
22 working with the Cooperatives of Proposal Number 1.

23 MR. GARBANI: Good morning, Pete Garbani, spelled  
24 G-A-R-B-A-N-I, and I'm with Land O'Lakes.

25 MR. ENGLISH: Good morning, your Honor, Chip English,

1 E-N-G-L-I-S-H, with the law firm of Davis, Wright, Tremaine, my  
2 office in Washington, DC. And thank you very much, Mr. Sumner,  
3 for reminding me, I was going to say here on behalf of the  
4 Dairy Institute of California supporters of Proposal Number 6,  
5 just to see if everybody was listening, but Proposal Number 2,  
6 thank you.

7 MS. VULIN: Ashley Vulin, A-S-H-L-E-Y, V -- as in  
8 victorious -- U-L-I-N, Attorney with Davis, Wright, Tremaine,  
9 also representing the Dairy Institute of California.

10 DR. SCHIEK: Good morning, William Schiek, S-C-H-I-E-K,  
11 Economist with Dairy Institute of California.

12 MS. KALDOR: Rachel Kaldor, R-A-C-H-E-L, K-A-L-D-O-R,  
13 Executive Director Dairy Institute of California.

14 MR. ZOLIN: Alan Zolin, A-L-A-N, Z-O-L-I-N, representing  
15 Hilmar Cheese.

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

18 MS. TAYLOR: Good morning, Sue Taylor with Leprino Foods.

19 MS. HANCOCK: Nicole Hancock with Stoel Rives, representing  
20 the California Producer Handlers Association and Ponderosa  
21 Dairy.

22 MR. SHEHADEY: Richie Shehadey, Producers Dairy.

23 JUDGE CLIFTON: I'm sorry, I have got to get the spelling  
24 again. I know I have gotten it once or twice, but --

25 MR. SHEHADEY: On the last name? She - had - EY.



1 JUDGE CLIFTON: She - had - E-Y.

2 MR. SHEHADEY: There you go. Good?

3 JUDGE CLIFTON: Give me the letters, please.

4 MR. SHEHADEY: S-H-E, she -- had -- H-A-D -- E-Y.

5 JUDGE CLIFTON: I get it. Thank you.

6 MR. VU: Hi. Bao Vu, B-A-O, V-U, with the law firm  
7 Stoel Rives, and we represent the California Producer Handlers  
8 Association and Ponderosa Dairy. Thanks.

9 MR. DeGROOT: Good morning, Ted DeGroot, spelled  
10 D-e-G-R-O-O-T, with Rockview Farms and Ponderosa Dairy.

11 MR. GONSALVES: Good morning, Anthony Gonsalves,  
12 Professional Legislator, Representative for the California  
13 Producer-Handlers, G-O-N-S-A-L-V -- as in Victor -- E-S.  
14 Thank you.

15 MR. DeGROOT: Good morning, Amos DeGroot, Rockview Farms,  
16 Ponderosa Dairy.

17 JUDGE CLIFTON: That's spelled the same as Ted spells it?

18 MR. DeGROOT: Yes.

19 JUDGE CLIFTON: Thank you.

20 MR. LAI: Good morning, Victor Lai with Producers Dairy  
21 Foods V-I-C-T-O-R, L-A-I, thank you.

22 MS. LOPES: Good morning, Linda Lopes, L-O-P-E-S, dairy  
23 person.

24 MS. DUARTE: Good morning, Antoinette Duarte, D-U-A-R-T-E,  
25 dairy producer, Elk Grove, California.

1 MS. REED: Good morning, Kristine Reed, I'm an Attorney  
2 with the Miltner Law Firm, and I represent Select Milk  
3 Producers.

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

6 JUDGE CLIFTON: Is there anyone else who would like to be  
7 identified at this time? No one. I would like now to invite  
8 preliminary matters, announcements, and the like.

9 MS. MAY: Good morning, Laurel May with USDA AMS Dairy  
10 Program, also feeling victorious because I was finally able to  
11 get into the VPN -- it's monumental.

12 As you know, everybody is welcome to testify at this  
13 hearing, if they would like to. And to do so, you merely need  
14 to let me or somebody else on the USDA staff know that you  
15 would like to do that and we'll get you into the line up.  
16 Anybody who would like to may also question any of the  
17 witnesses during cross-examination, and to do that you would  
18 just notify the Judge and approach the podium and you can do  
19 that.

20 We are broadcasting this session of the hearing via  
21 live audio feed and you can access that at  
22 [www.ams.usda.gov/live](http://www.ams.usda.gov/live).

23 The court reporter is taking transcripts and making  
24 those available to you online approximately two weeks after the  
25 end of each hearing week. You can access those at the AMS

1 Dairy website. We do have some extra copies of exhibits on  
2 that table back there behind Mr. Vandenheuvel, and so you are  
3 welcome to help yourself to those if you would like.

4 Yesterday, at the end of the day we had Mr. Blaufuss on  
5 the stand, I believe, and he's looking forward to returning,  
6 but I think that according to what I have heard, we might be  
7 hearing from a couple of women producers, Lisa Lopes and  
8 Antoinette Duarte, who are here from Turlock and Elk Grove,  
9 respectively. So I will turn the time over to somebody else to  
10 tell us what's happening.

11 One more thing, just as a reminder, after this week's  
12 sessions here at the Piccadilly, we will be moving over to the  
13 Falls Event Center, which is at 4105 West Figarden Drive, and I  
14 can give you more precise directions to that if you want.

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

16 MR. ENGLISH: Good morning, Chip English.

17 Yes, your Honor, Ms. May is correct that, of course  
18 obviously Mr. Blaufuss was on the stand when we finished  
19 yesterday, I think we all know that. And we certainly are  
20 prepared to return him to the stand when the time permits. We  
21 have had, I can say, extensive discussions after the hearing  
22 yesterday, over the evening, early this morning, and I believe  
23 we have reached sort of the following sort of concept; the two  
24 dairy persons who just identified themselves would testify  
25 first, and we are happy to do that. We believe, and I thank

1 Ms. Hancock for sharing the testimony of Mr. Gonsalves last  
2 night, we believe based upon what we have read, and at least  
3 what I think, subject to how I have been wrong throughout this  
4 hearing, how long the cross-examination would likely go, that  
5 it should be -- emphasize the word should be -- safe to then  
6 turn to him, and we are prepared to accommodate the  
7 professional lobby person on that with respect to his  
8 testimony, with the hope and expectation that he can be done by  
9 1:00 p.m. when that's when he needs to leave. With that, we  
10 would then turn back to Mr. Blaufuss to complete Part 4,  
11 fortification. And then depending on exactly how things work  
12 with what's ready at that moment, what we will be ready today  
13 with Rob Blaufuss, Part 6, transportation, and Sue Taylor,  
14 Part 3, price impacts.

15 I have a couple of housekeeping things to do after  
16 that, and other than I think you raised an issue before the  
17 hearing, your Honor, that would complete our testimony and the  
18 overly optimistic part of me says we can finish that today.  
19 After much laughter -- I think more realistically, we should be  
20 able to finish that, I would think, before noon tomorrow. So I  
21 think, again, subject to all the vagaries of these things being  
22 different than you think they are going to be, while I'm taking  
23 some risk, and if I'm wrong, this is going to be on me, that I  
24 think we can accommodate Mr. Gonsalves today, as requested by  
25 Ms. Hancock, and we are prepared to do that with the hope and

1 expectation -- by the way, I understand from Mr. Beshore there  
2 are four dairy farmers tomorrow, but my understanding is they  
3 would be in the afternoon, so hopefully we would finish with  
4 what we have got.

5           So we're willing, I hope it's not a big risk. I think  
6 we have all had the opportunity now to have Mr. Blaufuss'  
7 testimony over night so hopefully that would compact a little  
8 bit of the examination. Ms. Taylor has a short statement and  
9 four tables. I'm not going to predict how long  
10 cross-examination is going to go on that. Mr. Blaufuss has a  
11 short statement on transportation credits. So we are  
12 cautiously optimistic that we could be done by noon tomorrow.

13           JUDGE CLIFTON: Would anyone else like to be heard with  
14 preliminary matters? I have a couple.

15           I thought of some additional questions that I would  
16 like Dr. Schiek to respond to. I would actually like every  
17 Economist who has not yet testified on quota, to keep in mind  
18 what I'm thinking and help me with this struggle.

19           I would like to have a practical suggestion for USDA to  
20 consider. Nobody knows what USDA is going to do, but in the  
21 event it determines that a Federal Milk Marketing Order is in  
22 order, that it would be a good thing, USDA has to deal with  
23 quota. USDA has control over very little about how quota is  
24 priced, how it's issued, and so on. There could be changes  
25 that might occur through California entities, so this is what I

1 want everyone to think about. Suppose that the USDA determined  
2 that the idea of sunseting quota is a good one, a step toward  
3 uniform prices, but that it should not be abrupt and that it  
4 should allow the value of quota to be realized. So suppose  
5 that the USDA determined that the way it would deal with quota  
6 is that the receipts would have a percentage that is devoted to  
7 quota holders, and that that percentage would diminish over  
8 time, very gradually, until no more percentage was paid over to  
9 the quota holders. If some system like that were to be  
10 evaluated, what would the starting percentage be? What is the  
11 current percentage that is paid to quota holders? And if the  
12 USDA determined that some percentage would be paid over to  
13 quota holders, that would just be a mathematical calculation of  
14 what the receipts are, that percentage goes to quota holders.  
15 Now, it does come from the top of the pool and I know there's  
16 some objection to that. But it's one pool at least. And  
17 anyone doing business with the California pool would have,  
18 would be on notice there's quota that has to be dealt with and  
19 then they can choose whether or not to have business  
20 transactions that involve the California pool. And if the  
21 percentage diminishes gradually over time in a way that's  
22 designed to recognize the value of the quota and not rob  
23 anybody of his quota value, you could eventually work toward  
24 uniform prices.

25 So I have no idea if this could be figured out, but if

1 it could be, we certainly need the help of all the Economists  
2 to figure it out. Mr. Beshore?

3 MR. BESHORE: Marvin Beshore. If I might, and I don't want  
4 to go into a long discussion, it's -- but just to make it known  
5 and clear on the record -- it's the position of the  
6 cooperatives that the quota rights under state law are vested  
7 property rights which must be recognized pursuant to the  
8 Federal Statute authorizing this hearing. And therefore, they  
9 are not subject to erosion or dissipation by Federal  
10 Regulation. I'll leave it at that, but I want that noted.

11 JUDGE CLIFTON: Thank you. Mr. English?

12 MR. ENGLISH: First, your Honor, thank you, and we  
13 certainly will do so, but clearly not today. And, in fact, it  
14 may be later and allow things to move forward.

15 I just want to make sure I had all of it, because at  
16 least when you said procedurally to me before going on the  
17 record that you might want to recall Dr. Schiek, I thought you  
18 suggested that there were a couple questions you wanted to ask.  
19 Is this the whole -- does this encompass it or is there more?

20 JUDGE CLIFTON: No. No, well, I guess my overall concern  
21 is, how does USDA deal with the fact that it does not control  
22 what California is going to do with respect to quota? It  
23 doesn't control changes with regard to how quote is paid, it  
24 doesn't control whether quota is issued, it doesn't control  
25 anything about quota. So how does, number one, how does a

1 Federal Order deal with figuring out what part of receipts  
2 would be paid over to quota holders, so that's the first thing.

3 And then the second thing is, how to work toward  
4 uniform pricing. And then the third thing is, how to  
5 compensate quota holders for the full value of their holding.

6 If, for example, there were some sort of a formula and  
7 California decided to go on and retire quota and appropriated  
8 the money to do it, or that would be -- that would be an impact  
9 that wouldn't change anything under the Federal Order because  
10 the Federal Order would pay a certain percentage over to the  
11 quota holders, and if there are no more quote holders, there  
12 would be no more percentage. So I don't know how it can work,  
13 I just think if there's to be a Federal Milk Marketing Order in  
14 California, this is probably the biggest problem.

15 MR. ENGLISH: And thank you, your Honor, and obviously we  
16 heard you yesterday with some of your questions. Let me  
17 respond very briefly, I don't want to get into a legal debate  
18 and upset our apple cart with timing, but obviously, I  
19 fundamentally disagree with Mr. Beshore on what the statute  
20 means and requires. And, you know, we certainly believe that,  
21 yes, there's the Farm Bill language, but because it was not  
22 written with language such as notwithstanding any of the  
23 provision of law, because it was not written to physically  
24 amend Section 608c(5)(b), the Secretary, in our view, needs to  
25 read all of those and make them consistent, and one cannot



1 overrule the other. That is our thesis from yesterday.

2           So, yes, especially I wrote down number two, the  
3 Secretary needs to look at this issue, which is why we tried to  
4 provide at least one piece yesterday. So I thank you for that,  
5 I don't want to, again, get into an extended legal debate  
6 today, but I wanted to make sure -- and I just wanted also to  
7 say I think that there is something that gets lost in this  
8 proceeding, and that is that the quota money isn't just extra  
9 dollars lying around. That's money that is coming out of other  
10 dairy farmers. And one of the questions is, who are those  
11 dairy farmers going to be, and how long should that continue?  
12 So I'm ready to go with dairy farmers.

13           JUDGE CLIFTON: Thank you. Ms. Hancock?

14           MS. HANCOCK: I just want to make sure that in the  
15 discussion of value and quota that what's also not lost in this  
16 is the treatment, the historical treatment for exempt quota as  
17 well and the values that are assigned to that. And I'm not  
18 saying that I agree with kind of an extended buy out, but to  
19 the extent that that is an option that's being considered, I  
20 think it is important to consider the exempt quota as well, as  
21 well as the treatment for the out-of-state producers and the  
22 impact it would have on them in changing the system.

23           JUDGE CLIFTON: Thank you. And I hope you will have the  
24 true solution. I'm looking forward to it. No pressure, right?  
25 No pressure.

1 I have said it before, I'll say it again, I am so  
2 grateful for the experience and the wisdom and the help that we  
3 are getting from every participant in this proceeding. It's  
4 very much appreciated.

5 All right. Let's see, let me ask, let me ask the two  
6 dairy producers who will testify first, to come to the podium  
7 together. Have you discussed, and as each of you responds to  
8 this you can speak into the microphone and say who you are  
9 before you tell me your answer. Have you discussed which one  
10 of you will go first?

11 MS. LOPES: Yes, I will. Linda Lopes.

12 JUDGE CLIFTON: Linda Lopes will go first. All right. And  
13 do you have any document that you want to have made an exhibit?

14 MS. LOPES: Yes, I have my testimony.

15 JUDGE CLIFTON: All right. And do you have copies of it to  
16 distribute?

17 MS. LOPES: Yes, they have, it's been taken care of.

18 JUDGE CLIFTON: All right. And people are holding up their  
19 copies. So let's see, who still needs them. I would like a  
20 copy, and I would like to make sure Ms. Frisius has her four.

21 All right. And Ms. Duarte, will you be involved at all  
22 in Ms. Lopes' testimony? Will you be asking her any questions  
23 from the podium, for example?

24 MS. DUARTE: No, I won't. I have testimony from my heart  
25 and my mind. I have not prepared anything to pass out.

1 JUDGE CLIFTON: All right. Very good. Then I would invite  
2 you to be seated until Ms. Lopes has completed her testimony  
3 and then we'll call you.

4 Ms. Lopes, you may be seated in the witness stand,  
5 which is this big table to my right. Please raise your hand if  
6 you would still like a copy of the testimony of Linda Lopes,  
7 California dairy producer? It appears they have all been  
8 distributed. Ms. Frisius, will this Exhibit be 149?

9 MS. FRISIUS: Yes.

10 JUDGE CLIFTON: Yes. Exhibit 149,

11 (Thereafter, Exhibit 149, was  
12 marked for identification.)

13 JUDGE CLIFTON: I'm marking my copy. Ms. Lopes, I'll swear  
14 you in in a seated position. If you will raise your right  
15 hand, please.

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

18 MS. LOPES: I do.

19 JUDGE CLIFTON: Thank you. Please again, state and spell  
20 your name.

21 MS. LOPES: Linda Lopes, L-O-P-E-S.

22 JUDGE CLIFTON: Thank you. You may proceed.

23 MS. LOPES: My name is Linda Lopes and I'm a dairy producer  
24 from Turlock, California, where my husband and I own and  
25 operate a 500 cow dairy operation for 48 years. We ship our

1 milk to California Dairies, Inc. I currently serve as  
2 President the California Dairy Women, am a member of the  
3 California Dairy Campaign, California Farmers Union,  
4 Progressive Ag Organization, the National Family Farm  
5 Coalition, and California Milk Advisory Board.

6 I greatly appreciate the opportunity to testify here  
7 today in strong support of the Federal Order proposal put forth  
8 by California Dairies, Inc., Dairy Farmers of America, Inc.,  
9 and Land O'Lakes. An important aspect of the proposal is to  
10 maintain our state quota system. I realize the proposal will  
11 not solve all the problems of the California dairy producer,  
12 but it is a start.

13 I do not claim to be an expert on milk pricing, but I  
14 am in charge of the financial business of the dairy operation.  
15 This job has been very difficult. I have become an expert in  
16 balancing a checkbook and knowledgeable in the business's  
17 income and expenses. I know that we're not covering our cost  
18 of production. Our dairy has been on the CDFA cost study for  
19 over 20 years and I know the majority of the dairies have been  
20 losing money.

21 In the past 15 years, I have testified many times at  
22 the California Department of Food and Agriculture in order to  
23 correct this bad situation, only to be granted pennies or  
24 nothing. I had high hopes when Karen Ross was appointed  
25 Secretary of Ag. I thought she would be a change. She wasn't.

1 She has been the biggest disappointment for California dairy  
2 women. She has done nothing of significance for California  
3 dairymen.

4           The California dairy business at this moment is  
5 disintegrating before our eyes. I hear from many distressed  
6 dairy wives who say they cannot take this constant pressure  
7 much longer. Thousands of cows have been sold for beef. We  
8 have lost many dairies, many dairymen, some committing suicide.  
9 The dairy industry in California has split many families. My  
10 husband and I have worked side-by-side to maintain our  
11 operation, along with our son, our only child. When our son  
12 returned from Cal Poly he was excited to be back on the dairy.  
13 When he married in 1998, we made him a partner. He became the  
14 manager, as we cut back on some of the physical work. He had a  
15 difficult time handling the stress of the business, the work  
16 and not covering the cost of production during the bad years.  
17 There have been more bad years than good years. On July 3,  
18 2013, he left the business without notice. We had to give him  
19 a settlement for his partnership. Since he left, my husband  
20 and I had to step up. We've taken over his jobs. We have not  
21 seen our grandchildren since Christmas. They loved the dairy.  
22 This has been the most difficult thing I've ever had to endure.  
23 He resents us for being in the dairy business, which led him  
24 into the business. If the Federal Order had been in place, we  
25 would have been paid at least a dollar more per hundredweight

1 and things might have been different today for our family.

2 I realize this hearing is not for the purpose of  
3 pricing milk -- no, I realize this hearing is not for the  
4 purpose of pricing milk, however, we have to have a more stable  
5 pricing system if we want the younger generation to continue  
6 the dairy industry.

7 Today, many dairymen are changing to trees. Trees are  
8 a lot less work and a lot more money. I think the Federal  
9 Order will be the first step as it puts the California dairy  
10 farmers in line with other producers throughout the federal  
11 system. The cost of production must be part of the equation.  
12 The Margin Protection Program does nothing for us in  
13 California.

14 In conclusion, it has been far too long that dairy  
15 producers in California have been at this disadvantage. We  
16 need to be on a level playing field. I urge you to adopt the  
17 Cooperatives' Federal Order proposal. I thank the United  
18 States Department of Agriculture for the opportunity to present  
19 this testimony today. Thank you.

20 JUDGE CLIFTON: Thank you, Ms. Lopes. How long have you  
21 and your husband been operating the 500 cow dairy operation?  
22 48 years, you say?

23 MS. LOPES: Yes.

24 JUDGE CLIFTON: Has it been located on the same ground that  
25 entire time?

1 MS. LOPES: No, we originally started in Merced, and then  
2 we bought in Turlock in 1981, so we have been there for 34  
3 years.

4 JUDGE CLIFTON: And I'm sure that when you included your  
5 son in the partnership, you expected that to be a benefit to  
6 him. When was that?

7 MS. LOPES: That was in 1998 when he got married, we made  
8 him a partner.

9 JUDGE CLIFTON: And were there good years for a time?

10 MS. LOPES: You mean as a business having good years or  
11 good years?

12 JUDGE CLIFTON: Yes. Yes, financially for the business.

13 MS. LOPES: Yes, but we have had a lot less good ones than  
14 bad ones.

15 JUDGE CLIFTON: Has that been true ever since 1998?

16 MS. LOPES: Oh, that's been ever since the beginning, I  
17 believe. But at the beginning, as long as you worked hard, you  
18 could get through it. But today that is not true. Today it is  
19 so far off, like today, say the cost of production is \$19.00  
20 and we're getting 15, so that's a big difference to make up.  
21 And two people in their 60's can't do all the work, you have  
22 hired help that you have to pay.

23 JUDGE CLIFTON: There's one word in your statement that I  
24 think we may want to change on the record copy. It's on  
25 Page 2, and it's in the top paragraph, which is just a partial

1 paragraph. And when you say fourth line up from the bottom of  
2 that paragraph, "this has been the most difficult thing I have  
3 ever had to endure." We just need to respell thing, is that  
4 right? Do you see it? I'm looking at it.

5 MS. LOPES: Yes, I have "think". I'm sorry.

6 JUDGE CLIFTON: No problem. We can fix it now. All right.  
7 So Ms. Frisius, do you see where I am?

8 MS. FRISIUS: Yes.

9 JUDGE CLIFTON: Thank you. So we're just changing the word  
10 "think" to "thing". And is there anything else you would like  
11 to add before I invite questions from all the people here?

12 MS. LOPES: No, I just think we really need this at this  
13 time to finally get some stability in the industry here in  
14 California. It's been needed for quite some time.

15 JUDGE CLIFTON: Now, when you say civility --

16 MS. LOPES: Stability.

17 JUDGE CLIFTON: Thank you. Thank you. Stability.

18 MS. LOPES: It could be civility too, as far as that goes.

19 JUDGE CLIFTON: Who would like to ask the first questions  
20 of Ms. Lopes? Mr. Beshore.

21 CROSS-EXAMINATION

22 BY MR. BESHORE:

23 Q. Marvin Beshore. Thank you for coming and testifying  
24 today, Ms. Lopes. I have just one question. You have heard,  
25 you were here in the room when there was some discussion this



1 morning about quota, the quota program, and you, of course, had  
2 prepared your comments here today before -- before coming, and  
3 made the statement, "an important aspect of the proposal is to  
4 maintain our state quota system." So I would just like you to  
5 elaborate on that. Tell us why that was part of your statement  
6 and how it's -- how it's important to you.

7 A. Well, we have a lot -- there's value to our quota. We  
8 have a lot of money invested in our quota depending upon how  
9 much quota you have, and to just take it away I don't think  
10 that would be fair. So there would have to be some way to --  
11 to, I don't know what would be the right way to do it, you  
12 know. But doesn't some other states in the Federal Order  
13 system also have quota? Isn't there another state that has  
14 quota?

15 Q. Actually --

16 A. Is it Ohio or someplace?

17 Q. No, there are not.

18 A. There are not? Somebody always says there is someone  
19 that does.

20 Q. No.

21 A. That's what my husband always tells me.

22 Q. Virginia has a system called the Base System, which  
23 sometimes is thought to be somewhat similar, but it is  
24 actually, it is actually quite different. So on your, so,  
25 what, do you own quota?

1 A. Yes.

2 Q. Okay. And what portion of your production roughly is  
3 covered by quota?

4 A. It's not a large. I think maybe like 30 percent.  
5 Yeah. Some people have a lot more. But, you know, there's a  
6 value to that quota on your financial statement when you look  
7 at it. But I know that when quota started, we weren't supposed  
8 to do, to have a value, but it's become a value and people have  
9 spent a lot of money buying quota, and there should be some way  
10 to compensate for that.

11 Q. And it is a value on your --

12 A. Yes, definitely.

13 Q. -- on your balance sheet?

14 A. Yes.

15 Q. So when you go to the bank --

16 A. Yes.

17 Q. -- that's part of your financial statement?

18 A. Yes, yes, and I would hate to lose it. Yes.

19 Q. Thank you very much. That's all I have.

20 JUDGE CLIFTON: Who next has questions for Ms. Lopes?  
21 Mr. Richmond? And Ms. Lopes, be sure to wait until he is  
22 finished talking before you respond.

23 MS. LOPES: Thank you.

24 CROSS-EXAMINATION

25 BY MR. RICHMOND:

1 Q. Bill Richmond, USDA. Thank you very much for coming  
2 here this morning. We appreciate your testimony. We just  
3 wanted to thank you, especially, we know you have put a lot of  
4 effort into this process so far with your work with California  
5 Dairy Women and the California Dairy Campaign, and it's really  
6 been a big help to us in the Department in better understanding  
7 the California dairy industry. So thank you.

8 A. Thank you.

9 JUDGE CLIFTON: Are there other questions for Ms. Lopes?  
10 Ms. Lopes, what else would you like us to know before you  
11 leave?

12 MS. LOPES: Well, the dairy business is a good business,  
13 and I think we need to do this to help to get it more stable so  
14 the younger generation will want to be in the dairy business.  
15 You know, the average age for people in the dairy business is  
16 pretty high, and if we want it to continue and have a product  
17 for our consumer, we have to do something to keep the younger  
18 generation wanting to continue with this business.

19 JUDGE CLIFTON: Thank you so much.

20 MR. BESHORE: Your Honor, has the exhibit been marked and  
21 received?

22 JUDGE CLIFTON: It's been marked, but not yet received,  
23 Mr. Beshore, thank you. Does anyone have any other questions  
24 for Ms. Lopes before you determine whether you have any  
25 objection to Exhibit 149? No one. Are there any objections to

1 the admission into evidence of Exhibit 149? There are none.  
2 Exhibit 149 is admitted into evidence.

3 (Thereafter, Exhibit 149, was  
4 received into evidence.)

5 JUDGE CLIFTON: Ms. Duarte, you may now come forward. Now,  
6 I think you will need to pull your chair closer to the table so  
7 that your mouth will be at the right distance from this  
8 microphone. I'll swear you in in a seated position. If you  
9 would raise your right hand, please.

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

12 MS. DUARTE: I do.

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

15 MS. DUARTE: Antoinette Duarte, A-N-T-O-I-N-E-T-T-E,  
16 D-U-A-R-T-E.

17 JUDGE CLIFTON: I am pronouncing it wrong.

18 MS. DUARTE: It is the Portuguese.

19 JUDGE CLIFTON: Thank you. We want to know about you and  
20 your involvement in the industry, in addition to your message  
21 for us. So you may proceed in any way you like.

22 MS. DUARTE: Thank you. I would apologize for not  
23 preparing anything, but this is, I was asked to come down weeks  
24 ago, and to put something on paper, I was having a difficult  
25 time. I attended and presented testimony in Sacramento, and it

1 just seemed like you get tired of putting things on paper. And  
2 sometimes coming from your mind and your heart is better.

3 My husband and my son and I own and operate a dairy in  
4 Elk Grove, California, where, at one time we had 28 dairies and  
5 today we have 6. My son did not go to college, he went to a  
6 JC, and because of an injury back in, I would say 18 years ago  
7 that my husband got, my son did not pursue his college career,  
8 and he stayed home, and he has been with us ever since then.

9 Five years ago my husband suffered a stroke. And all  
10 the responsibility of the dairy fell on my son's hands on the  
11 morning of May 22nd, 2010. And he is with us struggling,  
12 working hard, doesn't have anytime to spend with his children.  
13 He's got three kids, two boys and a girl. And I look at the  
14 dairy industry and I see there is no future for my  
15 grandchildren. In fact, I have sat down with them and I  
16 basically told them, "If you guys decide you want to think  
17 about coming to the dairy, I'm going to smack your hands with a  
18 ruler." Because it's a lot of hard work, a lot of stress. The  
19 rewards are you work as a family, but the negative is every  
20 month you are eating away your equity.

21 We do have approximately 56 percent of our milk is  
22 quota. Our quota value is 56 percent. We belong to, we ship  
23 our milk to DFA. And I am the Vice President of California  
24 Dairy Women, which we began our organization in 1996. And like  
25 I mentioned, I've been to Sacramento many times and presented

1 testimony.

2 In our area, the reason why we have lost a lot of  
3 dairies is the volatility. There's quite a few young dairymen  
4 who could not stay in business any longer. They did not see a  
5 light at the end of the tunnel. The equity was being eaten  
6 away. And then when you have investors coming in and offering  
7 large amounts of money for acreage to turn those nice dairies  
8 into walnut trees. In our area it's either walnut trees or  
9 grapes. And in the past four years there has been three large  
10 dairies that have gone into walnut trees and one dairy behind  
11 me who is being sold, I believe it's this Thursday, and one of  
12 them, part of the parcel will be into walnut trees.

13 I believe it is time for a change that California goes  
14 into the Federal Order. We have suffered enough volatility.  
15 It is time to change hands on how our milk is being priced. I  
16 realize that there is a lot of opposition, but in order for us  
17 to have a healthy dairy industry on the farm side, if there's  
18 no changes, we're not going to have a local milk, such as I  
19 stated, in Elk Grove, from 28 dairies down to 6. It is very  
20 sad. It is a very sad situation.

21 I have had, my road where I live on is very, very busy  
22 now because Elk Grove is growing, and I have had people who  
23 stop by don't realize how far we are from Elk Grove, that they  
24 have run out of gas, because they go down and visit the local  
25 correctional center. And many of them have stated where did

1 all the dairies go?

2 We, at one time, had many children come out and tour  
3 our dairy, and because of the responsibility that we have  
4 incurred in the last five years due to my husband's health, we  
5 had to stop it because it took a lot of time. But I'm seeing  
6 that the people that lost because we stopped was the children.  
7 Because they don't have the advantage of coming out to the  
8 dairies and seeing where their milk comes from. And so if we  
9 do lose more and more dairies, that is going to be a major  
10 impact for the local supply of our milk, and then, of course,  
11 the economy of our community, and also the children who will  
12 not be able to see where the cows are at.

13 I support the Proposal Number 1 from the DFA and CDI,  
14 and I'm hoping that the Department will see fit that we, in  
15 order to have a stable industry on the dairy producer side,  
16 that we can have the opportunity to go into the Federal Order.

17 JUDGE CLIFTON: I don't know where Elk Grove is. Could you  
18 describe for me what county you are in?

19 MS. DUARTE: We're in Sacramento County, approximately 15  
20 miles from Sacramento. My husband and my son, my, actually, my  
21 husband and I started the dairy 43 years ago. I am a third  
22 generation dairy farmer. My son, like I said, has taken over  
23 the responsibility, and at one time I thought maybe my children  
24 would be a great business for them. But if this continues, we  
25 might not be in business for my children. My oldest grandson

1 is 11. He's out there driving tractor, pulling calves, very  
2 hands-on, so it's nothing where he shies away from work. But  
3 like I say, I keep instilling in him, get an education and go  
4 find something else to do, because we might not be in business  
5 if this continues this way. Equity is being eaten. And we  
6 just renewed our loans, our hay loan and our lines, and  
7 speaking to our banker, they are very concerned with the loss  
8 of dairies that are going out every week. These are not small  
9 operations. We're milking 560 cows, and when you see dairies  
10 that are going out every week and advertising, sending out to  
11 other dairymen, 5, 6, 7, 1000, 1200 cows, it is a signal that  
12 things need to be, the pricing system needs to be changed in  
13 order for us to have a healthy dairy segment for the producers.

14 JUDGE CLIFTON: When you say you're a third generation  
15 dairy producer, where were the original location -- where was  
16 the original location and has that changed over time?

17 MS. DUARTE: My grandfather started his dairy in Stockton,  
18 and then went back to Azures and took my father and my two  
19 uncles. And then at the age of 19, my dad remembered how  
20 California was a land of opportunity, so he came here at the  
21 age of 19. And then my uncle, his brother, followed five  
22 months later. They milked cows for, I believe it was almost  
23 two years, and then got married and then they started a dairy  
24 as a partnership. And then in 1973, my dad bought some  
25 property, and along with my brothers, they went and they moved



1 half of the cows to Escalon, which is in the Stanislaus County  
2 area. And then when my dad passed away 10 years ago, my  
3 brothers decided, four 4 years ago, to sell the dairy.

4 And it was a wonderful dairy. It was one of the  
5 largest, I should say it was one of the most efficient, because  
6 it was president first round barn that milked eight cows at the  
7 time in 1973. It was an idea that came from New Zealand. And  
8 the dairy is still there. The people that bought the land,  
9 also, it's going to go into almond trees.

10 But my husband and I did start our own dairy.  
11 Actually, went into debt before we even got married. At that  
12 time, the banks allowed the husband and wife not being married  
13 to sign on the dotted line. So we love our area, we love the  
14 industry, but the volatility, as I stated, my husband suffered  
15 a stroke and it was the effects of the stress. He was very  
16 involved with the dairy industry as far as he was a Board  
17 Member of Western United for many years. And at that time, him  
18 and another gentleman who have also passed, and his sons have  
19 carried on the legacy of their dairy, stressed that going into  
20 the Federal Order. And here we are years later and we're still  
21 talking about it.

22 JUDGE CLIFTON: When you say equity is being eaten, do you  
23 have any numbers for the USDA to consider about the equity  
24 being eaten and the business that you are involved in? For  
25 example, do you know how much of your equity is lost each year?

1 Do you know how much your dairy operation is losing? Do you  
2 have any kind of numbers like that that would be of assistance?

3 MS. DUARTE: To give out personal information, I have no  
4 problem on that. I'm roughly about \$24,000 short each month.  
5 I finished our year-end, we are incorporated, became  
6 incorporated 2006 because our son is in the dairy business, and  
7 we have two other children who are not. So to protect his hard  
8 work and dedication, we incorporated. And our year ended  
9 October 31st. And of course, by the beginning of October I  
10 already know basically, what our standings are. And I don't  
11 need \$24 milk, I don't need \$20 milk. I just want whatever it  
12 cost me to produce that milk. We have five employees, and  
13 everything has gone up. Each month you look at the bill and  
14 there's an added surcharge for this, and an added surcharge for  
15 that. And that extra dollar that we would be getting by being  
16 in the Federal Order, it would help with all the extra charges  
17 that we are getting.

18 We have become so efficient -- we have been told, "you  
19 need to be efficient in order to stay in the business." We  
20 have become efficient. We have no other way to tighten the  
21 belt. And yet, we're losing dairies, we're losing equity, and  
22 I'm only in here because my son wants it. And in the past two  
23 years I keep telling him, "Justin, we need to get out." He  
24 goes, "Mom, one more year." How could I put a For Sale sign  
25 and sell my cows if my son is there working from 4:30 in the

1 morning until sometimes 8:00 at night. And he does all the  
2 breeding, he does the relieving, the feeding. Not the milking,  
3 we have good relief milkers for that. But to oversee  
4 everything. And I don't have the heart to put a big For Sale  
5 sign because he just pleads, one more year, one more year. So  
6 I told him, I said, "If we do not go into the Federal Order,  
7 Justin, there is no future, so you better start preparing that  
8 we will put this dairy up for sale and join the rest of the  
9 community and put trees in."

10 JUDGE CLIFTON: What is the name of the incorporated  
11 business?

12 MS. DUARTE: Duarte Family Dairy, Inc. And hopefully, like  
13 I mentioned, I told my grandsons, please get an education and  
14 go in, if you like the dairy industry, there's other aspects of  
15 the industry that you can become involved in and be in business  
16 with, but not on the farm. But I see my grandson out there  
17 with his dad, and he's literally out there working very hard,  
18 and I'm so proud of him, and I would like to carry on the  
19 legacy to have the fifth generation involved in the dairy  
20 industry on the ranch.

21 JUDGE CLIFTON: Do you have anything else you would like to  
22 add before I invite questions?

23 MS. DUARTE: No. I want to thank you for the opportunity  
24 and I do support the Proposal Number 1, as I stated.

25 JUDGE CLIFTON: Who would ask the first questions of

1 Ms. Duarte? Mr. Beshore?

2 CROSS-EXAMINATION

3 BY MR. BESHORE:

4 Q. Marvin Beshore. Thank you, Ms. Duarte. Just one  
5 question. Can you tell us a little bit and provide, you know,  
6 for this record, information about how you acquired the quota  
7 on your farm, or how you came to have that quota holding?

8 A. We purchased it. We purchased every pound of it in  
9 increments, as we could. And we have gotten information, like  
10 I said, dairies going out of business, and people are buying  
11 quota. There is one of the brokers that told me every time  
12 some quota is available he's got people buying it, so there is  
13 a value to it. And there, hopefully there is, you know, for it  
14 to stay in with the value, if we do want to move on to the  
15 Federal Order.

16 Q. Okay. So neither your business, you and your husband's  
17 operation, nor your family, actually had any quota issued to  
18 you at the time the law was passed in --

19 A. Very few pounds. Just a couple pounds here and there  
20 and that was it. But no -- no 95 percent of it was purchased.

21 Q. Okay. Very good. Thank you very much. Thanks for  
22 coming.

23 A. Thank you.

24 JUDGE CLIFTON: Who else has requests for Ms. Duarte?  
25 Mr. Richmond?

1 MR. RICHMOND: Bill Richmond. Thanks a lot, Ms. Duarte, we  
2 appreciate it. It's been very helpful.

3 JUDGE CLIFTON: Are there other questions for Ms. Duarte?  
4 I thank you so very much. I thank both of you for coming and  
5 sharing your heartache, as well as the factual data that the  
6 USDA has to have. Thank you.

7 MS. DUARTE: May I add something?

8 JUDGE CLIFTON: Yes.

9 MS. DUARTE: My brother, when they sold the ranch, he got  
10 the opportunity to work for a local auction yard in Escalon,  
11 which is Stanislaus County, just a few miles away from the  
12 original dairy where my dad and my brothers and my mom had.  
13 And he, him and I have contact almost everyday. And he has  
14 shared with me that lately, in the past two months, about a  
15 month and a half I should say, that the faces of the dairymen  
16 going in to take the cows that are no longer productive to  
17 beef, and he said it's very, very sad to see the concern, the  
18 stress, the unknown, the uncertainty, the future that lies  
19 ahead of the dairy producers. And taking the cows that are no  
20 longer producing, hoping that that's going to pay a bill, fill  
21 that void between the cost and the income that we're receiving.  
22 And when we get our milk check and we see out there what we are  
23 getting paid per hundredweight, and it's around \$16, it doesn't  
24 pay the bills. It does not pay. And that causes a lot of  
25 stress amongst the families, husbands and wives, the bankers

1 and the dairymen, the dairymen and their suppliers, and it  
2 trickles down on and on and on.

3 Thank you for this opportunity.

4 JUDGE CLIFTON: You are most welcome. And thank you.

5 I think we're ready now for Mr. Gonsalves' testimony.  
6 If you would come forward at this time and take the witness  
7 stand. And I would invite the distribution of any exhibit that  
8 would be introduced through his testimony.

9 All right. I think there are two documents that are  
10 being distributed, one is the Testimony of Anthony Gonsalves,  
11 and the other is the Exhibits to the testimony. Please raise  
12 your hand if you do not yet have a copy of each. All right.  
13 Let us mark the exhibits first, and then I'll swear in  
14 Mr. Gonsalves. Ms. Frisius, I believe the testimony of  
15 Anthony Gonsalves would be Exhibit 150; is that correct?

16 MS. FRISIUS: Correct.

17 JUDGE CLIFTON: Exhibit 150.

18 (Thereafter, Exhibit 150, was  
19 marked for identification.)

20 JUDGE CLIFTON: And the exhibits to the testimony of  
21 Anthony Gonsalves would be 151. Exhibit 151.

22 (Thereafter, Exhibit 151, was  
23 marked for identification.)

24 JUDGE CLIFTON: I will swear you in in a seated position.  
25 Would you raise your right hand, please?

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

3 MR. GONSALVES: Yes.

4 JUDGE CLIFTON: Thank you. And Mr. Vu, if you will  
5 identify yourself and then you may proceed.

6 DIRECT EXAMINATION

7 BY MR. VU:

8 Q. Thank you, your Honor. Bao Vu.

9 Good afternoon, Mr. Gonsalves.

10 JUDGE CLIFTON: Oh, no, it's not.

11 BY MR. VU:

12 Q. It's morning. Good morning, Mr. Gonsalves. How are  
13 you doing?

14 A. Doing good, thank you.

15 Q. Thank you so much for being here today, and a special  
16 thank you to the parties, the Judge and the USDA for  
17 accommodating our schedule. So I'm going to have you just read  
18 your statement, and I may interrupt you from time to time to  
19 flesh some things out, but I don't anticipate doing so too  
20 frequently. So for now, I'll have you just get started, and  
21 please keep in mind to read the headings and to read slowly for  
22 the court reporter's benefit. Thank you.

23 MR. ENGLISH: Your Honor?

24 JUDGE CLIFTON: Yes, Mr. English?

25 MR. ENGLISH: I'm not going into interrupt the testimony.

1 What I would like to do, though, is just note that I want to  
2 reserve our rights to raise admissibility objections only  
3 until after he's read it, and just don't need to discuss it now  
4 we can let him go.

5 JUDGE CLIFTON: Good. Thank you. Yes, you may reserve  
6 that right. All right. Then, Mr. Gonsalves, when you give  
7 your testimony to us, I want the headings to be included in  
8 what you state.

9 MR. GONSALVES:

10 INTRODUCTION

11 Good morning -- not afternoon -- and thank you for  
12 allowing me to share my testimony with you today. My name is  
13 Anthony Gonsalves and I am President of Joe A. Gonsalves & Son,  
14 a lobbying firm, specializing in the representation of clients  
15 before the California State legislature. My dad, Joe A.  
16 Gonsalves, started the firm in 1975.

17 I am here to testify in support of the California  
18 Producer Handlers Association, Proposal 3, seeking to recognize  
19 existing quota value in California, including the value of  
20 "regular" and "exempt" quota presently held by a class of  
21 producers commonly referred to as "Producer-Handlers" or  
22 "Producer-Distributors". While these terms are interchangeable  
23 in California, I will call them "exempt quota holders" for the  
24 purpose of this testimony, in order to differentiate them from  
25 the producer-handler definition used in the federal orders and



1 as proposed by both the Cooperatives and the Dairy Institute.

2 I have witnessed behind-the-scenes, the legislative  
3 efforts involving the Gonsalves Milk Pooling Act and related  
4 dairy and quota issues for the past 38 years. The legislative  
5 history I will be testifying about today, highlights that a  
6 class of quota called exempt quota held by the remaining four  
7 exempt quota holders has been an integral part of the  
8 California quota system since the conception in 1967.

9 Q. I'm going to interrupt you real quick, Mr. Gonsalves, I  
10 see in your testimony that you state that you --

11 JUDGE CLIFTON: That -- follow the example of the witness  
12 Mr. Vu, and pace your voice accordingly.

13 BY MR. VU:

14 Q. Oh, sorry. Thank you.

15 Mr. Gonsalves, I see in your testimony that you state  
16 you have been involved in the Gonsalves Milk Pooling Act and  
17 related dairy and quota issues for the past 38 years. Can you  
18 give us some of your education and work history following high  
19 school?

20 A. Well, I started out working as a Manager at Thrifty  
21 Drug Store, and worked my way up through the ladder, and  
22 decided I was more interested in politics so I took a job with  
23 the State Senate for a year before starting with my father in  
24 1977. But I think my training started back in 1963 walking  
25 precincts for my father when he was running for the State

1 Assembly.

2 And I can tell you, he felt so emotionally involved in  
3 passing the Gonsalves Milk Pooling Act. I remember when he  
4 came home from Sacramento and he literally broke down in his  
5 office in tears when the Governor signed that bill.

6 Q. Perfect. You can continue.

7 A.

8 JOE A. GONSALVES

9 My dad, Joe A. Gonsalves, was a true exemplification of  
10 the fulfillment of the American dream. From the humblest  
11 beginnings in the farming region of the Imperial Valley, he and  
12 his immigrant parents settled in Artesia where they began the  
13 first of several dairy farms. He ultimately operated his own  
14 successful dairy farm. Then, he was elected in 1958 to serve  
15 as a City Council member for the new City of Dairy Valley (now  
16 the City of Cerritos). He then served for two terms as Mayor,  
17 until 1962, when he was elected to the California State  
18 Assembly. When he left to start his career in State office,  
19 his dad told him, "Joe, do something for the dairy farmers."  
20 And indeed, from 1963 to 1966 that is exactly what he tried to  
21 do, though with little success. Finally, in 1967, he  
22 introduced AB, Assembly Bill AB 910, the Gonsalves Milk Pooling  
23 Act. Which, after a series of amendments, became law on  
24 November 8th, 1967.

25 AB 910 -- THE GONSALVES MILK POOLING ACT

1 I. Background

2 Prior to the enactment of AB 910, California dairy  
3 farmers were often at the mercy of the processors. Too  
4 frequently, dairy farmers would be given little notice of  
5 changes in the amount of milk the processors would be willing  
6 to accept, leaving such farmers with no place to send their  
7 milk product, and placing them in a weak bargaining position to  
8 dispose of their perishable product. A number of milk pooling  
9 bills were introduced in the 1960's prior to AB 910, including  
10 another bill by my dad. These ultimately proved to be  
11 unsuccessful. However, because the dairy industry could not  
12 reach agreement upon how to achieve a Pooling Plan that it  
13 would be acceptable to all sectors of the industry.  
14 Furthermore, before the introduction of AB 910, the Dairy  
15 Institute, which of course sought to protect the interests of  
16 the processors, had an "iron grip" on the Dairy and Livestock  
17 Committee. These factors often served as impediments to  
18 successful pooling legislation.

19 To overcome the obstacles to such enactment of pooling  
20 legislation, my dad decided to enlist the help of his friend,  
21 Assembly Speaker Jesse Unruh, who ultimately changed the  
22 dynamics of the Assembly Dairy and Livestock Committee by  
23 merging it with the Assembly Agriculture Committee. The  
24 increased membership of the newly merged committee resulted in  
25 a decrease of the Dairy Institute's influence. This allowed my

1 dad to push AB 910 through this first committee in which his  
2 prior pooling bill previously stalled.

3 My dad worked tirelessly for each vote and closely  
4 shepherded AB 910 through the entire legislative process,  
5 including keeping in constant contact with the Governor and his  
6 administration to avoid the possibility of gubernatorial veto.  
7 For those of you who do not know, the Governor of California in  
8 1967 was our former President Ronald Regan. On Thursday,  
9 July 27th, 1967, at 11:40 a.m., the Governor signed AB 910 (the  
10 Gonsalves Milk Pooling Act). It became law on November 8th,  
11 1967. I have a photograph of my dad and Governor Regan the day  
12 he signed AB 910 into law. That's part of the packet.

13 In light of the spirited debate and numerous  
14 compromises that resulted in an amendment, in amendments to  
15 AB 910, the bill represented a compromise in unity among all  
16 facets of the California dairy industry. Specifically, because  
17 a simple revenue pooling system as used under the Federal Milk  
18 Marketing Order system would have imposed losses on farmers who  
19 held covenant Class 1 contracts, the Gonsalves Milk Pooling Act  
20 established the alternative "quota system". Under California's  
21 quota system, farmers who had history of Class 1 contracts were  
22 assigned enough quota to ensure them the highest price for that  
23 portion of their milk that had previously been under contract.  
24 Other farmers who did not previously have Class 1 contracts,  
25 were assigned the rights to new quota that was created as

1 Class 1 sales expanded, thereby opening up, thereby opening the  
2 Class 1 market to those who may not otherwise have been able to  
3 obtain Class 1 contracts (and Class 1 prices for their milk).

4 A further balance was stricken to pass AB 910, the  
5 issuance of "exempt quota". To a class of producers who were  
6 producing raw milk that they processed themselves into a  
7 Class 1 finished product, rather than receiving regular quota,  
8 these producers were issued exempt quota as part of the quota  
9 system. Exempt quota holders were vertically integrated  
10 farmers with simultaneous ownership of both production and  
11 processing facilities. Because of this, they were not subject  
12 to the same pressures of regular farmers who were often at the  
13 mercy of milk processors. Thus, much like the compromise that  
14 resulted in allocation of regular quota, the exempt quota was  
15 issued to recognize the lack of financial assistance offered to  
16 them by pooling their milk. The exempt quota was issued as  
17 certificates of ownership to the producer entity, the handlers  
18 and the handler side, while it still had to report fully to the  
19 pool, received the deduction or credit for the volumes of  
20 exempt quota owned by the producer.

21 JUDGE CLIFTON: Now, you have written that a little  
22 differently, so I may need you to explain that. Would you read  
23 that last sentence again, the one you just read?

24 MR. GONSALVES: The exempt quota was issued as certificates  
25 of ownership to the producer entity, and the handler side,

1 while it still had to report fully to the pool, received the  
2 deduction or credit for the volumes of exempt quota owned by  
3 its own processor.

4 JUDGE CLIFTON: So --

5 MR. GONSALVES: Producer, I mean.

6 JUDGE CLIFTON: Yeah, its own producer. So the handler had  
7 to report the producer's exempt quota volume but got a credit  
8 back? Is that right? Do I understand it?

9 MR. GONSALVES: Yes.

10 JUDGE CLIFTON: Okay. Thank you. You may resume.

11 MR. GONSALVES: Thank you. In addition to the provisions  
12 for regular and exempt quota, the Gonsalves Milk Pooling Act  
13 required the Director to come up with a formula for pooling,  
14 for a Pooling Plan, and submit it in a referendum to all  
15 eligible market milk producers for their approval or  
16 disapproval. The Gonsalves Milk Pooling Act was quite specific  
17 in certain permissive and restrictive provisions that the  
18 Pooling Plan must contain. After extensive research,  
19 revisions, and testing, the committee and the Department  
20 prepared a draft of the proposed Pooling Plan, which went to a  
21 public hearing held in several locations throughout the state  
22 of California starting in February 1968.

23 Testimony at these hearings indicated the proposed Pool  
24 Plan needed adjustments and the hearing, the hearings were  
25 continued until May 1968 when amendment was presented. As a

1 result of this hearing, the final proposed Pooling Plan was  
2 submitted to producers for a vote on September 10th, 1968. The  
3 votes were counted on November 8th, 1968. Producers gave an  
4 overwhelming approval to the Pooling Plan far surpassing the  
5 required percentage for approval.

## 6 II. Exempt Quota Provisions

7 As I stated earlier, when the Gonsalves Milk Pooling  
8 Act was implemented, the quota system was established to  
9 include both regular and exempt quota. In July 1969, there  
10 were 49 exempt quota holders. For milk falling within exempt  
11 quota, the exempt quota holders paid their farm business units  
12 the Class 1 price.

13 The original Gonsalves Milk Pooling Act stated,  
14 however, that in the future, any Class 1 sales exempt quota  
15 holders were able to acquire, must have quota for those Class 1  
16 sales, and instead of receiving the Class 1 price for that  
17 milk, the exempt quota holders would have to share those new  
18 Class 1 sales with the pool. That meant that although they  
19 sold Class 1 milk, they would receive a blend price for that  
20 milk. This was part of the sacrifice that the exempt quota  
21 holders had to make in conceding to the Gonsalves Milk Pooling  
22 Act, and part of the compensation that they gave up in order to  
23 receive their exempt quota. If they had not voted for the  
24 Pooling Act, they could have continued to grow their Class 1  
25 market and continued to reap the benefits and higher payments

1 for their increased Class 1 sales. By accepting the volume of  
2 exempt quota assigned to them, they gave up the opportunity for  
3 higher, for the higher sales.

4 It is very clear that from the beginning the  
5 legislative intent was that the California producer holding  
6 exempt quota in 1967 would participate in the quota system by  
7 receiving exempt quota assignments in proportion to their  
8 historic production.

9 I have included as exhibits various documents  
10 supporting the legislative history. I believe it is clear in  
11 these documents that the legislative intent was that exempt  
12 quota holders be considered part of the quota system and the  
13 foundation of AB 910.

14 BY MR. VU:

15 Q. I'm going to interrupt you really briefly,  
16 Mr. Gonsalves.

17 And so as I look through the exhibits, the way I  
18 understand they are organized, and you can correct me if I'm  
19 wrong, is that the first exhibit, generally, is the enacted  
20 legislation and then the exhibits following the enacted  
21 legislation are the legislative history leading up to that; is  
22 that correct?

23 A. That's correct.

24 Q. Who compiled all these exhibits that are in  
25 Exhibit 151?



1 A. Well, my office and I compiled all the exhibits from  
2 the files my father kept from 1966 on, on Milk Pooling.

3 Q. And so it sounds to me like these are files that are  
4 maintained by your firm; is that correct?

5 A. That is correct.

6 Q. And how did your firm come to obtain these documents?

7 A. Well, the documents are all public record. The  
8 different ones from Legislative Council and the Senate Ag  
9 Committee actually came from the Policy Committees and from the  
10 attorneys for the legislature.

11 Q. Perfect. And in the interest of time, subject to  
12 Mr. English's admissibility objection, of course, I'm going to  
13 just highlight a few of the exhibits as we move forward that  
14 may be helpful to the USDA. So looking now at Exhibit 151,  
15 which is your exhibit packet; is that correct?

16 A. Correct.

17 Q. Exhibit A-1 is the Gonsalves Milk Pooling Act as it was  
18 enacted; is that correct?

19 A. That's correct.

20 Q. And then turning to Exhibit A-4, which is a series of  
21 photographs, can you explain to me what those photographs are  
22 of and why you include them here?

23 A. Well, for the historical theme I think it's very  
24 important to realize the history of the Gonsalves Milk Pooling  
25 Act. And these were pictures that were taken the day that the

1 Governor signed my father's legislation.

2 Q. And then looking forward to the next section that  
3 starts off with 1977 Amendments. I just want to be clear for  
4 the record, you didn't become involved with the firm officially  
5 until 1977, correct?

6 A. That's correct.

7 Q. So in with regard to these 1977 amendments, were you  
8 involved in what you are about to testify to?

9 A. Yes.

10 Q. And being involved in these 1977 amendments, did you  
11 have to go back and learn the history the legislative history  
12 of the original Gonsalves Milk Pooling Act and how it came to  
13 fruition?

14 A. If you had the opportunity to share in Thanksgiving  
15 dinners and Christmas dinners, you were getting history on the  
16 Gonsalves Milk Pooling Act on a regular basis.

17 Q. Perfect. You may proceed.

18 A. 1977 AMENDMENT TO GONSALVES MILK POOLING ACT.

19 In 1977, AB 1110 was introduced by a Assembly Member  
20 Barry Keene on behalf of the producers. AB 1110, as  
21 introduced, had a requirement forcing exempt quota holders to  
22 share all their Class 1 sales with the pool, essentially doing  
23 away with the exempt quota. After much debate and negotiation,  
24 that proposal was removed. In its place was a provision  
25 allowing exempt quota holders to buy additional exempt quota,

1 reaffirming the commitment to preserve the exempt quota as part  
2 of the quota system.

3           Specifically, in Assembly Ways and Means Committee,  
4 AB 1110 was amended to provide for the exempt quota holders to  
5 increase their amount of exempt quota. In this committee, this  
6 amendment was adopted over the sponsors and the authors  
7 objections. The exempt quota allowed under this amendment, was  
8 part of an overall amendment to the quota system, and the  
9 exempt quota acquired under this amendment, was part of the  
10 California quota system.

11           During the discussions about the proposed amendment  
12 there was some opposition from the dairy industry to allowing  
13 exempt quota holders to buy more exempt quota. Director  
14 Richard Rominger, from the Department of Food and Agriculture,  
15 wrote a letter calling for a meeting to help mediate the dairy  
16 industry's differences. If they came to an agreement, AB 1110  
17 would be able to move forward in the legislative process.

18           After the meeting at the Department of Food and  
19 Agriculture and after all parties involved in those discussions  
20 reached a compromise position, the dairy industry agreed to  
21 support AB 1110, which included the containment, included the  
22 continued allowance of exempt quota. As you will see in  
23 Exhibit B-5, my dad composed a letter showing they had all come  
24 to a consensus and AB 1110 was signed into law three months  
25 after the Rominger meeting. As with the initial enactment of

1 the Gonsalves Milk Pooling Act, the quota system discussions,  
2 negotiations, and amendments, always included the exempt quota.

3 I have included as exhibits, various documents  
4 demonstrating the legislature's intent with the respect of the  
5 1977 amendments.

6 Q. I'm going to interrupt you again, Mr. Gonsalves, and  
7 I'll let you grab a sip of water, too. So is it your  
8 understanding that the effect of these 1977 amendments were to,  
9 among other things, allow for then present exempt quota holders  
10 to obtain more exempt quota?

11 A. That's correct.

12 Q. And then turning to Exhibit B-1, which is, of course,  
13 in marked Exhibit packet 151, B-1 is, excuse me, B-1 is AB 1110  
14 as enacted; is that correct?

15 A. That's correct, that's the chapter version.

16 Q. And then continuing to highlight only some of the more  
17 interesting exhibits, I'm going to move forward to B-3. Can  
18 you describe what this letter is?

19 A. B-3 is the letter from the Director of the California  
20 Department of Food and Agriculture, Mr. Rominger, requesting  
21 the dairy industry come to a meeting to try and resolve the  
22 issues an AB 1110.

23 Q. And then turning to the second page of the letter, it  
24 looks like it is actually in enclosure attachment to the  
25 letter. Joe Gonsalves is a person who received an invitation

1 in accordance with this letter, does that look correct to you?

2 A. I'm going to have to find it.

3 JUDGE CLIFTON: Just the next page after the letter, B-3.

4 MR. GONSALVES: Yes, it is.

5 BY MR. VU:

6 Q. And that meeting was ultimately held on July 14th,  
7 1977, correct?

8 A. Correct.

9 Q. Then turning to Exhibit B-5, can you please describe  
10 that to me?

11 A. This is a memo written by my father that was  
12 distributed to the members of the Senate Finance Committee,  
13 which is the Fiscal Committee of the State Senate, and he is  
14 letting the members know that they had their meeting and  
15 everyone in the dairy industry were in support of the bill, and  
16 that he did not want to have any additional amendments to taken  
17 to the bill.

18 Q. So it's fair to state that a meeting was held on  
19 July 14th, 1977, correct?

20 A. Correct.

21 Q. And then as a result of that meeting, there is a memo  
22 from your father stating that the dairy industry had reached a  
23 compromise with regard to AB 1110, correct?

24 A. Correct.

25 Q. And the ultimate affect of AB 1110 was to allow those

1 presently, then presently holding exempt quota to obtain more  
2 quota, correct?

3 A. Correct.

4 Q. And AB 1110 was ultimately enacted with that provision?

5 A. It was signed into law, yes.

6 Q. Perfect. I'll let you continue reading your testimony.

7 A. 1993 Amendment to the Gonsalves Milk Pooling Act

8 In 1993, Senator Dan McCorquodale introduced  
9 Senate Bill SB 688. SB 688 revised the milk pooling statutes  
10 to produce a fixed differential of \$1.70 between quota and  
11 overbase. AB 688 also increased the ability of producers  
12 holding exempt quota to capture the Class 1 price on more of  
13 their production through additional exempt quota purchases.

14 My dad and I became involved in SB 688 when it was  
15 heard in a subcommittee of the Senate appropriations hearing  
16 bills that were on the suspense file. My dad presented an  
17 amendment, and it was accepted by the proponents and entered as  
18 an author's amendment by Senator McQorquodale. SB 688 then  
19 went to the Agriculture Committee and through the rest of the  
20 legislative process with our complete support.

21 This bill was overwhelmingly supported by all the  
22 legislative policy and physical committees, as well as both  
23 floors prior to the Governor's signature. AB 688 became law in  
24 1993 because all the dairy industry gave its support and was  
25 satisfied that AB 1285 would be introduced the following year.

1           In 1994, Assembly Member Sal Cannella introduced  
2 AB 1285 to address the sunset clause contained in SB 688 (which  
3 was to expire January 1, 1995). That sunset clause, however,  
4 did not affect the additional exempt quota allowed to  
5 producer-handlers.

6           I have included as exhibits to my testimony,  
7 legislative documentation concerning AB 688 and 1285. I  
8 believe my exhibits clearly show the legislature's intent on  
9 including the exempt quota amendments. Through substantive  
10 amendments, negotiations, compromises, and debates, the quota  
11 system that included both regular and exempt quota, were yet  
12 again approved by the industry.

13         Q. I'm going to interrupt you one more time,  
14 Mr. Gonsalves. With regard to exempt quota, what was your  
15 understanding of the effect that SB 688 had?

16         A. That legislation allowed the producer-handlers,  
17 producer-distributors, to buy exempt quota with no cap. It was  
18 an ongoing provision.

19         Q. And then you have included, it seems, some legislative  
20 history about AB 1285. Can you explain what effect, if any,  
21 AB 1285 had on the exempt quota provisions, then existing?

22         A. We have two legislative counsel's opinions, both on the  
23 McCorquodale Bill and the Cannella Bill, that state clearly  
24 that the exemption for the producer-handlers was not  
25 sunsetting, it was ongoing. But the legislative history on

1 1285 was very clear that in the McCorquodale Bill it had this  
2 language, but it also stated in there the ongoing exemption for  
3 the producer-handlers.

4 We even have a letter from the Republican leader of the  
5 senate asking for Governor Wilson at the time, to sign the  
6 Cannella Bill so that the deal that was made between the two  
7 pieces of legislation would continue, including the  
8 producer-handlers exemption.

9 Q. And the legislative history surrounding SB 688 and  
10 AB 1285 are included in your exhibit packet, and are generally  
11 Exhibits C and D in their sub exhibits, is that accurate to  
12 say?

13 A. That's correct.

14 Q. Okay. You can keep on going. Thank you.

15 A. Attempt to Eliminate Exempt Quota Failed

16 In 1995, Senator Dave Kelley introduced SB 105. This  
17 bill was introduced on behalf of a co-op, otherwise known as  
18 "California Milk Producers." They were attempting to reverse  
19 what was already agreed upon previously in the SB 688 and  
20 AB 1285 package. AB 105, as introduced, would have based the  
21 amount of exempt quota held by producers based upon 1978  
22 figures. This bill was soundly defeated on the Senate floor on  
23 May 1st, 1995, with a vote of Ayes 10, Noes 20. In order for  
24 it to pass, SB 105 needed 21 Aye votes; it came up 11 short and  
25 was at a standstill. It was the legislative intent to preserve



1 exempt quota as part of the quota system.

2           Shortly after the Senate floor vote, and at the request  
3 of exempt quota holders, a meeting was called with the dairy  
4 industry. In an effort to have unity in the dairy industry,  
5 the exempt quota holders offered a compromise to cap their  
6 ability to purchase exempt quota and roll back the purchase  
7 date to March 1st, 1995. After this date, the exempt quota  
8 volumes were frozen and producers could no longer acquire or  
9 purchase any further exempt quota. Any quota acquired after  
10 that date was acquired as regular quota. The exempt quota  
11 would naturally sunset or expire with the tables of  
12 consanguinity when the generational limitations were met.  
13 Since that date, the quota system has continued to operate with  
14 regular quota and exempt quota, as well as the other pooling  
15 calculations for base and overbase production payments.

16           I have included as exhibits the legislative history on  
17 SB 105.

#### 18                               CONCLUSION

19           Throughout the legislative history of the Gonsalves  
20 Milk Pooling Act, the quota system has had many aspects beyond  
21 the regular quota held by any producer. The entirety of the  
22 quota system in California included both regular quota and  
23 exempt quota. Out-of-state milk was not subject to the pool in  
24 exchange for not receiving the benefits of a quota system.  
25 Together, all of these aspects make up the quota system since

1 its inception in 1967.

2 When the USDA considers the quota system in California  
3 and the investments made by all quota holders, I respectfully  
4 request the investments of exempt quota holders be included in  
5 the Federal Milk Marketing Act for California, and the overall  
6 aspects of the quota system be preserved in its entirety.

7 Thank you.

8 I'm available to answer any questions concerning the  
9 Gonsalves Milk Pooling Act and/or the exempt quota that is  
10 outlined in California Food and Agriculture Code.

11 Q. Thank you, Mr. Gonsalves. And I have some questions  
12 for you.

13 So the 1995 amendments to the Gonsalves Milk Pooling  
14 Act that you describe in essentially the last section of your  
15 testimony, the legislative history supporting that amendment is  
16 an Exhibit E to your exhibit packet; is that correct?

17 A. I'm getting there. Okay. What was the question, I'm  
18 sorry?

19 Q. So the legislative history surrounding the 1995  
20 amendments are in Exhibit E; is that correct?

21 A. That's correct.

22 Q. And you also state with regard to the 1995 amendments,  
23 that they limited the purchase of the exempt quota to March 1,  
24 1995; is that correct?

25 A. That's correct.

1 Q. And you also state in your testimony that after that  
2 date, exempt quota volumes were frozen and producers could no  
3 longer obtain additional exempt quota; is that correct?

4 A. That's correct.

5 Q. And is that your understanding of the system between  
6 1995 and the present? In other words, since 1995 and to the  
7 present, exempt quota could not additionally be obtained,  
8 correct?

9 A. That's correct.

10 Q. Mr. Gonsalves, what's your understanding of the Federal  
11 Milk Marketing Order system?

12 A. I have been asked from time to time, because I have so  
13 many friends in Congress and United States Senate, why don't I  
14 lobby in Washington? And my patent answer for that is, "I  
15 don't lobby foreign governments." I have no idea how the  
16 Federal Order works.

17 Q. Have you ever read a Federal Milk Marketing Order?

18 A. No, I have not, no offense.

19 JUDGE CLIFTON: I think that's my favorite line from this  
20 entire hearing.

21 MR. VU: I think that's it for my direct, for now, I'll  
22 step aside.

23 JUDGE CLIFTON: Thank you, Mr. Vu. Ms. Hancock?

24 MR. VU: Oh, no, I will not step aside yet. Your Honor,  
25 I'd offer Exhibit 150.

1 JUDGE CLIFTON: Does anyone wish to ask questions just on  
2 150? We'll just start with 150, before we get to the exhibits.  
3 So just 150, does anyone wish to ask Mr. Gonsalves questions  
4 about anything before you determine whether you have any  
5 objections to the admission of Exhibit 150? No one. Is there  
6 any objection to the admission into evidence of Exhibit 150?  
7 Mr. English?

8 MR. ENGLISH: Your Honor, I said I would reserve my rights  
9 under of admissibility. And while I may know where this may be  
10 going, nonetheless, I rise to object on three grounds of  
11 various sections.

12 Certainly, before he joined the firm in 1975, and while  
13 he might have been visiting legislative offices, his testimony  
14 about things that happened before '75 are, and appear to be  
15 hearsay, and it's even double hearsay when -- may appear to be  
16 harmless, but nonetheless it is double hearsay when he puts in,  
17 when he left to start his career in the State office, "His dad  
18 told him, Joe, do something for the dairy farmers." So he's  
19 got what the grandfather told the father, which is double  
20 hearsay.

21 And there's other hearsay throughout this. For  
22 instance, the statements about before '75 when the committee  
23 was reconstituted about the so-called influence the  
24 Dairy Institute had.

25 I would also say that legislative history is not

1 something that is to be testified about, although a lot of  
2 people have done it, and, in this proceeding, but legislative  
3 history is a term of art. And frankly, he's attached a lot of  
4 it, although some of the things he's attached are individual  
5 statements of individuals, but there is legislative history in  
6 the attachments. But to the extent that he says, this is  
7 legislative history, or this is the intent, or this is what was  
8 meant, that is objectionable on the grounds it's legal opinion  
9 or is an attempt to offer his statements as legislative history  
10 as opposed to what the actual legislative history is.

11 So we object to that extent. And again, I know how the  
12 ruling is going to go, but we need to note the objection.

13 JUDGE CLIFTON: Yes. I value very much that objection  
14 because I think it is a useful caution, nevertheless, it's  
15 overruled, and it would not keep this document from becoming  
16 part of the evidence.

17 Does anyone else have any objection to the admission  
18 into evidence of Exhibit 150? No one. I do admit into  
19 evidence, over objection, Exhibit 150. 150.

20 (Thereafter, Exhibit 150, was  
21 received into evidence.)

22 JUDGE CLIFTON: Now, with regard to Exhibit 151.  
23 Mr. English, the same objection you just made will apply here  
24 and you are welcome to add to it if you wish. Is there anyone  
25 that wishes to question Mr. Gonsalves before determining

1 whether you have any objection to the admission into evidence  
2 of Exhibit 151? No one. Is there any objection, in addition  
3 to what Mr. English has already stated, which will be applied  
4 also with regard to Exhibit 151, any additional objection by  
5 anyone? I see none. Exhibit 151 is admitted into evidence,  
6 over objection.

7 (Thereafter, Exhibit 151, was  
8 received into evidence.)

9 MR. VU: I will now step aside.

10 JUDGE CLIFTON: Thank you, Mr. Vu. So people are saying it  
11 is time for a break before cross. Yes, it certainly is. It's  
12 already 10:45. Please be back ready to go at 11:00.

13 (Whereupon, a break was taken.)

14 JUDGE CLIFTON: We're back on record at 11:06. Who would  
15 like to ask the first questions of Mr. Gonsalves?

16 MR. GONSALVES: Your Honor?

17 JUDGE CLIFTON: Mr. Gonsalves?

18 MR. GONSALVES: On the objection of hearsay, I would like  
19 to respond to that, if I may.

20 JUDGE CLIFTON: I'm sorry, what, Mr. Vu?

21 MR. VU: That's okay.

22 JUDGE CLIFTON: Go ahead, Mr. Gonsalves.

23 MR. GONSALVES: On the question of hearsay on the  
24 Dairy Institute's iron grip on the committee back during  
25 Milk Pooling, and also on what my grandfather said to my

1 father, my father wrote a book called A Capitol Life. And that  
2 book is in the State library and the State Legislative Library,  
3 and those were quotes taken out of his own biography. Thank  
4 you.

5 JUDGE CLIFTON: Thank you. A Capitol Life, how is that  
6 Capitol spelled? How did he spell it?

7 MR. GONSALVES: With an O.

8 JUDGE CLIFTON: With an O. Okay. Thank you. Mr. English,  
9 you may proceed.

10 MR. ENGLISH: I do want to respond briefly. As we've heard  
11 a lot in the news recently, what's written in a book isn't  
12 necessarily true. My hearsay objection stands.

13 JUDGE CLIFTON: Understood. Understood. And hearsay is  
14 admissible in USDA proceedings. Of course, the trier of fact  
15 needs to determine how reliable hearsay is. Mr. English?

16 MR. ENGLISH: Thank you.

17 CROSS-EXAMINATION

18 BY MR. ENGLISH:

19 Q. Mr. Gonsalves, I understand that you don't have a lot  
20 of experience with Federal Milk Orders, but you agree you're  
21 testifying in a Federal Milk Marketing Order hearing today,  
22 correct?

23 A. Correct.

24 Q. Okay. Have you read the proposal as submitted by the  
25 California Producer Handlers Association, which is

1 Proposal Number 3?

2 A. Yes.

3 Q. Okay. Have you read -- so that, it's my understanding  
4 that there's actually going to be specific language offered at  
5 some point in time to, well, I guess I should say, is there  
6 specific language, do you know the specific language to be  
7 offered to implement what is in the Hearing Notice  
8 Exhibit 147235?

9 A. Yes, I understand.

10 Q. Have you seen that language?

11 A. No, I have not.

12 Q. So you don't know whether it deviates in anyway from  
13 the language that appears on page 47235, do you?

14 A. I do not.

15 Q. Okay. You, yourself, raised the issue of  
16 consanguinity. And first, for the record, that's not a term  
17 that everybody uses everyday. What exactly do you understand  
18 that term to mean?

19 A. The producer-handlers in the statute has a definition  
20 what a producer-handler is. They can not sell their business  
21 and the people that buy the business then has the exempt quota,  
22 it has to be bloodlines and moving down the bloodline.

23 Q. So consanguinity --

24 A. Family members.

25 Q. -- consanguinity would be the degrees in which you



1 stand in place with the person who owns the right today; is  
2 that right?

3 A. Correct.

4 Q. Okay. And there are limits at some point to what can  
5 happen with that; is that correct?

6 A. That's my understanding.

7 Q. Okay. And again, understanding that you don't have a  
8 lot of that information on Federal Orders, do you know what the  
9 term individual handler pool is?

10 A. No, I do not.

11 Q. Okay. Do you understand that to the extent that  
12 producer-distributors in California hold exempt quota, they are  
13 not obligated to pay the California pool on that volume?

14 A. Correct.

15 Q. Okay. And that is what you are asking to be continued  
16 in a Federal Order, correct?

17 A. If the Federal Order is going to recognize the quota  
18 system, in the California quota system you have both the normal  
19 quota and the exempt quota, and they should recognize both.

20 Q. Well, my question was, do you understand that if it  
21 goes into a Federal Order, as your group is proposing, that  
22 effectively that volume that is subject to exempt quota of  
23 Class 1 sales, would not be shared with the other order  
24 producers?

25 A. That's correct.

1 Q. Okay. Now, you used, you did use the term  
2 producer-handlers and distinguished exempt quota holders from  
3 producer-handlers. Do you understand that under the  
4 producer-handler definition in Federal Orders, that, first,  
5 there is a limit that they have no more than 3 million pounds  
6 of total Class 1 sales?

7 A. That is my understanding.

8 Q. Okay. Do you also understand that except for a very  
9 modest amount of milk, 150,000 pounds, they cannot purchase any  
10 other volumes of milk from other sources?

11 A. I understand that, but I also understand this is a  
12 different Federal Order for California.

13 Q. I am asking you questions as to how you understand it  
14 works, sir.

15 A. Yes.

16 JUDGE CLIFTON: Now, I guess hearing the exchange between  
17 the two of you, were you asking him, Mr. English, how it works  
18 in all the existing Federal Milk Marketing Orders?

19 MR. ENGLISH: Yes, your Honor, but I was also using his own  
20 term of producer-handlers, which he was distinguishing from  
21 exempt quota holders. So it would, and in fact, as I  
22 understand it, theirs is a separate provision that wouldn't  
23 alter the fact that there would still be a producer-handler  
24 definition which would work under the Federal Orders. So in  
25 fact, it would be under both, it's just they are actually

1 asking for a different provision.

2 JUDGE CLIFTON: Okay. Ms. Hancock, let me hear from you  
3 then I'm going to ask Mr. English to ask his question again.

4 MS. HANCOCK: Your Honor, we have made clear as this  
5 witness has testified, he's here to talk about the legislative  
6 history. He's already said he does haven't any experience or  
7 knowledge about Federal Orders. We will have a witness that  
8 will put in our language. We will also have our  
9 producer-handlers that will testify about how it works for them  
10 and what they are proposing. But I think trying to trap him  
11 into some language or some admissions about how it would work  
12 in a Federal Order system, when he's already said he doesn't  
13 have any experience or knowledge about that, is outside the  
14 bounds of his testimony, and it's not reflective of the  
15 positions he's here to talk about.

16 JUDGE CLIFTON: Thank you, Ms. Hancock. Anyone who  
17 testifies here has two opportunities. The first is to share  
18 what they know and the second is to learn something new.

19 I have no objection to any questioner of a witness  
20 making the witness aware of certain things and asking their  
21 opinion about it, but I'm not sure, Mr. English, the way you  
22 asked your question, I'm not sure that it -- I would like to  
23 you start again.

24 MR. ENGLISH: I will certainly rephrase it and go back, but  
25 your Honor, I'm presented with two problems not of my making.

1 First, the witness said, "I'm hear today to testify in support  
2 of," I'm sorry, "I'm here to testify in support of California  
3 Producer Handlers Association Proposal 3." So that's what he's  
4 here to testify about. He didn't say, "I'm here to give you  
5 legislative history." If he said, "I was here to give you  
6 legislative history," and hadn't said, "I'm here to support  
7 Proposal 3," then Ms. Hancock might be right. But she didn't  
8 do that.

9 Number two, I am faced with the problem that I don't  
10 have the actual language of Proposal 3 in front of me. So  
11 that's not my fault, and it's a result of a drive-by witness  
12 which we have agreed to allow to come in early.

13 JUDGE CLIFTON: A drive-by witness?

14 MR. ENGLISH: Well, I can't say parachute because he drove.

15 MS. HANCOCK: I guess first off, I'm not entirely sure how  
16 we have kind of taken what feels like a little bit more of a  
17 hostile approach.

18 This would have been our first witness whether we went  
19 now or whether we went tomorrow, it is just that Mr. English  
20 has been telling us that we would be putting our case on since  
21 Friday of last week, and so we asked him, we also told him that  
22 if it didn't work out we would be happy to accommodate all of  
23 his requests. So he's not at all disadvantaged by the fact  
24 that Mr. Gonsalves has been our first witness. Our position  
25 hasn't changed. Unfortunately, we can only put on one witness

1 at a time, and so you have to eek out the information. We  
2 certainly haven't had the benefits of all of Mr. English's  
3 testimony, but that doesn't mean that one witness then becomes  
4 the voice for the entirety of the case.

5 As his witnesses have done, they have limited what they  
6 were testifying to. Mr. Blaufuss said specifically he would  
7 not be talking about quota, that would come with the later  
8 witness. In this case, this witness is here to talk about  
9 legislative history that supports our proposal, but he's not  
10 here to be the entirety of our case.

11 JUDGE CLIFTON: So do you want -- do you want to hear from  
12 this witness that he's not here to talk about quota and he's  
13 not here to talk about exempt quota? You don't want to hear  
14 that from this witness?

15 MS. HANCOCK: I didn't say that. I'm not sure what --

16 JUDGE CLIFTON: Okay. All right. Thank you. Mr. English,  
17 you may resume.

18 BY MR. ENGLISH:

19 Q. Thank you, your Honor.

20 So I believe where I was trying to go is that thinking  
21 about the existing provision in Federal Orders and the  
22 provision that would be in this Federal Order separate and  
23 apart from whatever language we have yet to see on Proposal 3,  
24 do you understand that producer-handlers, in addition to not  
25 being permitted to sell more than 3 million pounds of Class 1

1 milk to include not to lose their exemption, that they cannot  
2 purchase more than 150,000 pounds from outside their  
3 operations?

4 JUDGE CLIFTON: And in, in that phrase, Mr. English, you  
5 are using producer-handlers in the existing Federal Milk  
6 Marketing Orders; is that correct?

7 MR. ENGLISH: Yes and no, your Honor. And here -- okay.  
8 Let me ask it another different way.

9 JUDGE CLIFTON: Okay.

10 BY MR. ENGLISH:

11 Q. On page 1 of your testimony, Mr. Gonsalves -- this is  
12 where I got there, your Honor, from his own testimony. On  
13 Page 1 you have emphasized that because of some interchangeable  
14 terms, producer-handlers or producer-distributors, you were  
15 trying to clarify and speak about entities that you called  
16 exempt quota holders, correct?

17 A. I was referring to how producer-handlers and  
18 producer-distributors had been recognized in the California  
19 legislature in analyses and in statute.

20 Q. Okay. But for purposes of this testimony, because you  
21 understand that there's this other thing under producer, under  
22 Federal Orders, and as proposed in the California Federal Order  
23 in Proposals 1 and 2, called producer-handlers, isn't that why  
24 you, for clarity, tried to use the term exempt quota holders?

25 A. I think, Mr. English, I tried to make it fairly clear

1 the last time when I made a cute statement about "I don't lobby  
2 foreign governments," that I'm not an expert on the Federal  
3 Order, and it would be very difficult for me to be answering  
4 questions on that.

5 If you would like to ask me questions about California  
6 legislative history and the statutes, I think I could be of  
7 some benefit to you there.

8 Q. Okay. Well, let me -- I had actually gotten a clear  
9 answer from you, that you said you did understand that under  
10 the Federal Orders producer-handlers could not sell more than  
11 3 million pounds of Class 1. You already answered that  
12 question; is that correct?

13 A. That is correct. I understand that is --

14 Q. Thank you.

15 JUDGE CLIFTON: However, Mr. English, Mr. Gonsalves added  
16 that, under consideration here is a Federal Milk Marketing  
17 Order that has not yet been promulgated, and that he's holding  
18 out the possibility that it might having some different in it.

19 MR. ENGLISH: And I understand that, your Honor, I'm trying  
20 to draw some distinctions, if I can.

21 JUDGE CLIFTON: Okay. Go ahead and do what you are going  
22 to do next.

23 MR. ENGLISH: Okay.

24 BY MR. ENGLISH:

25 Q. You represent a group of people who have a treatment

1 under the California system for something called exempt quota,  
2 correct?

3 A. Correct.

4 Q. Okay. Now, do your clients purchase, do any one or  
5 more, can you tell us whether any one or more of them purchase  
6 more than 150,000 pounds of milk from sources other than their  
7 own farms?

8 A. I don't know the answer to that.

9 Q. Okay. Fine. Do you understand that today, and in  
10 Proposals 1 and 2 as written for this California Federal Milk  
11 Order, there is no provision for a treatment of something like  
12 exempt quota?

13 A. That is my understanding.

14 Q. And if Proposal 3, as written in the Federal Register,  
15 if the language that we see, that we haven't seen yet, allows  
16 for the removal of the degree of family consanguinity, does  
17 that also mean that the exempt quota that exists today in  
18 California would be allowed for free trans -- basically  
19 transfer to other persons?

20 A. Not having seen the language --

21 MS. HANCOCK: Hold on one second.

22 JUDGE CLIFTON: Ms. Hancock?

23 MS. HANCOCK: Nicole Hancock. And I'll represent for the  
24 record, we put this in our proposal, in our amended proposal,  
25 we are not asking for any kind of modification to the tables of



1 consanguinity. We understand, at the time that I wrote the  
2 initial proposal, I didn't have a full understanding of how the  
3 Federal Milk Marketing proposals would work in conjunction with  
4 the state statute. Once I had a chance to dive in deeper on  
5 that, I understand that it wouldn't, it wouldn't supersede  
6 that, and so the state limitations on the consanguinity  
7 requirements would remain in place. So we're not at all going  
8 to be proposing in this matter any kind of amendment or  
9 modification to the Tables of Consanguinity.

10 JUDGE CLIFTON: Okay. So Ms. Hancock, don't leave. So if  
11 I'm looking at language in the Federal Register on Exhibit 1,  
12 page 47235, that says, "CPA also proposes to remove the degrees  
13 of family consanguinity as it pertains to the ownership of  
14 exempt quota, to allow for the continuation of exempt quota  
15 transfers within a family." Should I consider that stricken?

16 MS. HANCOCK: If that's the appropriate mechanism, stricken  
17 or withdrawn, whatever the mechanism is to take that off the  
18 table for purposes of this hearing.

19 JUDGE CLIFTON: Okay.

20 MS. HANCOCK: And I had footnoted that into our amendment,  
21 and I probably should have made it clear before now, but it's  
22 not something that we are pursuing in this hearing.

23 JUDGE CLIFTON: Okay. That's helpful. Thank you very  
24 much.

25 MR. ENGLISH: Thank you, this is Chip English, thank you,

1 Ms. Hancock, that is very helpful.

2 BY MR. ENGLISH:

3 Q. Now, notwithstanding that, and with your vast  
4 experience in California legislature, there is certainly  
5 nothing that would prevent the legislature from changing those  
6 provisions in the future, correct?

7 A. That's correct.

8 Q. Okay. Now, you reference in your testimony the history  
9 of how exempt quota started and how there were some expansions.  
10 Isn't it the case that since 1995 there have been some efforts  
11 by the California Producer Handlers to further expand their  
12 ability to grow exempt quota?

13 A. There was one bill that was amended to include a  
14 provision to allow for the expansion for the producer-handlers.  
15 The bill was amended in Senate Appropriations Committee and  
16 passed that committee. The bill then went to the floor of the  
17 Senate and the bill passed the floor of the Senate to the  
18 Assembly. The author of the bill decided that he wanted to  
19 change course and amended the bill before it was ever heard in  
20 a policy committee in the Assembly, so there was no vote taken  
21 on the producer-handler in the Assembly exemption.

22 Q. So for clarity in the record, when was that?

23 A. What year?

24 Q. Yes, what year?

25 A. I don't have that with me.

1 Q. Okay. And going back to the question I just asked  
2 about consanguinity. In your experience with the California  
3 legislature, is there anything to prevent the California  
4 legislature in the future from amending the provision to allow  
5 exempt quota to be larger?

6 A. I would say that there, it is possible, but difficult.

7 Q. But nothing prevents your clients, after Federal Order  
8 is adopted, if one's adopted, from going to the California  
9 legislature to make that request, right?

10 A. That's correct.

11 Q. You referenced 49 exempt producer-handler, sorry,  
12 exempt quota holders back in 1967, and then I guess it got down  
13 to 6 by 1993; is that correct?

14 A. I don't know if that's correct.

15 Q. All right. In the interim, between 1967 and 1978, up  
16 through 1978, exempt quota holders were free to buy additional  
17 quota and exempt quota to grow their exempt quota?

18 A. I don't know the answer to that.

19 Q. Didn't you --

20 A. Oh, you mean in the amendment in 1978?

21 Q. Yes.

22 A. Yes, they were allowed to buy additional exempt quota,  
23 I'm sorry.

24 Q. Okay. And do you think whether they bought any of  
25 that quota from some of those 49 businesses who are not in

1 business today?

2 A. I do not know the answer to that.

3 Q. Going to page 3 of your testimony.

4 A. Okay.

5 Q. And on the bottom paragraph you used the term "covenant  
6 Class 1 contracts". And I may have missed something in this 34  
7 days of hearing, but I don't think I have heard a definition of  
8 covenant Class 1 contracts. Do you know what that definition  
9 was?

10 A. That was a term my father used.

11 Q. But I got to be careful about asking about that.

12 JUDGE CLIFTON: Go ahead.

13 MR. GONSALVES: He used to tell the story about the  
14 representative from the creamery coming to the dairy farm  
15 before Milk Pooling, and having to have a case of his favorite  
16 case of booze or stock with his trunk full of meat to be able  
17 to keep his Class 1 contracts, and I think that's why he  
18 referred to that.

19 MR. ENGLISH: Your Honor, I object to my previous question.

20 BY MR. ENGLISH:

21 Q. I guess what I'm really getting at there, you have the  
22 sentence, "Specifically because of simple revenue pooling  
23 system as used in the Federal Milk Marketing Order system,  
24 would impose losses on farmers who held covenant Class I  
25 contracts, the Gonsalves Milk Pooling Act established the

1 alternative quota system."

2 And I understand, again, that you have limited  
3 knowledge or no knowledge about Federal Milk Orders, but to the  
4 extent when a Federal Order went into effect, if what it did  
5 was establish a system of pooling of revenues that didn't exist  
6 before that, wouldn't that have also taken from Federal Order  
7 producers who had the privilege of selling to Class 1 plants,  
8 those revenues to share with other producers?

9 A. Prior to the Milk Pooling Act?

10 Q. I'm drawing a distinct, yes, I'm drawing a parallel  
11 between price to the Milk Pooling Act, how is that different  
12 from prior to a Federal Order, if you accept with me the  
13 proposition that a Federal Order adoption meant that producers  
14 who sold to Class 1 plants and had the privilege of a higher  
15 price, then had that money shared with the other order  
16 producers.

17 A. Prior to Milk Pooling, the dairy farmer was at the  
18 mercy of the creamery. They may have had Class 1 contracts,  
19 and 30 days later they did not. They were going to get paid a  
20 different amount. So the quota system was put in place so that  
21 they would have a guarantee for their milk that they produced,  
22 whether it was Class 1 or Class 4, or whatever the class was,  
23 they would have, they would know what they were going to  
24 receive each month from the creamery.

25 Q. So if the record in this hearing and the history of

1 Federal Orders were to demonstrate that that identical  
2 situation existed in Federal Orders and that nonetheless  
3 pooling and pricing came along, how is what California did  
4 different in spirit than what the Federal Orders did?

5 A. I think the difference is the dairy farmers had quota,  
6 and that quota had a value, and that quota could be sold. And  
7 they had a guarantee that their milk would be shipped and taken  
8 by the creameries.

9 Q. And didn't Federal Order producers who had whatever  
10 revenue stream before a Federal Order, didn't the Federal Order  
11 effectively impose losses on those producers when the Federal  
12 Order came in and established no quota for them?

13 A. I do not know.

14 Q. Fine. On page 4, on the carry over paragraph, eight  
15 lines down, well, seven lines down, you say, "exempt quota  
16 holders were vertically integrated farmers with simultaneous  
17 ownership of both production and processing facilities."

18 Do you see that sentence?

19 A. Yes.

20 Q. Does that mean in that sentence that all the production  
21 they had went to the processing facility?

22 A. I believe that is the case. When the Gonsalves Milk  
23 Pooling Act was enacted, again, my father exempted them because  
24 they had their own dairy farms, they had their own processing  
25 plant, and they went out and got their own sales. They did not

1 need protection from themselves and they did not need to share  
2 in the pool for their own products.

3 Q. And turning the question on its head. Did the  
4 processing facilities buy only the from the production of the  
5 farms?

6 A. Back in 1968?

7 Q. Yes.

8 A. I believe because of the definition at that time there  
9 may or may not have been some dairy farmers that were selling  
10 their milk to these processors, but that milk would not be  
11 included in the exempt quota.

12 Q. And so going back to my question a few moment ago, do  
13 you know whether that has changed, whether today the processing  
14 facilities are buying other milk that's not subject to the  
15 exempt quota?

16 A. I believe that several of the producer-handlers are  
17 buying milk from other dairy farmers and they are treated the  
18 same in the quota system.

19 Q. That is to say for that milk they have to share, they  
20 actually have to pay the pool and share that money with the --

21 A. That's correct.

22 Q. -- producers. We're going to turn for a couple  
23 minutes, I'm going to flip back and forth, we're going to turn  
24 for a couple minutes to Exhibit 151. And you included as the  
25 last part of C-5, page, a page, well, I guess it is an entire

1 document, so it's, you included from the unfinished business,  
2 pages 1 through 4.

3 A. Mr. English, what am I looking for?

4 Q. You are looking for C-5.

5 A. C-5.

6 Q. Can you tell us what C-5 is, please?

7 A. Unfinished business is the Senate floor analysis  
8 essentially. It is done by the Senate Rules Committee, as you  
9 can see the Office of Senate floor Analysis.

10 Q. Okay. So this basically has an analysis of the  
11 legislation and then it has a list --

12 A. And what it means by unfinished business, it means that  
13 it has gone through the entire legislative process. It is back  
14 for concurrence only. And if passed, it goes before the  
15 Governor for his approval.

16 Q. Were you involved in this particular piece of  
17 legislation?

18 A. Yes.

19 Q. And were you involved when this unfinished business  
20 document was published?

21 A. Yes.

22 Q. Okay. At the very end of the report there's a  
23 discussion about arguments and opposition, and referencing  
24 Consumers's Union. We have had a lot of testimony in this  
25 proceeding and we haven't heard from Consumers, but do you



1 recall in your active involvement, the Consumers Union  
2 objected?

3 A. That's correct.

4 Q. Okay. And looking at the very last two sentences, was  
5 part of their objection that the quota system imposed  
6 additional costs on consumers?

7 A. Because of the \$1.70 differential --

8 Q. Yes.

9 A. -- price, they were concerned that it was going to cost  
10 the consumers more money.

11 Q. Thank you.

12 A. And the bill had a sunset, and that's why the Cannella  
13 Bill had to be introduced, because the Department and the  
14 Governor wanted to see what the results were going to be, and  
15 so they did a short sunset on this bill. And finding that  
16 there wasn't a big spike in cost to the consumers, the Cannella  
17 Bill was passed and we moved the sunset.

18 Q. Now, turning to E-6.

19 A. E?

20 Q. As in English. I believe it is a two-page document.

21 A. That's correct.

22 Q. And this was your firm's opposition to Senate Bill 105?

23 A. Correct.

24 Q. Okay. And do you recall this document?

25 A. I do.

1 Q. Okay. So let me turn to the second page. And first of  
2 all, did Senate Bill 105 pass?

3 A. Senate Bill 105, which this document is referring to,  
4 in opposition to the members of the Senate floor received only  
5 10 aye votes.

6 Q. But my question was did it pass? Did it pass?

7 A. Well, the bill passed after the language was removed  
8 that harmed the Producer Handlers Association.

9 Q. Okay. Thank you. So let's look at Exhibit 1 for a  
10 moment, because the language I think you just said, that got  
11 removed would have altered the current law, correct?

12 A. Correct.

13 Q. So does that mean that example 1 stayed the current law  
14 when the bill was ultimately passed without the piece of  
15 legislation that you said harmed the Producer Handlers  
16 Association?

17 A. The bill was introduced to roll back the exemption on  
18 quota for the producer-handlers. That portion of the bill was  
19 defeated on the floor of the Senate. After a meeting with the  
20 dairy producers, there was a compromise to put in a date that  
21 allowed the additional quota that the producer-handlers had  
22 already purchased from the McCorquodale Bill and the Cannella  
23 Bill to stand. And that was an agreement, and that agreement  
24 then, was put into the Kelley Bill, and that's when the  
25 Kelley Bill passed.

1 Q. All right. I'm sorry I'm struggling through this. I'm  
2 trying to understand, did the legislation that year, in the  
3 end, alter your little Example 1 chart?

4 A. In the Example 1 chart, that is current law that we  
5 were pointing out and how that affected them, and if the bill  
6 was to pass, it would have altered that --

7 Q. So --

8 A. -- from their -- from their purchase of the additional  
9 exempt quota that they purchased.

10 Q. Okay.

11 A. Example 3 shows what the bill was going to do.

12 Q. Yeah, and I'm not interested in what the bill was  
13 trying to do.

14 A. Well, you asked if it passed, so I was trying to give  
15 you an example how it passed and how it did not pass. To say a  
16 bill was introduced and did that bill pass and amendments  
17 follow --

18 Q. I am, sir, I'm trying to get at what change, if any,  
19 since you said Example 1 was current law, correct?

20 A. That's correct.

21 Q. Okay. After the legislation was passed, when it was  
22 all done, the next year, what, if anything, changed in  
23 Example 1?

24 A. The only thing that changed was they were not allowed  
25 to purchase additional exempt quota.

1 Q. Okay. But nonetheless, the chart as you show it, to  
2 the extent they had exempt quota, had not changed; is that  
3 correct?

4 A. That's correct.

5 Q. All right. Now, in your chart you show the PD, I  
6 assume that means producer-distributor, correct?

7 A. Correct.

8 Q. Pays, and there's an example of a Class 1 of \$13.64.  
9 And you're showing an arrow from the plant pays to the state,  
10 and then you are showing an arrow from the state to the  
11 producer-distributor farm. Correct? That's what you show?

12 A. That's what it shows.

13 Q. Okay. Did the money actually flow from the  
14 producer-distributor plant to the state, and from the state to  
15 the producer-distributor farm, or was it an accounting  
16 mechanism that where the state wasn't involved in the actual  
17 flow of funds?

18 A. It is a generally an accounting mechanism.

19 Q. So it might have been the kind of thing we do when we  
20 are trying to show people in this complex world how it works,  
21 but it wasn't that the actual money flowed, correct?

22 A. That's correct.

23 Q. Thank you. Now, to the extent you say the  
24 producer-distributor farm receives the \$13.64, that is not  
25 audited by CDFA, correct?

1 A. I don't know.

2 Q. Okay. So on page 5 of your testimony now, back to  
3 Exhibit 150 --

4 JUDGE CLIFTON: May I interject, Mr. English? For the  
5 court reporter typing the transcript, you have had three  
6 spellings that I would like for you to highlight for us,  
7 beginning after Mr. English took you to Exhibit E-6.

8 MR. GONSALVES: Okay.

9 JUDGE CLIFTON: So the first one was McCorquodale.

10 MR. GONSALVES: Yes.

11 JUDGE CLIFTON: And so would you just spell that from your  
12 letter?

13 MR. GONSALVES: M-C, C-O-R-Q-U-O-D-A-L-E.

14 JUDGE CLIFTON: And then the next one was Cannella, if you  
15 would spell that.

16 MR. GONSALVES: C-A-N-N-E-L-L-A.

17 JUDGE CLIFTON: And then the next one was Kelley.

18 MR. GONSALVES: K-E-L-L-E-Y.

19 JUDGE CLIFTON: And then you also referred, I believe, to  
20 Cannella when you were talking earlier with Mr. English about  
21 C-5, and you were talking about the concern about more cost to  
22 consumers, and there was a sunset provision, and it was taken  
23 away when the price to consumers did not increase. What bill  
24 was it that took away the sunset provision?

25 MR. GONSALVES: The first bill that passed was

1 Senator McCorquodale's Bill, SB 688. That bill had a provision  
2 with a sunset clause. Following the McCorquodale Bill was  
3 AB 1285, Cannella, which made some adjustments to that bill,  
4 but also removed the sunset clause.

5 JUDGE CLIFTON: Thank you. All right. Mr. English, back  
6 to where you were going.

7 MR. ENGLISH: Thank you. And thank you for doing that,  
8 your Honor.

9 BY MR. ENGLISH:

10 Q. So now I'm back on Exhibit 150, page 5 for a few  
11 minutes.

12 A. Okay.

13 Q. And under item 2, exempt quota provisions, in that  
14 paragraph, the third sentence, which is the last sentence, you  
15 say, "For milk falling within exempt quota, the exempt quota  
16 holders pay their farm business units the Class 1 price."  
17 That's what you say, correct?

18 A. Correct.

19 Q. Okay. If that, if you don't know whether that is  
20 audited, how do you know that statement to be true?

21 A. I don't know for sure whether or not the state audits  
22 them on a regular basis.

23 Q. Do you know whether the state audits them at all for  
24 that particular issue?

25 A. No.

1 Q. Okay. So turning a little lower in that page you are  
2 talking about, and I think we have talked a little bit about  
3 the changes and how exempt quota holders, as you say, would  
4 have to share new Class 1 sales with the pool, and that, as you  
5 say, that meant that although they sold Class 1 milk, they  
6 would receive a blend price for that milk. Your next sentence  
7 is, "that was part of the sacrifice that exempt quotas had to  
8 make in conceding to the Gonsalves Milk Pooling Act." So what  
9 exactly is the sacrifice that they had to make?

10 A. Well, in instead of receiving the Class 1 price for  
11 their fluid milk, they would get a blend price.

12 Q. Okay. And do you understand that to the extent Federal  
13 Orders, when they came in and there were producers who were  
14 getting a Class 1 price had to share that with the pool, that  
15 that also happened to Federal Order producers, they had to  
16 share that blend price?

17 A. I don't know that.

18 Q. Now, your last sentence on that page is, "by accepting  
19 the volume of exempt quota assigned to them, they gave up the  
20 opportunity for the higher sales." Is that --

21 A. That's correct.

22 Q. Okay. So does that mean that as a result of that, they  
23 didn't grow?

24 A. I would say as a result of that, we only have four  
25 left.

1 Q. Okay. And do you know whether those, if any of those  
2 four have grown since that time?

3 A. I believe they all have.

4 Q. Okay.

5 A. But they have also had two pieces of legislation that  
6 allowed them to buy more exempt quota.

7 Q. Well, let me turn, then, to your last, very last page  
8 of Exhibit 151, which is Exhibit A, E-8, and it is a one-page  
9 document. And first, in looking through your testimony and the  
10 relationship to that, it looks like from page 11 of page 150,  
11 in the footnote that is listed as producer-distributor outline,  
12 dated 1995. So was this a document that your firm produced as  
13 part of its talking points or discussion points for discussing  
14 legislation?

15 A. I believe this was produced by the legislature.

16 Q. Oh, this is the legislature that produced this?

17 A. I believe this was part of another document, actually.

18 Q. I mean --

19 A. That the front page must have --

20 Q. If you look at the last paragraph, it looks more  
21 argumentative to me than something the legislature would  
22 produce, because it says, "Why should the PD's have to share  
23 their hard working Class 1 sales?" I mean, that sounds to me  
24 like something your firm might have used to argue why a  
25 provision should or shouldn't be adopted.



1 JUDGE CLIFTON: Let me interrupt for just a minute. Is it  
2 possible that Mr. Gonsalves is right, that this is page 2 of a  
3 two-page document? Down at the bottom it shows total page 2.

4 MR. VU: We will have to double check that.

5 JUDGE CLIFTON: Very good. If it turns out that there was  
6 another page that would help identify the source of it, we'll  
7 add it. Okay. Go ahead.

8 BY MR. ENGLISH:

9 Q. Looking at this, do you recognize this document, sir?

10 A. I do recognize the document, and I believe there is a  
11 cover page to this. And I don't, I don't have it in the  
12 documentation, it may have got lost.

13 Q. Well, you have produced this document from your  
14 records, correct?

15 A. Correct.

16 Q. Okay. And when you see the statement at the bottom,  
17 this raises a good question, "why should the PD's have to share  
18 their hard working Class 1 sales," isn't that the kind of  
19 statement you would have made in terms of arguing in favor of  
20 your clients?

21 A. That is a discuss point that has been in the California  
22 legislature since the inception of the Gonsalves Milk Pooling  
23 Act and has been often written, not just by our firm, but also  
24 by legislative analysts and others.

25 Q. Okay. So you believe this could be a legislative

1 analyst issue?

2 A. It could be a follow up on a Senate Ag Committee  
3 document or it could be legislative analyst, but that is an  
4 argument that's been before the California legislature on when  
5 they milk their own cows, they have their on processing plant,  
6 and they go out and get their own sales, why do they have to  
7 share in that?

8 Q. Okay. So let's go up a little bit. The second  
9 paragraph there's the statement, "in 1978, the PD's only  
10 represented 3.96 percent of the total Class 1 sales in  
11 California." Do you see that?

12 A. Yes.

13 Q. Does that resonate with you as having been correct at  
14 the time?

15 A. Yes.

16 Q. The next statement is, "to date, they even represent  
17 less than 3.64 percent." Is that correct?

18 A. That's correct.

19 Q. Does that resonate with you?

20 A. Yes.

21 Q. Okay.

22 A. And those were figures that were given by the  
23 Department of Food and Ag.

24 Q. Sure. And then it's followed with what one might call  
25 a rhetorical question, but nonetheless, it says, "How much of

1 an impact could they have with this small percentage?"

2 Do you see that?

3 A. That's correct.

4 Q. Okay. Do you know what percentage the  
5 producer-distributors have of the Class 1 market today?

6 A. I do not.

7 Q. Okay. Do you know that there's testimony in this  
8 hearing that it is 24 percent?

9 A. I do not.

10 MS. HANCOCK: Your Honor, I would object, that  
11 misrepresents --

12 JUDGE CLIFTON: Come to the microphone, please,  
13 Ms. Hancock, and start again.

14 MS. HANCOCK: I object on the grounds I think it  
15 misrepresents what the comparison is today.

16 JUDGE CLIFTON: All right. Thank you. Your objection is  
17 noted.

18 MR. ENGLISH: I would note that Mr. Blaufuss testified that  
19 he did a calculation that it was 24 percent of the total  
20 Class 1 sales.

21 MR. GONSALVES: And these calculations came from the  
22 California Milk Pooling Branch.

23 BY MR. ENGLISH:

24 Q. Well, and Mr. Blaufuss' came from the compilation of  
25 the CDFA as well, sir. So let me ask you this, having studied

1 California, do you also know that the overall sales of Class 1  
2 have gone down in California, especially in the last decade?

3 A. I do not know that.

4 Q. Okay. I have no further questions for this witness.

5 JUDGE CLIFTON: Who next would ask questions of  
6 Mr. Gonsalves? Mr. Beshore?

7 CROSS-EXAMINATION

8 BY MR. BESHORE:

9 Q. Marvin Beshore. I have just one question,  
10 Mr. Gonsalves. On page 11 of Exhibit 150, your testimony, in  
11 the conclusion there's a sentence, the first paragraph of the  
12 conclusion, "out-of-state milk was not subject to the pool in  
13 exchange for not receiving the benefits of the quota system."  
14 I don't recall, and help me because maybe I missed it, any  
15 prior observations in your recitation of the legislative  
16 history, discussion of out-of-state milk, or I don't recall  
17 seeing any references to that in Exhibit 151. Are there, can  
18 you point me to some?

19 A. I don't believe there is any reference to out-of-state  
20 milk there. I believe it was a federal court case.

21 Q. Okay. I just wondered why --

22 A. It wasn't part of legislative history.

23 Q. I just wondered then, why that observation, or what is  
24 the basis for that statement in your conclusion?

25 A. Well, the basis in my conclusion is that the quota

1 system in California, although it's been somewhat flawed  
2 sometimes, has worked very well. And if we're going to go to a  
3 Federal Order, those who have purchased quota, those who have  
4 exempt quota, and those because of the federal ruling, ought to  
5 be considered.

6 Q. Okay. I'm just -- I'm just limiting my focus here to  
7 the out-of-state. I'm just wondering why the observation to,  
8 about out-of-state milk was included in your, the conclusion of  
9 your testimony here, when I didn't see it anywhere in the  
10 anything that came before it.

11 A. I did not bring legislation that I believe failed  
12 passage that was trying to limit out-of-state milk coming into  
13 California.

14 Q. Okay. Did Ms. Hancock's law firm, Stoel Rives,  
15 represents out-of-state producers, are you also here on behalf  
16 of out-of-state producers?

17 A. I'm here on behalf the California producer-handlers.

18 Q. And that group only?

19 A. Yes.

20 Q. Okay. Thank you very much.

21 A. Thank you.

22 JUDGE CLIFTON: Who next has questions for Mr. Gonsalves?

23 MR. RICHMOND: Bill Richmond, USDA. We don't have any  
24 questions, Mr. Gonsalves. We just want to express our  
25 gratitude for the legislative history. It really helps our

1 understanding of the program, so thank you for that.

2 MR. GONSALVES: Thank you very much.

3 JUDGE CLIFTON: Mr. Gonsalves, is there anything you would  
4 like to add now so we will have a full understanding?

5 MR. GONSALVES: Well, my father cared deeply about the  
6 dairy industry, being a former farmer, his father a farmer, his  
7 brothers were farmers, they went through tough times in the  
8 '40's, '50's, and '60's, and he truly wanted to set up a  
9 program so that dairy farmers would have the opportunity to  
10 invest money and have security and get a decent payment back so  
11 they could stay in business. And so when you take in your  
12 consideration of all the testimony, I hope you take into  
13 consideration the quota system. Thank you.

14 JUDGE CLIFTON: Mr. Gonsalves, we're honored that you came,  
15 and I thank you. And I'm very glad that we were able to have  
16 you testify while you were here this trip so that you did not  
17 have to stop again. And Mr. English, I'm very grateful for  
18 that, thank you.

19 MR. GONSALVES: Thank you again, Mr. English.

20 MR. ENGLISH: Your Honor, at about 5:00 a.m. this morning I  
21 said that I had fond hopes of getting one of my witnesses back  
22 on at noon, and I expressed concern that it might not happen,  
23 and so I thank Ms. Hancock, it is now 11:58, and I call  
24 Mr. Blaufuss back to the stand to discuss Exhibits 147 and 148.  
25 Which means, remember that little optimistic forecast I had

1 this morning, I'm feeling some optimism.

2 JUDGE CLIFTON: Mr. Blaufuss, you remain sworn. I would  
3 like you again to state and spell your name.

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

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

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

7 CONTINUED DIRECT EXAMINATION

8 BY MR. ENGLISH:

9 Q. So we were sort of rushing last night to fill seven  
10 minutes, so I want to backtrack a little bit now.

11 So looking at Exhibit 147, which is your testimony. On  
12 the bottom of page 1, through a combination of production  
13 errors and either too many or a few eyes on this, you reference  
14 a fluid milk standards, FDA standard minimum level at the very  
15 bottom left hand, of 8.7 percent.

16 Do you see that?

17 A. I do.

18 Q. So is the -- as opposed to what, as someone phrased to  
19 me yesterday, what God had the cow produce, what is the FDA  
20 standard of identity for milk?

21 A. 8.25.

22 Q. 8.25 percent, correct?

23 A. Correct.

24 Q. Okay. Nonetheless, the statement at the end where you  
25 say "the California base fluid milk standards are set at 8.7

1 percent," that's correct?

2 A. That's correct, that's a California standard flow.

3 Q. And as it turns out, because milk from the cow  
4 actually, especially in California, would it average at least  
5 8.7 percent?

6 A. Yeah, it would be north of that, yes.

7 Q. Okay. So you don't have to standardize or that is to  
8 say, fortify whole milk in California, correct?

9 A. Correct. Typically the standards are high enough where  
10 you don't fortify whole or skimmed milk.

11 Q. So the correction that we put on the bottom of  
12 Page 1, and I guess, your Honor, we would like Exhibit 1 to  
13 modify, I'm sorry, Exhibit 147, not Exhibit 1, we're not trying  
14 to modify Exhibit 1, please -- Exhibit 147, page 1, the  
15 reference at the bottom line to the FDA standard of identity of  
16 8.7 percent we would ask to be modified to be 8.25 percent.

17 JUDGE CLIFTON: Ms. Frisius, are you there? The first, the  
18 first content on the very last line of page 1. All right. So  
19 we're striking 8.7 percent and inserting 8.25 percent.

20 BY MR. ENGLISH:

21 Q. Okay. Now, does that change affect in any way your  
22 calculations and tables in Exhibit 148?

23 A. No.

24 Q. Okay. On page 2, I believe when you read the  
25 testimony, and I agreed with it, the bottom paragraph, the very



1 first line you read, "at the onset of the initial discussion  
2 around the possibility of a California Federal Order hearing.  
3 We would insert the word "a" between "of" and "California",  
4 your Honor, and that's how he read it.

5 JUDGE CLIFTON: Ms. Frisius, are you there?

6 MR. ENGLISH: Page 2, the bottom paragraph, the line that  
7 says, "at the onset of the initial discussion around the  
8 possibility of," that's first line.

9 JUDGE CLIFTON: All right. Done.

10 MR. ENGLISH: And then I think he inserted 148 a couple of  
11 times, and I think she actually did that as we went long on  
12 pages 3 and 4.

13 MS. FRISIUS: Yes.

14 MR. ENGLISH: And on 5 there's a, there is also 148. And,  
15 your Honor, I'm a little hazy in my recollection, it may be  
16 that we actually fixed it on page 5, but the paragraph up from  
17 the bottom that says, "the per gallon cost difference" the next  
18 line said, "three factor Class 1 pricing system compared to the  
19 two factor pricing formula," we struck the word "a" inserted  
20 the word "factor", and I can't remember now, whether we did  
21 that yesterday or not, Ms. Frisius.

22 JUDGE CLIFTON: Yeah, but then we made it different. So  
23 the way it ended for the record copy, it reads, and we're on  
24 page 5, the last full paragraph, second line, the way the  
25 record copy now reads, and I'm going to ask Ms. Frisius to

1 confirm this, but it reads, "compared to a two factor pricing  
2 formula." Is that correct, Ms. Frisius?

3 MS. FRISIUS: Correct.

4 JUDGE CLIFTON: And that was what Mr. Blaufuss asked for.

5 MR. ENGLISH: Thank you for correcting my incorrect  
6 correction.

7 JUDGE CLIFTON: Well, I had corrected it wrongly  
8 originally, so.

9 MR. ENGLISH: Well, I apparently wasn't following along to  
10 the next part.

11 And then a couple lines down where there's a blank  
12 after table, he read "as Table 2 of Exhibit 148," and she's  
13 nodding her head she has that.

14 JUDGE CLIFTON: Yeah, Ms. Frisius has that. Yes.

15 MR. ENGLISH: So that's all I had on Exhibit 147, your  
16 Honor, do you have anything else that we didn't get through  
17 yesterday?

18 JUDGE CLIFTON: Yes, I think we also did this.  
19 Ms. Frisius, with regard to page 6, the first full paragraph,  
20 the fifth line down, I believe we inserted the word "time"  
21 before "jettisoning". Yes. So we did that, Mr. English, and  
22 that's all.

23 MR. ENGLISH: Great.

24 BY MR. ENGLISH:

25 Q. All right. So now turning to Exhibit 148, before I you

1 additional questions, did you have, Mr. Blaufuss, with respect  
2 to an Excel spreadsheet sort of issue, a correction for, a  
3 correction for Tables 3, 5, and 7, for the two factor formula?

4 A. Yes. So there's a label change we need to make.

5 Basically what happened was my Excel spreadsheet didn't match  
6 up with the columns as shown here, so where Columns I, actually  
7 this would be Column I.

8 Q. Okay. So let's start on page 3, let's be as clear as  
9 we can be. We're on page 3 of Table 3, and Column I with the  
10 yellow Pearson Square, 2 percent below that, right? You have  
11 Pearson Square 2 percent in yellow?

12 A. Correct.

13 Q. And Column I and Column J are above that, so you are  
14 going to speak to Column I, correct?

15 A. Correct.

16 Q. So what is the change in the label of Column I?

17 A. So that equation should be  $100 * F - G / F - .335$ . So instead  
18 of the G it should say F, and instead of the H it should say G.

19 Q. Okay.

20 JUDGE CLIFTON: Do you have room, Ms. Frisius, just to  
21 strike the first G and make it an F, and strike the first H and  
22 make it a G?

23 MS. FRISIUS: Yes.

24 JUDGE CLIFTON: Then do you have room to strike the second  
25 G and make it an F?

1 MS. FRISIUS: Uh-huh.

2 JUDGE CLIFTON: Yes.

3 MS. FRISIUS: Yes.

4 JUDGE CLIFTON: Good.

5 BY MR. ENGLISH:

6 Q. Okay. So that same change, Mr. Blaufuss, would need to  
7 be made for Table 3, page 3 and page 4, correct?

8 A. Correct.

9 JUDGE CLIFTON: Table 3?

10 MR. ENGLISH: We were just on Table 3, page 3, but that  
11 table has two pages, your Honor, so on the next page, page 4,  
12 the identical change would need to be made changing the G to F,  
13 the H to G, and the G to F.

14 JUDGE CLIFTON: All right. Good. So we only do it twice.

15 MR. ENGLISH: Well, so far.

16 JUDGE CLIFTON: So far.

17 MR. ENGLISH: That's Table 3.

18 JUDGE CLIFTON: Okay.

19 MR. ENGLISH: Then we need to go to Table 5.

20 JUDGE CLIFTON: Now, let's not go there yet. Ms. Frisius,  
21 let me know when you are ready to move. You're ready?

22 MS. FRISIUS: Yes.

23 JUDGE CLIFTON: Okay. Good. Mr. English?

24 MR. ENGLISH: Page 22 is Table 5, and this is the two  
25 factor formula, and so this is the identical, is this the

1 identical change, Mr. Blaufuss?

2 MR. BLAUFUSS: That's correct.

3 MR. ENGLISH: So again, the G to F?

4 JUDGE CLIFTON: Wait, wait, now, I'm on page 22.

5 MR. ENGLISH: 22, Table 5,

6 JUDGE CLIFTON: Okay.

7 MR. ENGLISH: The difference, your Honor, is merely the  
8 level of the skim. Correct, Mr. Blaufuss?

9 MR. BLAUFUSS: That's correct.

10 MR. ENGLISH: So -- so basically, it's just the very same  
11 label change.

12 JUDGE CLIFTON: Okay. And Ms. Frisius, what's easier for  
13 you, just to copy it from what you have already done or to have  
14 us read it to you again?

15 MS. FRISIUS: It's fine, I will just do it from what I have  
16 already done.

17 JUDGE CLIFTON: All right. She says it's fine, she'll just  
18 do it from what she's already done.

19 MR. ENGLISH: And so for Ms. Frisius' purposes, it is pages  
20 22 and 23 for Table 5, and one more time when we get to  
21 Table 7.

22 JUDGE CLIFTON: All right. So, Ms. Frisius, please alert  
23 us when you are ready.

24 MS. FRISIUS: Okay.

25 JUDGE CLIFTON: She's fast. Mr. English?

1 MR. ENGLISH: Faster than I can get to Table 7.

2 Table 7 is pages 41 and 42, and again, this is for the two  
3 factor formula only, Mr. Blaufuss; is that correct?

4 MR. BLAUFUSS: That is correct.

5 BY MR. ENGLISH:

6 Q. And it's just for the label under Column I; is that  
7 correct?

8 A. That is correct.

9 Q. And the G goes to F, and the H goes to G, and the G  
10 goes to F, correct?

11 A. Correct.

12 Q. You got 'em?

13 MS. FRISIUS: Yeah.

14 MR. ENGLISH: Great.

15 JUDGE CLIFTON: And we only do that twice, pages 41 and 42;  
16 is that correct?

17 MR. ENGLISH: Yes, your Honor.

18 JUDGE CLIFTON: All right.

19 BY MR. ENGLISH:

20 Q. Now, the most important question about those labels,  
21 does that change the results?

22 A. No. When I noticed it, I caught it on the three factor  
23 but didn't on the two. Obviously when I saw the label issue I  
24 had a little bit of anxiety if it was the formula, but it turns  
25 out it was just the column labels, the formulas are accurate.

1 Q. Okay. All right. So now let's sort of revisit, as you  
2 said yesterday, you put the cliff notes at the beginning,  
3 correct?

4 A. That's correct.

5 Q. So let's talk about Table 1. So what, walk us through  
6 Table 1 and we'll walk through one or two of the numbers for  
7 the lines. What exactly is Table 1 showing us?

8 A. So this Table 1 is the data table that was provided to  
9 me by USDA, and these are just the factors used to basically  
10 come to a skim equivalent value for both the fortification  
11 value and the increased volume due to fortification, which  
12 would be priced at Class I.

13 Q. And you say from USDA, did you work with a particular  
14 Market Administrator's office?

15 A. Yeah, it would be the Pacific Northwest.

16 Q. Okay. And so what does, what does the first line, just  
17 walk us through it. I understand that you got it from Pacific  
18 Northwest, the record won't know what that means. Why don't  
19 you just walk you us through the headings and the very first  
20 line.

21 A. So the first column is the percent total solids in the  
22 mixture, and that's just to represent the condensed skim  
23 percentage, which is basically what's going to dictate what  
24 factors you are going to use. So in this case I chose 33 and a  
25 half, which generally reflective of condensed skim, and that's

1 going to, that dictated what I used for, if you go to the last  
2 two columns, the volume factor and the Class IV fortification  
3 factor.

4 Q. So -- so you used, for your calculation purposes, going  
5 down about 30 percent of the way, you used the line over 33.5  
6 but not over 34.5?

7 A. I used over 32 and a half but not over 33.5.

8 Q. All right. And again, USDA generated, Order 124  
9 generated this for you?

10 A. I think it's a standard document that they have. I  
11 don't think the individual Order generated it, I think it is  
12 just a standing document that the Federal Order system abides  
13 by.

14 JUDGE CLIFTON: Do you, Mr. Blaufuss, for the purpose of  
15 this testimony, consider condensed and concentrated as the same  
16 thing?

17 MR. BLAUFUSS: That is my understanding.

18 JUDGE CLIFTON: Okay. All right. Mr. English?

19 BY MR. ENGLISH:

20 Q. Okay. Thank you. So the chart gives you more  
21 information than you needed; is that right?

22 A. Correct.

23 Q. What you needed was the volume factor and the Class IV  
24 fortification factor; is that correct?

25 A. That's correct.



1 Q. Okay. So you needed the volume factor of .0904, and  
2 you needed the Class IV fortification factor of 2.709?

3 A. That's correct.

4 Q. Okay. And where did you take those numbers next?

5 A. Well, they are going to show up, those individual  
6 numbers, so the .904 and the 2.709 will show up in the  
7 individual data tables as the factors to be used in order to  
8 figure out how many pounds of skim equivalent I need to fortify  
9 the fluid milk.

10 Q. So for instance, if we go to page 5, which is the third  
11 page of Table 3, you have an analysis called Costing at Actual  
12 California Skim Test 2 Price Formula, correct?

13 A. Correct.

14 Q. And you just used the numbers that appear in Columns R  
15 and S of that page, correct?

16 A. That's correct.

17 Q. Okay. And so throughout this document, for the back up  
18 for the various tables, that will be the Columns R and S -- or  
19 wherever the -- if it's different, that will be the columns for  
20 that column -- the numbers.

21 A. Yeah, I don't know the column labels, but anytime I  
22 have a volume factor or fortification factor, those will be  
23 consistent regardless if I'm talking two factor or three factor  
24 or any level of skim.

25 Q. Okay. So you tell me if this is the chart you want to

1 use or a different one as the example. Which one do you want  
2 to use as, well, for walking it through?

3 A. Well, let's just do the actual since it is there.

4 Q. Okay. So we'll do actual for January 2010, does that  
5 work for you?

6 A. That's fair.

7 Q. Okay. So we have got the 0.904 and the 2.709 in  
8 Columns R and S, and those come from Table 1, 32 and a half,  
9 over 32 and a half but less than --

10 THE COURT REPORTER: Mr. English, can you do numbers a  
11 little slower, please?

12 MR. ENGLISH: No.

13 THE COURT REPORTER: Thank you. Appreciate that.

14 MR. ENGLISH: All right.

15 JUDGE CLIFTON: And just so people know where this is,  
16 right now we're looking at Exhibit 148, page 5.

17 MR. ENGLISH: And page 1.

18 BY MR. ENGLISH:

19 Q. So just to be clear, we are using in what's Columns R  
20 and S on page 5, the identical information coming from page 1  
21 for volume factor and Class IV fortification factor for over  
22 32.5 but not over 33.5. Correct, Mr. Blaufuss?

23 A. That's correct.

24 Q. Okay. So where does Column T come from, or should we  
25 go look somewhere else first?

1 A. Well, it kind of depends on how much in the weeds you  
2 want to get in the numbers.

3 Q. I think we should do one line for the numbers so the  
4 record has January, let's do January 2010, and run the numbers  
5 so that anybody can either double check us or understand where  
6 they came from.

7 A. Okay.

8 Q. So rather than my trying to go through it, why don't  
9 you tell me how January 2010 works?

10 A. All right. Well, I'll just start from the beginning,  
11 then, on Table 3, on page 3. So obviously column A is just the  
12 month. Column B and C, since I'm using the actual in this  
13 case, are reflective of CDFA data for the actual market milk  
14 for both skim and fat for producer milk. So for January of  
15 2010, the skim percent was 8.86 percent and the fat percent was  
16 3.76 percent.

17 Q. Okay.

18 A. And so the next step was to calculate the percent SNF,  
19 which is the solids nonfat in a hundredweight of farm milk, and  
20 all I did there was 1 minus C, so it is essentially the percent  
21 of skim with the fat taken out, so that came to .9624.

22 Column E is just the percent SNF. So in this case,  
23 Column E on January 2010 is 0886, which is just 8.86 percent.

24 Q. Okay.

25 A. Column F was trying to figure out what the skim SNF

1 test of the market milk is. And what we're doing there is just  
2 dividing column E by column D. And with respect to Columns G  
3 and H, it's essentially trying to figure out what percent skim  
4 do you need to hit once you put fat back in that you are going  
5 to get to representing a 10 percent and 11 percent per the  
6 California solids to meet the fortification standards of the  
7 State of California.

8 Q. So what you mean is that once you have reduced the  
9 butterfat in order to get it down to 2 percent, by definition  
10 you now have less milk, correct?

11 A. Correct.

12 Q. And in addition, you need to fortify to a higher  
13 standard than the cow would have given you anyway, correct?

14 A. Correct.

15 Q. So that is why you have that different percentage,  
16 correct?

17 A. That's correct.

18 Q. Okay. And G is for 2 percent and H is for 1 percent,  
19 correct?

20 A. That's correct.

21 Q. Okay. So what did you do next?

22 A. So the next step was to use a Pearson Square to figure  
23 out, okay, I need this amount of skim, how am I going to divvy  
24 that up between a condensed and just the regular market milk.  
25 And so what the Pearson Square did here was basically tell me

1 in Columns I and J, how many pounds of condensed I need and how  
2 many pounds of milk did I use to get to the level. And I did  
3 it the same, so Columns I and J is using Pearson Square for 2  
4 percent, and K and L is the Pearson Square for 1 percent,  
5 assuming, of course, the condensed skim is 33 and a half  
6 percent solids nonfat.

7 JUDGE CLIFTON: Now, this Pearson Square, P-E-A-R-S-O-N,  
8 Square, is that a formula that's widely used for this kind of  
9 calculation?

10 MR. BLAUFUSS: Well, I use it for this, I use it for other  
11 things, too. You are talking about if you got farm milk coming  
12 in, how many pounds cream generation you can use it for, and  
13 there's different things that it's used for in the dairy  
14 industry.

15 JUDGE CLIFTON: Okay.

16 MR. ENGLISH: Are you the only one who uses it?

17 MR. BLAUFUSS: No. I know I use it, I know the MA staff  
18 who we kind of walked through this with, that's what he also  
19 suggested using, so I believe it's widely used in the industry.

20 BY MR. ENGLISH:

21 Q. All right. So just to be clear, the abbreviation in a  
22 number of these columns, such as Column I and Column K and  
23 column M, COND, would that be condensed?

24 A. That's correct.

25 Q. Okay. So what did you do next?

1       A. So once I moved past the Pearson Square percentage,  
2 really what I'm doing in Columns M and N and O and P, is then  
3 standardizing that product to a 2 percent or 1 percent. So in  
4 the case of Column M, I'm talking Column I times 1 minus .02,  
5 so it's, in this case since I'm looking at 2 percent, .02  
6 represents the fat level. So that's saying I have 98 percent  
7 skim in that product. So it is multiplying Columns I and  
8 Columns J by .98 to make sure that I'm not, I'm using 98 pounds  
9 of skim and I'm using 2 pounds of fat. Whereas in Columns I,  
10 J, K, and L is assuming a hundred pounds, so I need to  
11 standardize that down to reflect that there's fat in that  
12 product ultimately when it goes to the consumer.

13       Q. And you do that similarly for the 1 percent, but using  
14 .01 rather than .02, correct?

15       A. Correct. So the Columns M and N for 2 percent will add  
16 up to 98 pounds, and then for O and P on a 1 percent, the skim  
17 will add up to 99.

18       Q. All right. So we have gotten through Column P, and I  
19 had already jumped ahead, so now on page 5, Column Q is the  
20 month again, and we have already discussed Columns R and S,  
21 correct?

22       A. That's correct.

23       Q. So that brings us to Column T.

24       A. Yes. So columns T, U, V, and W, is just calculating  
25 the skim equivalent based on the factors that we just walked

1 through in Columns R and S, and the amount of condensed in milk  
2 that I'll be using to fortify the product. So for Columns T,  
3 or for Column T, you multiply the volume factor found in Column  
4 R, times the condensed pounds in the product found in Column M.

5 Q. Which were the standardized pounds, correct?

6 A. Correct.

7 Q. Okay.

8 A. And then for the fortification factor I'll be taking  
9 Column S times Column M.

10 Q. And that's for the two percent, so you would do  
11 essentially the same calculation using the applicable columns  
12 for 0 for 1 percent, correct?

13 A. That's correct.

14 Q. Okay. Otherwise the calculation's identical to what  
15 you just discussed, correct?

16 A. Correct.

17 Q. All right. So what are columns, what is Column X?

18 A. Column X is the Class I skim milk price which includes  
19 a \$2.10 hundredweight differential. So all the analysis that I  
20 did, whether I am talking a two factor or three factor, assumes  
21 a 2.10 base differential, so that's already been included in  
22 the numbers.

23 Q. And Column Y?

24 A. Is the Class IV skim cost, which will be used to  
25 calculate the fortification value. So basically, you know, if

1 you want to maybe skip a step ahead to kind of give a broad  
2 overview.

3 Q. Sure.

4 A. Anytime that we're talking the volume factor, you are  
5 going to multiply that by the Class I value, and the  
6 fortification is going to be multiplied by the Class IV value.  
7 Kind of as I walked through in my testimony, you know, the bulk  
8 of the cost is going to be cost to the Class IV because most of  
9 it is allocated to fortification, but since you are fortifying  
10 a product you end up with a higher amount of Class I volume and  
11 that gets allocated on the volume basis.

12 Q. Okay. The displacement? Is that the displacement?

13 A. That's correct.

14 Q. Okay. All right. So now, that was page 6. We would  
15 next turn to page 8; is that correct?

16 A. That's correct.

17 Q. Okay. And Column Z is the month again, correct?

18 A. Correct.

19 Q. All right. So now, we've finished the Alphabet so we  
20 go to double A, correct?

21 A. We do. So the value of fortification is what we're  
22 trying to figure out in Columns AA, AB, AC, and AD. So just  
23 walking through the 2 percent value of fortification  
24 calculation, taking the Column X, which is the per  
25 hundredweight Class I skim milk price, times Column T, which is



1 the pounds of volume skim equivalent divided by a hundred. So  
2 since I'm using a hundredweight price, I need to get the pounds  
3 into a hundredweight level as well so that I'm not  
4 overinflating the value. The fortification value, so the next  
5 column over in AB, I'm taking Column Y, which is the Class IV  
6 skim cost, times Column U, which is the fortification skim  
7 equivalent pounds divided by a hundred.

8 Q. And so that's the 2 percent for AC and AD, Columns AC  
9 and Columns AD, you are doing basically the same calculation  
10 but for 1 percent; is that correct?

11 A. That's correct.

12 Q. Okay.

13 A. And both the Class I skim milk price and Class IV skim  
14 costs are exactly the same, so there's no change in the price.

15 Q. So since AE is another column of months, what happens  
16 in AF?

17 A. So AF is, I'm actually looking at this and trying to  
18 figure out what the value of milk is. So the previous  
19 calculation was saying here's the value of fortification, well,  
20 that's not the only cost, obviously we're paying for the milk  
21 as well. And so in this case I'm valuing the milk at actual  
22 solids contents as we walk through in the first two columns,  
23 and going through and basically multiplying Columns X, which is  
24 the Class I skim milk price, times Column N, which, if I can  
25 remember, basically I'm just going through and looking at the

1 value and calculating this is how many pounds of skim I'll  
2 have, this is how many pounds of fat, and then adding that up  
3 and saying this is the value of milk, which is what Columns AF,  
4 AG, and AH are doing.

5 Q. Okay. And that's for 2 percent, correct?

6 A. That's correct.

7 Q. And for 1 percent it is the identical kind of  
8 calculation in Columns AI, AJ, and AK, correct?

9 A. Correct.

10 Q. All right.

11 A. And again, this assumes a 2.10 differential zone.

12 Q. All right. So, first of all, that basically is how  
13 Table 3 works, correct?

14 A. Correct.

15 Q. And then that's for -- that's for actual California  
16 Skim Test 2 factor. When we go through the rest of the tables,  
17 so Table 4, is the actual California skim test at the  
18 III Class. So that's going to be a little different, so we  
19 need to go through that example as well?

20 A. I don't think we need to go through the first part  
21 because it's identical, the only, obviously, the part that's  
22 going to change is we're not pricing it on a skim and  
23 butterfat, you are pricing it on butterfat solids nonfat in a  
24 fluid carrier.

25 Q. So what you are saying is Table 4, pages 11, 12, 13, 13

1 the first half, are identical, but when we get to the second  
2 half of 13, once we start moving into columns, especially  
3 Columns X, Y, and Z, it is going to change, correct?

4 A. Correct.

5 Q. But up until that point in time, up through Column W,  
6 you are doing it the same way as you have done it, correct?

7 A. Correct.

8 Q. All right. Okay. So why don't we not repeat steps A  
9 through W, and turn to Columns X on page 13.

10 A. Okay. So the Class I skim milk price is being  
11 calculated as it was before. Obviously, where we're different  
12 here is we're splitting that skim value into the solids nonfat  
13 fluid carrier. So as I walk through in page 1, we did make  
14 some revisions to our pricing formula. When we had initially  
15 put in the hearing proposal, we had an SNF factor of 9 and a  
16 fluid carrier factor of 91, which would, of course, ignore the  
17 fact that you are at standard going to have a 3 and a half  
18 percent fat level. So California has pretty good milk, but I  
19 don't think they can run 102.5 percent solids level in pricing.

20 So we adjusted the fluid carrier down to reflect the  
21 fact that, yes, there's butterfat in milk. So instead of 91,  
22 we adjusted that down to 87.5, which is the value used in  
23 Column Z. And then Column Y, we made that SNF value stay at 9  
24 percent. Typically, in the Federal Order structure we're  
25 valuing SNF at 9 percent. California runs theirs a little bit

1 different in their Class I price formula, they assume an 8.7  
2 percent solids nonfat. So it is a little bit different, but we  
3 figure we're talking a Federal Order proposal, let's try to  
4 incorporate as much we can into our proposal.

5 Q. All right. And then what is Column Z?

6 A. So Column Z is the fluid carrier cost. So we're taking  
7 the Class I skim milk times .24 and dividing that by 87.5.

8 Q. And Column AA?

9 A. Is the skim milk cost for Class IV. And then for AB  
10 we're calculating the Class IV SNF, which is just AA divided by  
11 9, which AA is the Class IV skim cost.

12 Q. And again, you are using the 9 from Federal Orders,  
13 correct?

14 A. Correct.

15 Q. Okay. So we go to page 15. I'm sorry, that's not 15,  
16 page 16. Why don't you, I think this completes the three  
17 factors, this page?

18 A. This is the value fortification.

19 Q. Right?

20 A. Correct.

21 Q. Okay.

22 A. It is in the value of fortification, I just kind of  
23 walked through with MA staff. This is going to assume that  
24 there's a 9 percent SNF level in the milk being used to produce  
25 the condensed, so I was describing that's why I have the .09 in

1 Columns AD, AE, and AF, and also, AG, AH, and AI.

2 Q. So again, 1 percent would be done the same way as 2  
3 percent, so let's do the 2 percent in AD, AE, and AF?

4 A. Okay.

5 Q. Or is that what you meant, you just did already?

6 A. No, I'm just making sure I have the right columns here.  
7 Put this together a while ago. All right.

8 So Column AD we're taking Column T, which is the volume  
9 of the skim equivalent of the fortifying agent, times  
10 Column Y, which is the Class I SNF price per pound times .09.  
11 Column AE we're taking Column T, which again is the volume  
12 fortification factor, times Column Z, which is the fluid  
13 carrier cost per pound, and multiplying that by a 1-.09, and I  
14 guess another point I should mention here, since I am taking  
15 1-.09, that obviously equals 91. It is important to point out  
16 that this is the base number that is being multiplied again,  
17 has already been standardized down to reflect the fat's been  
18 taken out, so it is truly 91 percent, 9 percent of the true  
19 skim, so I'm not overvaluing that value of fortification.

20 And then Column AF is the fortification value, so  
21 Column U, which is the skim equivalent of the fortifying agent  
22 for the fortification, times AB, which is the Class IV SNF  
23 price per pound times .09.

24 Q. And then again, the same analysis for 1 percent,  
25 correct?

1 A. Correct.

2 Q. All right. We're almost there. We need to turn, I  
3 think, to page 19; is that correct?

4 A. Correct.

5 Q. So what is this? How does this table work?

6 A. So, again, I'm calculating here the value of milk using  
7 the actual skim SNF test of the incoming milk, so it is going  
8 to be reflective of the monthly skim level in the milk being  
9 produced on the farm, so I'm pricing that using the Class I SNF  
10 price that we walked through. The amount of fluid carrier in  
11 the milk, times the fluid carrier price, and so on so forth,  
12 the butterfat, and ultimately arriving at a per hundredweight  
13 price using the actual skim test and the formulas laid out that  
14 we walked through.

15 Q. And again, the same for 1 percent, correct?

16 A. Correct.

17 Q. So now that is the analysis for actual California skim  
18 test three factor formula, correct?

19 A. Correct.

20 Q. You then do the identical analysis for both three  
21 factor and two factor for the high and the low skim test,  
22 correct?

23 A. Correct.

24 Q. And that's what follows in the, in those tables that  
25 follow, Table 3, so let's just look very quickly, I'm sorry,

1 the Table 5 is the high, what appear to be the high skim test  
2 for two factor formula, correct?

3 A. That's correct. So in this case I am assuming a high  
4 skim to be 9.2 percent.

5 JUDGE CLIFTON: Okay. So we have gone to page 22 of the  
6 exhibit.

7 MR. ENGLISH: Right. And that is basically the identical  
8 two factor test, the two factor, like Table 3, but for 9.2  
9 percent, your Honor. Okay? And otherwise, Table 5 is  
10 calculating the same way as Table 3, Mr. Blaufuss?

11 MR. BLAUFUSS: Correct.

12 BY MR. ENGLISH:

13 Q. Okay. So then we get to Table 6 which starts on page  
14 30, and now we have turned to the three factor formula for the  
15 high California skim test, correct?

16 A. Correct.

17 Q. And that, except for the fact it is California, it's  
18 9.2 percent California skim test, otherwise the calculation is  
19 done identically as on Table 4, correct?

20 A. Correct.

21 Q. And then that takes us to Table 7 which starts on  
22 Page 41, and now we're looking at the 8.8 percent or low  
23 California skim test, correct?

24 A. Correct.

25 Q. And for the two factor formula, correct?

1 A. Correct.

2 Q. And so other than the fact that it's the low skim test,  
3 Table 7 is identical to Tables 3 and Table 5, correct?

4 A. Correct.

5 Q. And Table 8, starting on page 49, is the three factor  
6 formula for the 8.8 percent or low California skim test,  
7 correct?

8 A. Correct.

9 Q. And other than it being the low California skim test,  
10 Table 8 is identical to Tables 4 and Table 6, correct?

11 A. Correct.

12 Q. All right. So that would take us through Table 8,  
13 which ends on page 59. So do we go to Table 9 next or do we go  
14 back to Table 2, Mr. Blaufuss?

15 A. You know, it would almost probably be easier to go  
16 through Table 9, then we can kind of walk through line by line  
17 once we do that, to get to where I got a landed cost.

18 Q. All right. Let's do Table 9, which is on page 60 of  
19 this document.

20 A. All right. So Tables 9, 10, and 11 are the same  
21 obviously basic calculations, I'm just adjusting the skim level  
22 to be reflective of high, low, and actual. And I guess maybe  
23 answering the question before it gets asked, over this period  
24 that I looked at, the average of the five years the SNF level  
25 was 8.88 percent, so there wasn't much of a difference between



1 my low factor and my medium factor, and I guess my rationale  
2 for that is, I didn't want to put an SNF test at, call it 8.5  
3 and say that was low, and have to come back and fortify my  
4 whole and my skim milk. So I tried to go as low as low as I  
5 could go without having to create other complications in my  
6 math.

7 Q. Okay. So walk us through Table 9 and then tell us  
8 what's different for Tables 10 and 11.

9 A. So for Table 9 this is the actual skim SNF test. So if  
10 you look at the percent skim in producer milk, which would be  
11 the third label from the bottom left of the table, that 8.88  
12 reflects the actual test. The 96.3 represents the percent  
13 skim, so it's a hundred percent minus the fat, so 96.3 percent.

14 Q. So your actual butterfat was 3.7?

15 A. I believe for the month I looked at in this case, yes.  
16 And then the SNF test in the market milk, which was just the  
17 8.88 divided by the 96.3.

18 Q. Okay.

19 A. And in order to figure out how many pounds of SNF I  
20 have and how much I need to add to get to a 10 percent or 11  
21 percent milk, I standardized that SNF test of market milk to be  
22 reflective of a 2 percent or 1 percent. So the 2 percent milk  
23 skim label is just taking .98 times that 9.22, and again, for  
24 the 1 percent, taking 9.22 times .99.

25 Q. So that's what gives you the 9.04 percent for

1 2 percent, and the 9.13 percent for 1 percent?

2 A. Correct.

3 Q. Okay.

4 A. So I guess just starting at the top and working my way  
5 down with the chart. So the first line is the gallons in the  
6 California hundredweight of milk. And this data was, I  
7 believe, provided by Dr. Schiek a few years ago. I think he  
8 received it, information from CDFA staff at that time to kind  
9 of give a general reflection how much a gallon of milk weighs  
10 in the California system, which varies, compared to what the  
11 Federal Orders have its standard weights. So in the case of  
12 2 percent it was assumed that a gallon weighs 8.67 pounds, and  
13 for 1 percent, a gallon weighs 8.71 pounds. So obviously just  
14 doing the math, tells you you are going to get 11.53 gallons  
15 for 2 percent, and for 1 percent you will get 11.48 for each  
16 hundredweight of milk.

17 Q. Okay.

18 A. The pounds of solids per gallon of standard milk, this  
19 assumes standard is whole milk, so 8.7 percent solids. So  
20 .7499 is the pounds of solids per gallon in standard milk, and  
21 then try to, my goal here was to figure out the pounds of  
22 solids per gallon need to fortify. That's just the pounds of  
23 solids I needed to add to the mix to get up to the 11 percent  
24 and 10 percent solids content. And that's also the factor used  
25 to calculate the base condensed allowance. So the allowances

1 on per pounds the solids used, so that's how I'm getting at the  
2 .0082 and the 0161.

3 Okay. And then basically for the total fortification  
4 allowance credit per hundredweight, it is just the gallons in a  
5 hundredweight times that base allowance.

6 Q. So how is Table 10 different from Table 9?

7 A. The only thing that's been adjusted in Table 10 from  
8 Table 9, is again, that third line column label up, percent  
9 skim and producer milk has been changed to reflect the high  
10 skim that 9.2 percent skim, which then flows through the model  
11 to figure out the pounds of skim I need to fortify.

12 Q. And Table 11 does the same thing but the low test,  
13 right?

14 A. Correct.

15 Q. Okay. And so the purpose of that was to be able to  
16 create your analysis to show what impact some of this would  
17 have on the desirability of purchasing different levels if you  
18 didn't have a fortification allowance?

19 A. Correct. So you're going to have two components of  
20 this, there is going to be a milk price and a fortification  
21 cost. So you are going to have varying levels of both  
22 depending on what the solids content is. So if you have a  
23 higher solids content you are going to have a higher cost in  
24 your milk and you should have a lower cost in your  
25 fortification, and vice versa if you have lost test.

1 Q. So if you didn't make a fortification allowance  
2 adjustment in a California Federal Order, but because of  
3 California's statutory program requiring fortification, you  
4 would, without such allowance, create first a non-uniform price  
5 for milk, correct?

6 A. Yeah, and I think I said that in my testimony. We view  
7 it as creating unequal raw product costing for handlers.

8 Q. Which could create incentives to alter your milk supply  
9 in order to fix that problem, correct?

10 A. Correct. I mean, if I'm looking at it, just looking at  
11 the differences in the two factor I think it was roughly, we'll  
12 call it 4 cents to make easy math, and so that's basically  
13 telling me I've got roughly 40 cents a hundredweight in savings  
14 from high test skim compared to low test in a raw product milk  
15 cost.

16 Q. I'm going to go back to Table 2 I think in a moment,  
17 but did I read it correct that if you do a three factor versus  
18 two factor, that the cost of milk to Class I handlers actually  
19 goes up?

20 A. That's what my numbers would indicate, yes.

21 Q. Okay. All right. So having described Table 9 and  
22 having talked yesterday about the cliff notes, how do we get  
23 to, how do we get to the cliff notes in Table 2?

24 A. All right. So I guess I'll start line by line. The  
25 same basic premise is going to hold whether or not we're

1 talking a two factor or three factor. I'll start just first  
2 with the two factor and with the 9.2 percent SNF milk. So the  
3 milk cost for all of these different two factor, three factor,  
4 all the various skims are going to be pulled off the data table  
5 that I provided subsequently. So that's where the milk cost  
6 lines are coming from. The fortification costs and the  
7 displacement costs per hundredweight are coming from the same  
8 data sources, so the various columns that we walked through.  
9 Which, obviously, you have your milk cost, your fortification  
10 cost, and your displacement are going to equal up to being your  
11 raw milk cost. So using the example of a reduced fat, two  
12 factor, with fortification, the raw milk cost would be \$17.36  
13 per hundredweight, your fortification cost would be .84 cents  
14 per hundredweight, and the displacement value would be .34  
15 cents per hundredweight.

16 JUDGE CLIFTON: I'm sorry, you've got to show me exactly  
17 where you are, I'm lost.

18 MR. BLAUFUSS: So the third column from the left in the  
19 upper left table.

20 JUDGE CLIFTON: All right.

21 MR. ENGLISH: Called reduced, correct?

22 MR. BLAUFUSS: Reduced, correct.

23 JUDGE CLIFTON: Okay. So tell me again what you just told  
24 me.

25 MR. BLAUFUSS: So the milk cost, assuming 9.2 percent

1 solids in the milk, would be \$17.36 per hundredweight. The  
2 cost to fortify that product to meet California standards would  
3 be 84 cents per hundredweight. And the extra volume increase  
4 that we created as a result of fortification, which would be  
5 price to Class I, that's called displacement and that would be  
6 34 cents per hundredweight. You add the \$17.36 per  
7 hundredweight with the 84 cents per hundredweight, and the 34  
8 cents per hundredweight, and that lands you at your raw milk  
9 cost of \$18.54 per hundredweight.

10 With regards to shrink, I assumed a 1 percent shrink.  
11 And shrink will be priced at the lowest class price, so in this  
12 case, lowest price between Class III or Class IV. And my  
13 pricing formulas are reflective of that, so it's always going  
14 to pull the lowest class price. And I guess the other portion  
15 I should mention is, because I'm sure someone will notice that  
16 the shrink isn't consistent across, I also assume that the  
17 fortification, so the condensed coming in, is also going to be  
18 factored into the shrink calculation.

19 BY MR. ENGLISH:

20 Q. So the more fortification, the larger the shrink.

21 A. Correct.

22 Q. All right.

23 A. So the total milk cost is going to be the raw milk cost  
24 plus the shrink factor, so using the reduced, the total milk  
25 cost is \$18.71 per hundredweight.

1 JUDGE CLIFTON: The door closed just as you said that, say  
2 again what the total milk cost is?

3 MR. BLAUFUSS: The total milk cost would be your raw milk  
4 cost, so in the case of reduced, it would be \$18.54 per  
5 hundredweight, and then you would also add in your shrink cost,  
6 so in this case 18 cents per hundredweight, which lands you at  
7 the \$18.71 per hundredweight. Obviously, if you are looking at  
8 the face of that, that should be \$18.72. I would imagine  
9 having a rounding difference there.

10 BY MR. ENGLISH:

11 Q. What about the fortification allowance? Is that  
12 actually do you need to take, would that be what takes you down  
13 to \$18.71?

14 A. No. Because I am coming in, I brought that in since  
15 that's a per gallon cost, I brought that in at the end. So you  
16 are, I'm essentially taking the total milk cost, figuring out  
17 the weight of a gallon, and getting the per gallon cost, and  
18 then factoring in that per gallon fortification.

19 Q. So the fortification gets calculated, even though it's  
20 above it, it gets calculated after the total milk cost?

21 A. Correct. I brought that in at the end and that's just  
22 how I ended up doing it. You will have the same number, just  
23 get there a different way.

24 Q. And as you said, the analysis for the other five, the  
25 three factor, and the two and three factor for the different

1 levels of skim, are all done the same way, correct?

2 A. Correct.

3 Q. Okay.

4 A. Except, of course, in the three factor you are going to  
5 be factoring in the fluid carrier SNF not just skim.

6 Q. Should we walk through that quickly just to make sure  
7 it's not lost or do you think it's covered?

8 A. I think we covered it when we covered the two and three  
9 tables.

10 JUDGE CLIFTON: So, Mr. Blaufuss, as I look at Table 2, I  
11 understand your intention was to help us with the fortification  
12 issue, but this seems like a wonderful spreadsheet to show the  
13 cost of milk.

14 MR. BLAUFUSS: Yes, I guess I'll make a caveat here, and I  
15 don't think we mentioned this. After we went to publication,  
16 obviously there was a lot of moving targets with make  
17 allowances changes and the FOB adjuster changes, the one thing  
18 that I will note is my make allowance for the SNF for Class II  
19 and Class IV. I used the original make allowance and I didn't  
20 update that portion to be reflective of the recent up changes  
21 in the last week or two that have been made.

22 The analysis still holds true in talking about  
23 relationships, because whether or not I'm talking two factor or  
24 three factor, it's the same make allowance throughout. I don't  
25 have an issue of saying, here's the relationship, but I'm not



1 going to sit here and say that didn't play a role in saying  
2 here's the actual milk cost. So I'm not portraying this to be  
3 here's the per gallon cost, I'm portraying to say here's the  
4 relationship among the different factors.

5 BY MR. ENGLISH:

6 Q. Based upon the make allowance that was being used ten  
7 days ago?

8 A. Correct. So my make allowance is .1678, I believe the  
9 one that Dr. Schiek updated was .1997. So all the FOB  
10 adjusters are the same and yet are reflective of where we are  
11 at now. Merely the only thing that I didn't get updated was  
12 the make allowance for SNF for Class IV and Class II.

13 MR. ENGLISH: Now you are lost?

14 JUDGE CLIFTON: You know when I came in here, I didn't know  
15 that a gallon of milk under the California Order would weigh  
16 something different from the gallon of milk under the Federal  
17 Milk Marketing Orders. This is hard.

18 MR. ENGLISH: Well, I was thinking we would have three or  
19 for minutes of cross-examination and he would be done before  
20 lunch, right?

21 MR. BLAUFUSS: Well, maybe to make it a little more clear  
22 when I am talking about make allowance issue, so when you are  
23 calculating a solids not fat price, it is the nonfat dry milk  
24 price, minus the make allowance, minus, in our case, the FOB  
25 adjuster, times .99, so the only thing in the formula that

1 would be different is just that make allowance factor. So  
2 commodity prices are the same, the FOB adjusters are the same,  
3 it is just I used too low of a make allowance.

4 MR. ENGLISH: I'm going to let Mr. Beshore ask a quick  
5 question, I think it is purely for clarification.

6 MR. BESHORE: I may show my complete ignorance here. Are  
7 you using like Proposal 2 prices throughout this?

8 MR. BLAUFUSS: Yes, except I'm using the, I believe hearing  
9 proposal, USDA, basically said there's no western price  
10 formulas, so I'm using the pure default price, which was the  
11 NDPSR values.

12 MR. BESHORE: For the whole time period from January 10 --

13 MR. BLAUFUSS: Correct.

14 MR. BESHORE: -- forward, you went back and re-calculated  
15 what they would all be assuming proposal -- okay. Wow. Okay.

16 MR. BLAUFUSS: Correct.

17 MR. ENGLISH: Why do you think these price impacts have  
18 taken awhile to get to the stand. I agree, "wow".

19 I have a proposal to make. I think I'm done with  
20 direct exam. What I would like to do is move admission of  
21 Exhibit 147 and 148 and then take lunch. I think I will not  
22 have additional direct after that, but I'm hoping that maybe  
23 taking lunch would allow people to, if not digest food, digest  
24 this data, unless it gives them something else, and might  
25 shorten or might not, cross-exam.

1           But I agree, your Honor, this is, I agree with both you  
2 with your comment that this is really intense stuff, and I  
3 agree with Mr. Beshore's technical legal term, "wow". So I  
4 think I'm done with direct and I think I'm very impressed, and  
5 so I would move admission of Exhibit 147 and 148.

6           MR. BESHORE: Can Mr. Hollon get a question in before we --

7           JUDGE CLIFTON: Yes, I think that would help us as we  
8 evaluate over lunch. And Mr. Hollon, if you would identify  
9 yourself when you start.

10          MR. HOLLON: Elvin Hollon, Dairy Farmers of America.  
11 Rob, the equation that you changed, it was -- go to page 3.

12          MR. BLAUFUSS: Uh-huh.

13          MR. HOLLON: And the Column I, the 4.11 is the equation  
14 above supposed to yield 4.11? So if I take 100 times F minus  
15 G, and divide by G minus 3.35 --

16          JUDGE CLIFTON: Divide it by F.

17          MR. HOLLON: Okay. Divide it by F?

18          MR. BLAUFUSS: That's what my formula said.

19          MR. HOLLON: Well, just asking you, F minus G has got to be  
20 a negative number, 9.2 minus 10, so how do I get a positive  
21 number?

22          MR. BLAUFUSS: Because you are also taking your F, which is  
23 9.02 minus a negative, so that should also be a negative, so  
24 you have two negative numbers.

25          MR. HOLLON: Okay. So -- so when it says F minus .335,

1 it's supposed to say F plus .335 if I'm minus the minus?

2 MR. BLAUFUSS: I'll double check my formula, but I believe  
3 that's F minus C, F minus .335.

4 MR. HOLLON: Man, I hate these complicated spreadsheets.

5 MR. BLAUFUSS: You and me both.

6 MR. HOLLON: We both have good reason to do that. Does --

7 MR. ENGLISH: Wait a minute, isn't F -- F is a percentage,  
8 but .335 is not a percentage. So if you express F as a  
9 non-percentage, Mr. Blaufuss, it would be .0920, correct?

10 MR. BLAUFUSS: Correct.

11 MR. ENGLISH: And so you would be subtracting .335 from  
12 .092662, so that would give you a negative denominator, a  
13 negative numerator, which gives you a positive, correct?  
14 Divide them?

15 MR. BLAUFUSS: I believe that's what my formula has.

16 MR. HOLLON: Assuming the numbers are right. One other  
17 question?

18 MR. ENGLISH: Sure.

19 MR. HOLLON: Back on Table 2, the 1.6171 or any of those  
20 numbers, can you show me where 1.6171 shows up in one of the  
21 other tables or does it?

22 MR. BLAUFUSS: It doesn't. So that's basically doing the  
23 simple math, but it is the cost build up, and then just taking  
24 the here is a weights, which I provided for reduced fat and low  
25 fat in the vat, and just figure out how many gallons I'm

1 getting per that hundredweight.

2 MR. HOLLON: Okay. Thank you.

3 JUDGE CLIFTON: Does anyone -- anyone else want to clarify  
4 before you go to lunch? Think about this? Ms. May?

5 MS. MAY: Laurel May with USDA. Just a couple of questions  
6 about the notations on your testimony, page 1. At the end of  
7 the first paragraph you say that you are going to make  
8 adjustments to the Class I price calculations as found in  
9 Section 1051.50(a)(d), which is, there is kind of no such  
10 thing, so are those paragraphs (a) and (d) maybe?

11 MR. BLAUFUSS: Yes.

12 MS. MAY: Those are on page 47228 of the Federal Register.

13 MR. BLAUFUSS: Yes, that should be (a) and (d), not (a)(d).

14 MS. MAY: Okay. And then my other question --

15 JUDGE CLIFTON: Let's make that change now. Thank you very  
16 much. So Ms. Frisius, with regard -- we should have done that  
17 from the, we should have noticed that from the beginning, but I  
18 mean, I sort of noticed it, but all right. So we're on page 1,  
19 the third line down, we're going to insert the word "and" in  
20 between the (a) and (d). Thank you.

21 MR. ENGLISH: In fact, your Honor, a correction to  
22 Exhibit 1, page 47228, column 2. Thank you for catching that,  
23 Ms. May.

24 MS. MAY: You're welcome. I have one more. In the  
25 sentence under fortification credit revision on the same page,

1 "proponents are also going to revise the fortification credit  
2 calculation found in Section 1051.60(6), I'm wondering if that  
3 isn't supposed to be paragraph (a) and paragraph (a)5 and (a)6,  
4 which would be on the Federal Register page 47231, starting in  
5 the middle column. 60(6) is not a correct notation.

6 MR. ENGLISH: Maybe we'll consider that one at lunch,  
7 because obviously you are right, there's no 60(6), so rather  
8 than rushing that and giving you an answer which we then  
9 re-correct why don't we -- unless you have another question.

10 MS. MAY: No, those were my two just about the exhibits  
11 themselves.

12 MR. ENGLISH: All right.

13 JUDGE CLIFTON: Okay. Good. So we haven't admit these  
14 yet.

15 MR. ENGLISH: Well, let's hold off then, in case there's  
16 other little things like that.

17 MR. RICHMOND: Bill Richmond, USDA. The only other  
18 question we had was, and you can think about this, too, for  
19 Exhibit 148, if you wanted to provide the actual spreadsheets  
20 for us, we can potentially post them online when we do post the  
21 PDF's, so it may help. It would absolutely help us in  
22 understanding the spreadsheets, it may help others. Completely  
23 up to you.

24 MR. BLAUFUSS: Okay.

25 MR. ENGLISH: By that, do you mean the underlying

1 spreadsheets in raw form? In other words, in native form?

2 MR. RICHMOND: Yes.

3 MR. ENGLISH: Okay. We will certainly think about that. I  
4 think I know what the answer is going to be.

5 JUDGE CLIFTON: The "show your work" provision?

6 MR. RICHMOND: Yes, absolutely.

7 JUDGE CLIFTON: Are there other questions before we break  
8 for lunch? I'd just like to say, I'm pretty impressed,  
9 Mr. English, with the way you grasped that negative divided by  
10 the negative issue. Well done. All right. Let's see what  
11 time it is. I'm going to call it 1:10, it almost is, so please  
12 be back and ready to go at 2:25.

13 MR. ENGLISH: Thank you, your Honor.

14 (Whereupon, the lunch recess was taken.)

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1 TUESDAY, NOVEMBER 10, 2015 - - AFTERNOON SESSION

2 JUDGE CLIFTON: We're back on record at 2:26. Mr. English.

3 MR. ENGLISH: Thank you, your Honor. Before I go back and  
4 ask about admission of 147 and 148, and also turn Mr. Blaufuss  
5 over to further examination, it's been suggested by more than  
6 one person that today's scintillating discussion of the forest  
7 may have lost track of the trees. And since we are where some  
8 of the greatest trees are in the world, I thought maybe I would  
9 return briefly, and maybe went too fast yesterday and decide to  
10 retrace to yesterday. So, in a nutshell, Mr. Blaufuss, so  
11 what?

12 JUDGE CLIFTON: That's good. That's good. That was so  
13 what, question mark, right?

14 MR. ENGLISH: And may I help you out?

15 MR. BLAUFUSS: I can get it. So really when the initial  
16 discussion of a potential California Federal Order hearing  
17 started, from an internal perspective we tried to see what  
18 California standard milk does if you are using a standard  
19 Federal Order formula compared to what's going on in  
20 California. And so what we tried to do here was look at the  
21 relationships and how the Federal Order pricing versus  
22 California pricing works given that you have to fortify, and  
23 what those relationships are for different handlers who have  
24 different solids content in the milk coming into the plant.  
25 And so it's trying to look at a relationship to say is it a



1 half a cent a gallon, a penny a gallon difference under two  
2 factor, and that's really what I was trying to accomplish here.  
3 So I wasn't try to say, you know, here's the blended per gallon  
4 cost of the Proposal Number 2. I'm trying look at the  
5 relationship of a two factor versus three factor using the  
6 prices as laid out in Proposal 2.

7 JUDGE CLIFTON: Okay. Remind me what the two factors are  
8 in a two factor analyses.

9 MR. BLAUFUSS: So a two factor is just butterfat and skim.  
10 In a three factor we are talking butterfat, solids nonfat, and  
11 fluid carrier.

12 JUDGE CLIFTON: Mr. English.

13 MR. ENGLISH: Thank you.

14 BY MR. ENGLISH:

15 Q. So again, and part of this may be that I was trying to  
16 get ten minutes of testimony into 6 minutes and 10 seconds  
17 yesterday. Going back to Table 2 and your cliff notes, and  
18 looking at the bottom of page 5 and the top of page 6. First  
19 of all, you have included a column for whole milk, correct?

20 A. Correct.

21 Q. But this analysis is completely irrelevant as to whole  
22 milk because you don't fortify whole milk, correct?

23 A. Correct.

24 Q. And for simplification, in page 5 and 6, you have tried  
25 to look at just reduced fat milk, correct?

1 A. Reduced fat and low fat.

2 Q. I'm sorry, yes. And so what you were trying to show,  
3 looking at page 5, is you say that "under the two price  
4 formula, the cost of reduced fat milk at high test, the high  
5 test skim is 1.6171," and yesterday you pointed that out,  
6 correct? As being where on Table 2?

7 A. It would be the third column from the left.

8 Q. Under top spot?

9 A. Top left on Table 2.

10 JUDGE CLIFTON: Wait a minute now, you lost me at fat milk.

11 MR. ENGLISH: At reduced fat milk.

12 JUDGE CLIFTON: You didn't say reduced fat milk, you said  
13 fat milk. Start again.

14 BY MR. ENGLISH:

15 Q. On page 5 you were initially comparing reduced fat milk  
16 at the high test skim, correct?

17 A. Correct.

18 Q. And that's what you were just pointing out in that  
19 column is \$1.6171, correct?

20 A. That is correct.

21 Q. And you are comparing that to the two factor, same  
22 thing, reduced fat milk, which is the bottom box, same column,  
23 of 1.6565, correct?

24 A. That is correct.

25 Q. And that has a, just under 4 cent difference, correct?

1 A. Correct.

2 Q. 3.9 --

3 A. 94 cents per gallon.

4 Q. Yeah. And when you go to the three factor formula for  
5 those same types of milk, so third column, reduced fat, upper  
6 right versus bottom right. Upper right you have 1.6815,  
7 correct?

8 A. That is correct.

9 Q. Bottom right you have 1.6810, correct?

10 A. Yes.

11 Q. And that is a difference of .05 cents, correct?

12 A. Yes.

13 Q. Okay. And what conclusion do you draw from those  
14 differences?

15 A. That you have a much tighter difference depending, or  
16 regardless of what the skim content is under a three factor  
17 pricing formula.

18 Q. And why is a tighter difference important?

19 A. You are ensuring equal raw product costing for handlers  
20 in the Class I space, so that nobody has a competitive  
21 advantage based on their skim content of the milk coming in.

22 Q. And in addition, what impact would that have to the  
23 pool of using a three factor formula versus a two factor  
24 formula?

25 A. My data would show that the per gallon cost would be

1 higher in a three factor than a two factor.

2 Q. And so the pool, maybe not a huge number, but the  
3 pool's going to be bigger?

4 A. Correct. There will be more Class I dollars.

5 Q. All right. Your Honor, I repeat my request to admit  
6 Exhibits 147 and 148.

7 JUDGE CLIFTON: Let's go back to Ms. May's question on  
8 Page 1.

9 MR. ENGLISH: I'm sorry, thank you very much.

10 BY MR. ENGLISH:

11 Q. So this is the question in the middle of the page, and  
12 so, Mr. Blaufuss, your testimony has focused exclusively on  
13 condensed, use of condensed, correct?

14 A. Correct.

15 Q. So this language we are proposing would be for  
16 condensed which is 1051.60(a)(6), correct?

17 A. Correct.

18 Q. Okay. And there could be conforming changes to (a)(5),  
19 but Dean Foods doesn't use nonfat dry milk, correct?

20 A. That's what my belief is. I don't believe we use any  
21 nonfat dry milk to fortify.

22 Q. So at the moment, we don't have testimony on what that  
23 language would be, but we may very well brief it from the  
24 Dairy Institute of California, but the focus of this testimony  
25 has been on (a)(6).

1 JUDGE CLIFTON: All right. So the proposal, Mr. English,  
2 is, to insert (a) in the second line just below the heading  
3 Fortification Credit Revision on page 1 of Exhibit 147?

4 MR. ENGLISH: Yes, between the 60 and the 6.

5 JUDGE CLIFTON: All right. Do you see that, Ms. Frisius?  
6 Thank you. Done.

7 MR. ENGLISH: And we, just as a statement for the record,  
8 we don't disagree that it a similar change could be made to  
9 (a)(5) we just refocused on (a)(6) today.

10 JUDGE CLIFTON: Is there anyone who wishes to question  
11 Mr. Blaufuss with regard to Exhibit 147 to determine whether  
12 you have any objections to it being admitted? No one. Are  
13 there any objections to the admission into evidence of  
14 Exhibit 147? There are none. Exhibit 147 is admitted into  
15 evidence.

16 (Thereafter, Exhibit 147, was  
17 received into evidence.)

18 JUDGE CLIFTON: Does anyone wish to question Mr. Blaufuss  
19 regarding Exhibit 148 before you determine whether you have any  
20 objections? No one. Are there any objections to the admission  
21 into evidence of Exhibit 148? There are none. Exhibit 148 is  
22 admitted into evidence.

23 (Thereafter, Exhibit 148, was  
24 received into evidence.)

25 MR. ENGLISH: Your Honor, the witness is available for

1 further examination.

2 JUDGE CLIFTON: Who will be the first to question  
3 Mr. Blaufuss on this issue? Mr. Beshore?

4 CROSS-EXAMINATION

5 BY MR. BESHORE:

6 Q. Marvin Beshore. Good afternoon, Mr. Blaufuss.

7 A. Good afternoon.

8 Q. I have just a couple of questions and they are sort of  
9 this level and not down on this level.

10 A. You don't want to get buried in the weeds today?

11 Q. Not in the weeds, at the moment. So taking off from  
12 some of the last questions with Mr. English. Is there really a  
13 problem that needs to be addressed by this? Are there, do you  
14 have any information on actual tests to distributing plants  
15 which show a sufficient variation that needs to be addressed  
16 with this complication to the Order language? I'm assuming  
17 that your calculations and analysis, you know, is correct. And  
18 you know, there may be questions about it from people that are  
19 more capable of getting into it than I am, but assuming it is  
20 correct, is there actually a problem out there that needs to be  
21 addressed by bringing a fluid carrier into an order where we  
22 don't have it in any other orders? So I'm wondering is it, you  
23 know, there may be a theoretical problem, but the Order has,  
24 you know, large plants, diverse milk supplies. I mean, is  
25 there really any difference that amounts to any difference in

1 the, you know, in the content of the milk coming into  
2 distributing plants which, you know, which needs to be  
3 addressed here?

4 A. Well, first off, I don't have the other Class I  
5 bottlers' information to know what their solids content are.  
6 The only thing I can say, you know, it hasn't been a problem in  
7 California today because they do have the three factor pricing  
8 formula. So I can't stick to it and say there's disorder and  
9 it is causing inefficient movements of milk today, but the  
10 three factors what we have in California today, and whether or  
11 not it's needed or not, it was at one point, when they put in  
12 the pricing system in California, it was thought to be valid.  
13 And I still think given how we price milk in California today,  
14 I think it is still valid.

15 Q. So it's -- you want to -- it is preventive if not  
16 curative?

17 A. I think you could look at it that way. I don't have  
18 any data that says if we have a two factor, automatically  
19 inefficient movements of milk are going to occur. If I'm  
20 looking at how you price milk, I don't -- I have a higher per  
21 gallon cost, but you have more equal raw product costing among  
22 handlers.

23 Q. Okay. But for the issue with, you know, that you have  
24 addressed with the fluid carrier, I gather that the amount of  
25 of the fortification credit which is presently in California,

1 which is the same in Proposal 1 and is as in Proposal 2, is  
2 appropriate and satisfactory as far as you are concerned, the  
3 Dairy Institute is concerned?

4 A. Well, I will say, just talking fortification credit  
5 alone, we have made the modification. If I'm looking at what  
6 we had in our Proposal 2 and looking in the last five years, we  
7 actually would have had an average credit significantly above  
8 0987. And actually, I think if I remember correctly, credit  
9 came to about 20 cents on average. So actually when we made  
10 this modification, we're reducing the potential credit in our  
11 proposal to reflect current California and to eliminate any  
12 kind of increase fortification credit that we may receive under  
13 what was originally Proposal 2.

14 Q. Okay. But with the modification, you are satisfied  
15 that that's a sufficient fortification credit?

16 A. Correct.

17 Q. Okay. Just a question about the generation of the  
18 fluid carrier value. Where does the .24 come from?

19 A. As I understand, actually, I talked to Dr. Schiek about  
20 this probably a week or two ago. I think there was a late  
21 '90's hearing or we'll call it residual value was put in place,  
22 so they had attached the .76 to the SNF value and the .24 to  
23 the fluid carrier. And the exact rationale behind it I don't  
24 know. I was just informed that that's kind of when that got  
25 put in place, was the late '90's hearing.



1 Q. Okay. And so that's, you just carried it forward  
2 because it is in the CDFA formulas now?

3 A. Correct.

4 Q. Basically. On --

5 JUDGE CLIFTON: I just want to make sure I'm clear. So  
6 Mr. Blaufuss, you just said .76 to the solids not fat and .24  
7 to the what?

8 MR. BLAUFUSS: .76 solids not fat, .24 to the fluid  
9 carrier. And actually, if you go, if we just want to have a  
10 visual of what the formula looks like, it is page --

11 JUDGE CLIFTON: Yes, please.

12 MR. BESHORE: Page 1 of your testimony.

13 MR. BLAUFUSS: Oh, yeah, that will do.

14 JUDGE CLIFTON: Okay. So --

15 MR. BESHORE: That's where I was looking at it anyway.

16 MR. BLAUFUSS: You can get there different ways, it's  
17 certainly easier

18 JUDGE CLIFTON: Okay. So I'm looking at page 1 of  
19 Exhibit 147, and I definitely see the .24. Where do I find the  
20 .76? Oh, I'm not concerned with that here, am I?

21 MR. BLAUFUSS: No, that's the only revision we made. So in  
22 order to calculate the SNF value, and this is, I didn't have it  
23 here, but basically, not basically, you are taking the Class I  
24 skim times .76 and then you are dividing that by 9.

25 JUDGE CLIFTON: Okay.

1 MR. BLAUFUSS: And that's the SNF calculation.

2 JUDGE CLIFTON: Okay. Thank you. Mr. Beshore?

3 BY MR. BESHORE:

4 Q. Okay. In Exhibit 148, on the two series, which cost  
5 out at the high and the low solids content at 9.2 on the high  
6 side and 8.8 on the low side. I notice on both of those you  
7 just use, you use pool butterfat contents in each case. That  
8 is just the same, same butterfat as on the actual table. And  
9 I'm just wondering if that, I mean, when you have high test,  
10 high solids milk, you tend, you always have higher butterfat, I  
11 think. And when you have low solids, you tend to, it tends to  
12 go with lower butterfat. I wonder if that makes any difference  
13 in any of this.

14 A. I didn't view it causing any kind of major change. If  
15 I was going to adjust it, I think looking at the files that I  
16 had, I had enough variables that were moving around, that I  
17 didn't see what benefit it would be to move around the fat as  
18 well, and I didn't want to create any different, any  
19 differences based on the fat alone, because really in this case  
20 I'm more worried about what's going on in the skim.

21 Q. Right. I guess, again, I'll take your word for it. I  
22 guess that doesn't make any difference. It is just, I don't  
23 know, intuitively I wonder whether it makes any difference  
24 because you are working with either more or less pounds of skim  
25 in the milk to generate your formulas. And maybe it doesn't

1 make any difference. I'll leave it at that. I just noticed it  
2 and was interested.

3 One other -- one other little thing I noticed on the  
4 numbers here. If you just look at Table 3, I guess it carries  
5 all the way through, your targets, this is in G and H, Columns  
6 G and H, your targets I noticed are 10.2 and 11.1, I mean,  
7 slightly, I guess above the minimum required level. Is there a  
8 reason for that?

9 A. That was the direction the MA staff pointed me towards  
10 and I think ultimately when you land a skim test you want to be  
11 slightly above the minimum to make sure that you are meeting  
12 that threshold. I would assume they are just adding a little  
13 extra value there to create a little more over run so you are  
14 not creating a 9.8 or 9.9 once you have the full product in.

15 Q. Okay. Now, you have said that you, that all of  
16 Exhibit 148 was run based on the prices that would be generated  
17 by Proposal 2's formulas. Am I right on that?

18 A. Yes. So if I'm talking based commodity values, I'm  
19 using the default values because obviously there's no western  
20 price survey for the different commodities that we have in  
21 Proposal 2. So for both the advanced and the announced, it was  
22 the actual NDPSR prices, announced per USDA AMS, and then I  
23 actually went back in, so we're talking these classified  
24 pricing formulas. I also used, you know, our pricing formulas  
25 today and pulled them all the way back so there was no formula

1 changes between 2010 and 2014.

2 Q. And were you using the Proposal 2 proposed FOB adjuster  
3 in the fault of a western price?

4 A. Yes.

5 Q. Okay. And the Proposal 2 make allowances?

6 A. With the one difference is I didn't make the update on  
7 the nonfat dry milk make allowance. But it was the same for,  
8 it's not like I had announced in one make allowance and the  
9 advanced in another, they were consistent. And so that's why  
10 in my view I didn't view having to reprint all this, because I  
11 wasn't trying to come to a full line of cost, I was looking at  
12 the price differences. So my view, as long as those formulas  
13 weren't different, it didn't create major issues.

14 Q. And what about the whey value?

15 A. In this I just used the base NDPSR whey, dry whey.

16 Q. Do you -- do you show the class, resulting Class I  
17 prices here anywhere?

18 A. The Class I, the skim portion, you can find, so if I'm  
19 just looking at Table --

20 Q. Column X, I guess.

21 A. Yeah, Table 3, Column X will have the Class I skim  
22 milk, so that's a skim value, and that includes a 2.10  
23 differential. And then if we go further back and look at the  
24 butterfat, that actually has the butterfat value as well with a  
25 2.10 differential.

1 Q. That would be --

2 A. Columns AJ and DG.

3 Q. And AJ is butterfat per pound? Since it is one  
4 percent, would that 1.5809 in January 10 would be a pound of  
5 butterfat?

6 A. Correct. So really AJ would be where you would look to  
7 find the value, since you are multiplying by one.

8 JUDGE CLIFTON: To find the value of what?

9 MR. BLAUFUSS: A pound of butterfat. So if you look in  
10 Column AG, that's two pounds of butterfat, so it's going to be  
11 double the rates on a per pound basis.

12 MR. BESHORE: That's all the questions I have right now.  
13 Thank you, Mr. Blaufuss.

14 JUDGE CLIFTON: Who next has questions for Mr. Blaufuss?  
15 Mr. Schaefer?

16 CROSS-EXAMINATION

17 BY MR. SCHAEFER:

18 Q. Henry Schaefer with USDA.

19 Good afternoon, Mr. Blaufuss.

20 A. Good afternoon.

21 Q. I think I'll start with what may be the more  
22 complicated issue.

23 In your revisions to the Part 50(d) and part 50(a) on  
24 page 1, in the Class I price which is (a), you use a SNF price  
25 times 9. And as you mentioned, in all the Federal Order stuff

1 we do use 9 for nonfat solids, but in most cases, if not all  
2 cases, that's referring to 9 pounds of nonfat in the skim. And  
3 it would seem to me that when you are combining it with 35  
4 here, that that should be adjusted for, that that nonfat solids  
5 is actually in the skim, because you have got the 3 and a half  
6 percent butterfat. And the same would apply for the fluid  
7 carrier, because that's really making up the skim fraction,  
8 which, when we normally convert, when Federal Orders we  
9 convert, we're using 9 pounds of nonfat solids in the skim,  
10 would that be correct?

11 A. You mean 9 percent?

12 Q. Or 9 percent, or 9 pounds in a hundred pounds of skim.

13 A. Yes, that's what I'm interpreting that.

14 Q. Okay. So would it be, am I interpreting that correctly  
15 that the 9 pounds, the number 9 in that equation should  
16 actually be something lower than that to reflect the fact that  
17 you are using it to combine into a 35 price?

18 A. I think this is what's used as the base mover price, so  
19 when I look at it, even what the Federal Order speak is, you  
20 have a 9 percent SNF value, that's the assumed factor for price  
21 setting, and if you have 8.8 you are going to get costed at  
22 that. So if I look at how you announce it, this is how I would  
23 announce it, and then you look at the plant to see what skim  
24 and the fat ended up being in the allocation.

25 Q. But when we announce the price at 35, it's not, does

1 not have 9 percent nonfat solids in it, it actually has 8.685  
2 percent in it because of 35 test.

3 A. I see what you are saying. Yes. I did not make that  
4 differentiation, put it that way. Basically, in this I'm  
5 saying, I'm assuming 9 percent SNF, 3 and a half percent and  
6 everything else is fluid.

7 Q. Okay. So really what we would need to do to get to a  
8 3.5 is change that to 8.685, and the fluid carrier would have  
9 to be .87815 or 87, I'm sorry, 87.815.

10 A. Which is essentially what California does today. So  
11 they announce it at 3 and a half percent fat, an 8.7 percent  
12 SNF, and a 878.

13 Q. Very close to what they do, we're not that far apart  
14 when it comes to the 35. They are a little different on their,  
15 currently on their nonfat solids because they use an 87 as  
16 their number. Okay.

17 A. Yes.

18 Q. I think in your discussion on, I can't remember whether  
19 it was Mr. English or Mr. Beshore, there was, in the next  
20 paragraph there where you are talking about your fortification  
21 credit revisions, and I think they clarified it for me, but I  
22 kind of want to be sure here. So what you are saying is you  
23 are going to replace, in the case of the condensed, which is in  
24 51, Section 1051.65, 60, and then (5), that you are going to  
25 replace it with the italics that you have in there and a

1 similar thing for nonfat dry milk; is that correct?

2 A. Yes.

3 Q. So we're going to take out all the language that's in  
4 there today and just replace it with that?

5 A. That would be our intent.

6 Q. Okay. And do we need the pursuant to the provisions of  
7 the Pooling Plan in if it is going to be in the Federal Order?

8 A. No, I don't believe you would. Basically pulled the  
9 quote and I wanted to make sure I pulled the full quote, not  
10 the partial quote, in case anybody went back and looked.

11 Q. Okay. Looking at a little more on the pricing scenario  
12 with three of the three factors of butterfat, nonfat solids,  
13 and a fluid carrier. So you're suggesting from what you have  
14 said so far, that we would have those three factors allocated  
15 when we do our allocation so that we would know how much of  
16 each one of those factors is in there; is that correct? In  
17 Class I?

18 A. Correct.

19 Q. Similar to what we do today with other solids and  
20 protein in Class III?

21 A. Correct.

22 Q. Okay. Kind of a question that came to me that I found  
23 kind of interesting is, do you know if a plant ships, currently  
24 that if a California plant ships milk, packaged milk  
25 out-of-state, do they collect a credit on that if it's going



1 out with fortification?

2 A. I don't believe so, because I don't know they could  
3 regulate that, though I don't know that a hundred percent to be  
4 the case. I think the pool is going to be produced, processed  
5 and sold. That would be my belief. I don't -- I'm not a  
6 hundred percent positive on that.

7 Q. Okay. And then I guess the kind of a question that  
8 keeps coming to mind in our, a lot of our discussion here in  
9 the California hearing is, is it really necessary, and I think  
10 this also came up, maybe Mr. Beshore brought it up, is  
11 fortification really necessary in California when the rest of  
12 the Federal Orders or the other Federal Orders in the United  
13 States don't have any fortification credit, or, and they do  
14 fortify? And so I guess my question is, do you really feel it  
15 is necessary here when we don't have it anywhere else in the  
16 country on milk that's fortified?

17 A. In that question are you saying there's milk in the  
18 Federal Order system that is fortified today?

19 Q. Correct.

20 A. I guess I'm not generally aware that there is a lot of  
21 milk that's fortified in the Federal Order system, besides some  
22 protein plus potentially. I don't know what they would be  
23 fortified to, if we are talking the same 10 percent or 11  
24 percent, or if it's a number south of there. I would view  
25 there could be some differences among those two different

1 beliefs.

2 Q. So if I guess if I summarize that, when California,  
3 with their relatively high fortification on 2 percent and 1  
4 percent, that you feel it's necessary to have that credit in  
5 there?

6 A. Yes.

7 Q. I believe that's all the questions I have. Thank you,  
8 Mr. Blaufuss.

9 JUDGE CLIFTON: Mr. Blaufuss, were you able to give more  
10 thought to whether you could produce the spreadsheets that  
11 support your exhibits? And Mr. English?

12 MR. ENGLISH: Your Honor, the conundrum we find ourselves  
13 in, is we would love to do it, but, Mr. Blaufuss, do you have  
14 any idea how many hours you spent in creating those  
15 spreadsheets?

16 MR. BLAUFUSS: Quite a few.

17 MR. ENGLISH: More than a hundred?

18 MR. BLAUFUSS: Let's ballpark it there.

19 MR. ENGLISH: So your Honor, it is not proprietary in the  
20 traditional sense of being confidential, but if we share with  
21 USDA and they put up on their website, then all other Class I  
22 processors who may be competitors of Dean Foods are basically  
23 getting a gift of that spreadsheet. And you know, it would be  
24 nice if we could do it, but given the ex parte rules and the  
25 nature of things, we can't hand it over to USDA without them

1 putting it up. And we could not get, and I don't think we're  
2 going to get, permission from Dallas to basically take  
3 Mr. Blaufuss' valuable time and basically put it out there.  
4 It's just something that we can't do.

5 I can say that there was a spreadsheet initially that  
6 Mr. Mykrantz shared with Mr. Blaufuss, and if it happens USDA  
7 already has that, they can, I guess, make that available  
8 generally, and then people could obviously, already getting a  
9 starting point with this analysis, which is already out there,  
10 be able to re-create it. But to simply hand over the work  
11 product, over lunch we just could not find our way clear to do  
12 that because of what is the very valuable time that it is and  
13 what it would mean as a gift to others who are competitors of  
14 Dean Foods.

15 JUDGE CLIFTON: When Mr. Mykrantz testified, did he provide  
16 the spreadsheet that you are referring to as an exhibit?

17 MR. ENGLISH: No, I think what he did was before the  
18 hearing was noticed, and I can ask Mr. Blaufuss, how many years  
19 ago did you start on this project?

20 MR. BLAUFUSS: I was actually looking at the e-mail, and I  
21 thought I'd looked correctly, and I think I initially contacted  
22 him about two years ago.

23 JUDGE CLIFTON: Could Mr. Blaufuss provide as an exhibit  
24 the spreadsheet he got from Mr. Mykrantz?

25 MR. ENGLISH: I'll let Mr. Blaufuss answer that.

1 MR. BLAUFUSS: It is USDA material so, yes.

2 JUDGE CLIFTON: That would help. At least then we have got  
3 a format.

4 MR. BLAUFUSS: And there would actually be two, so he  
5 provided a snapshot for one month for both two factor and three  
6 factor.

7 JUDGE CLIFTON: And was that your template?

8 MR. BLAUFUSS: Yes.

9 JUDGE CLIFTON: I think that would help.

10 MR. ENGLISH: We will get that done in the next couple  
11 days, your Honor.

12 JUDGE CLIFTON: Okay. Great.

13 MR. ENGLISH: I hope that's an appropriate compromise.  
14 Again, I hope people understand the struggle we had, given the  
15 investment that Dean Foods made in creating the document.

16 JUDGE CLIFTON: All right. Very good. Are there other  
17 questions for Mr. Blaufuss? Mr. Beshore?

18 MR. BESHORE: So I have one question then I may yield to  
19 Mr. Jablonski who, they speak in a different language.

20 CROSS-EXAMINATION

21 BY MR. BESHORE:

22 Q. What's your thought, Mr. Blaufuss, of whether the  
23 credit, the fortification credit, should be applicable if milk  
24 is fortified beyond the State of California requirements?

25 JUDGE CLIFTON: Can you be more specific? I mean, he's got

1 nothing to work with at all.

2 BY MR. BESHORE:

3 Q. Well, I think he might, but I will try to tie it down  
4 some more. The language on 47231, 1051.60(a)(6) talks about  
5 deducting for each pound of milk, nonfat solids this is  
6 unrevised, but just to get the point, and condensed skim milk  
7 used for fortifying Class I products to meet the State of  
8 California's fluid milk standards. And of course, you have  
9 discussed how for one percent, reduced fat and one percent you  
10 need to fortify. So my question is, in that fortification  
11 credit, which is in Proposal 1 as well as Proposal 2, costs  
12 producers money, cost the pool money.

13 My question is, if, for whatever reason, fortification  
14 is done beyond that required by the State of California, should  
15 the fortification credit apply?

16 A. I can honestly say I haven't thought about that exact  
17 scenario, but it's not our intent to create some scenario where  
18 you are giving people the ability to abuse the credit beyond  
19 just meeting the State standards. So, I mean, you are not  
20 going to be able to -- it's not my intent to say you can  
21 fortify milk up to 20 percent solids and draw the credit.  
22 That's not my intent. I can honestly say I haven't thought  
23 about that.

24 Q. Okay. I will yield to Mr. Jablonski.

25 MR. JABLONSKI: Gary Jablonski.

1 CROSS-EXAMINATION

2 BY MR. JABLONSKI:

3 Q. Under the three factor pricing system, if you have  
4 differences in incoming milk receipts, like 8892 from  
5 unfortified products, doesn't that reflect a difference in cost  
6 for unfortified products currently, since there's a solids not  
7 fat pricing system in place now?

8 A. I'm not sure I'm understanding the question. What I --  
9 I'll answer it in how I think you are asking it, and I'm sure  
10 you will correct me if I'm wrong. When I'm going through the  
11 formulas, I'm actually pricing the milk at standards. So I'm  
12 assuming 92, left over is going to be fluid, so it's actually a  
13 price in the actual solids in the milk and the fluid in the  
14 milk, so there's going to be a differentiation in just the base  
15 skim value or the base milk value and the fortification. So if  
16 you have a higher solids, you are going to have a higher milk  
17 price, whereas you will have a lower fortification. And vice  
18 versa with the low test.

19 Q. If you don't fortify --

20 A. Correct.

21 Q. -- you say you are going to have a higher milk test,  
22 milk cost for the higher milk, incoming milk?

23 A. Correct.

24 Q. And that's happening now, right? I mean, if you get a  
25 higher test milk, it is going to cost you more for your milk

1 and whole milk?

2 A. Correct. Correct.

3 Q. And point of clarification. I believe on Table 3,  
4 Column G and H, you were asked about the 10.2041 --

5 JUDGE CLIFTON: Hold on just a minute, let us get to  
6 Table 3. All right. And where do you want us to look,  
7 Mr. Jablonski?

8 MR. JABLONSKI: G and H.

9 JUDGE CLIFTON: Okay.

10 BY MR. JABLONSKI:

11 Q. There's a question about the 10.2041 percent and the  
12 1.1111 percent.

13 A. Uh-huh.

14 Q. As I understand it, you have 98 pounds of skim at those  
15 it tests, so when you add the butterfat to it you get a hundred  
16 pounds of milk, and that's when they equal 10.00 and 11.00  
17 percent solids not fat in the finished product. That's trying  
18 to clarify why those numbers aren't 10.0 and 11.0 on those?

19 A. Yes, that's my belief. This is the formulas that  
20 Mr. Mykrantz provided, and that's my belief is you're kind of  
21 overshooting on the skim to pull it back down when fat  
22 ultimately gets added.

23 Q. Thank you.

24 A. Yep.

25 JUDGE CLIFTON: Are there other questions for Mr. Blaufuss

1 on this topic? Ms. May?

2 CROSS-EXAMINATION

3 BY MS. MAY:

4 Q. Laurel May with USDA.

5 On page 3 of your testimony, you, at the second line up  
6 there it says, "a 9.87 cents per pound credit is applied." Is  
7 that a maximum of 9 cents credit? It's not a fixed number,  
8 right?

9 A. It's the max, but it's my understanding the last couple  
10 of years in talking to our plan accountants and to CDFA staff  
11 is that 98.7 is the credit applied, so it's the maximum, but it  
12 is also the credit plants are receiving on fortification  
13 credit.

14 Q. Because the formula that you use always comes up to at  
15 least that?

16 A. It's, you know, what you read in the first page is the  
17 actual, so there's not like you are subtracting one number from  
18 another to get to that. You know, you may deduct for each  
19 pound of milk solids nonfat in such condensed market skim milk,  
20 a maximum charge of 9 and 87 hundredths cents, and you are  
21 basically given that.

22 Q. Okay. So I just wondered like where the concept of a  
23 maximum came from. And are you, is Proposal 2 suggesting the  
24 same maximum number with some kind of sliding scale something  
25 below that?



1       A. No. So, I mean, I don't know where the initial 0987  
2 came in, I just know that's currently what's in California  
3 regulations. And that's a number, it's not a sliding scale.  
4 If I could talk what we would have in our initial is what was  
5 in the Federal Register, there was months, a few months where  
6 the fortification credit would go to zero, but it was also some  
7 months where when you do the math, it comes to being about 30  
8 to 40 cents on the value. So we wanted to eliminate all that  
9 and just keep the 0987.

10       Q. So it can be 0987 but no more than that, regardless of  
11 how much it really cost?

12       A. Correct.

13       Q. Okay. And did I miss where you or somebody else said  
14 whether this credit would be available to out-of-state handlers  
15 who ship milk into California for distribution?

16       A. I think with a lot of these regulations, if they are  
17 pooling that volume of milk, they should be eligible for the  
18 credit. So if that milk was being pooled as Class I in the  
19 state of California, I think they are eligible to receive the  
20 benefits of being in the pool in that case.

21       Q. Okay. Finally, on page 6 you say that it's Dean Foods  
22 view that you should use the three factor formula for  
23 calculating a fortification credit. Is that just Dean Foods  
24 view or do you have any sense that it is the view of all the  
25 other proponents of Proposal 2?

1 A. While I am a member of the Dairy Institute of  
2 California, I am only here for Dean Foods. I can't speak to  
3 what our competitors views are in the issue.

4 JUDGE CLIFTON: Mr. English, would you also like to  
5 respond?

6 MR. ENGLISH: Yes. This is an official position of the  
7 Dairy Institute of California as well.

8 MS. MAY: Great. Thank you. That's all my questions.

9 JUDGE CLIFTON: Who else has questions for Mr. Blaufuss on  
10 this topic? Mr. Blaufuss, is there anything you would like to  
11 add before I invite redirect?

12 MR. BLAUFUSS: Nope.

13 JUDGE CLIFTON: Is there any redirect?

14 MR. ENGLISH: No, your Honor.

15 JUDGE CLIFTON: All right. Mr. Blaufuss, thank you so  
16 much. I am very pleased that there were people in our audience  
17 who knew how to talk to you about these figures.

18 MR. ENGLISH: Your Honor, if Ms. Hancock is ready to go,  
19 otherwise we would do Mr. Blaufuss, Part 6. But I think for  
20 those who don't know from the Internet, we had a discussion  
21 before lunch, after we went off the record that we had some  
22 scheduling issues, and Ms. Hancock has kindly, I think got a  
23 witness ready to go. So I think Mr. Blaufuss will now come off  
24 the stand, and he'll be the next witness after this, subject to  
25 any dairy farmers.

1 JUDGE CLIFTON: Excellent. Thank you, Mr. English. Thank  
2 you, Mr. Blaufuss, you may step down now.

3 MR. ENGLISH: And I thank Ms. Hancock and her team.

4 JUDGE CLIFTON: And we are distributing documents. All  
5 right. If documents are being distributed, the Judge needs  
6 them. And who else? All right. So we have a witness in the  
7 witness chair. Before I swear him in, let's talk about the  
8 documents.

9 Ms. Hancock, if you would identify yourself and tell us  
10 what we have here?

11 MS. HANCOCK: Nicole Hancock for Stoel Rives. We have the  
12 testimony of Richard Shehadey, that will be the first exhibit  
13 we mark. What number are we on?

14 JUDGE CLIFTON: I believe that will be 152. So that will  
15 be the testimony of Richard Shehadey.

16 MS. HANCOCK: And then the exhibits to the testimony of  
17 Richard Shehadey will be Exhibit 153.

18 (Thereafter, Exhibit 152 and Exhibit 153,  
19 were marked for identification.)

20 JUDGE CLIFTON: All right. Is there anybody who does not  
21 yet have copy for your use of Exhibit 152 and 153? It appears  
22 everyone has a copy.

23 Mr. Shehadey, I'll swear you in at this time. I  
24 believe this is the first time you have testified in this  
25 hearing; is that correct?

1 MR. SHEHADEY: Yes, it is.

2 JUDGE CLIFTON: All right. Well, we have appreciated your  
3 being here. We have also appreciated the products that you  
4 brought for us to enjoy.

5 MR. SHEHADEY: We're happy to do that.

6 JUDGE CLIFTON: Thank you. All right. Then if you would  
7 raise your right hand.

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

10 MR. SHEHADEY: Yes, I do.

11 JUDGE CLIFTON: Thank you. Ms. Hancock, you may proceed.

12 MS. HANCOCK: Thank you, your Honor.

13 DIRECT EXAMINATION

14 BY MS. HANCOCK:

15 Q. Mr. Shehadey, Exhibit 152 is your prepared statement?

16 A. Yes.

17 Q. And if you wouldn't mind, can you read that into the  
18 record, please?

19 A. Read the statement?

20 Q. Yes.

21 A. Okay.

22 Introduction

23 My name is Richard Shehadey and I am the Chief  
24 Executive Officer of Producers Dairy Foods ("Producers Dairy")  
25 and an owner in Bar 20 Dairy, LLC, ("Bar 20 Dairy"). I'm

1 submitting this testimony in support of Proposal Number 3  
2 submitted by the California Producer Handlers Association  
3 ("CPHA") regarding a potential Federal Milk Marketing Order for  
4 the State of California. I support the adoption of a Federal  
5 Milk Marketing Order as proposed by the Cooperatives in  
6 Proposal Number 1, preserving the quota system "intact" as  
7 Dr. Eric Erba testified to in this hearing in Exhibit 42. With  
8 the addition of CPHA's Proposal Number 3 to the Cooperatives'  
9 proposal, the quota system will be preserved "intact" because  
10 it will include both types of quota, regular and exempt.

#### 11 Producers Dairy History

12 I wish to start by explaining the Producers story --  
13 Producers Dairy Story, excuse me. It first began as Producers  
14 Dairy Delivery Company in December of 1932 by a group of  
15 ambitious men wanting to package and deliver high quality milk  
16 products in the local community here in Fresno, California. It  
17 started with a small milk processing plant and a few trucks to  
18 deliver fresh milk directly to people's homes in glass bottles.

19 In 1949, my father, Larry Shehadey, bought an interest  
20 in that then small milk delivery business. By 1955, my father  
21 bought out the other two partners such that Producers Dairy has  
22 been an entirely family-owned independent company ever since.  
23 And though my father did not have a college degree, he worked  
24 incredibly hard to make Producers Dairy the number one dairy in  
25 the area in a very short period of time.

1           One of his creative and pioneering marketing decisions  
2 was to associate Producers Dairy with Hopalong Cassidy, who,  
3 for the benefit of younger generations, was a well-known and  
4 respected fictional cowboy who was also just called "Hoppy" in  
5 TV shows that ran in the 1950's and 1960's. This helped build  
6 up Producers Dairy's market of its Class 1 products by  
7 marketing and creating brand recognition of our products, with  
8 efforts such as putting photos of Hoppy on Producers Dairy milk  
9 containers and trucks, distributing product coupons available  
10 at grocery stores to attend Hoppy's Saturday matinees, and  
11 creating a Producers Dairy radio jingle that ran on local  
12 stations. All these efforts helped develop Producers Dairy's  
13 Class 1 sales. These unique efforts really encouraged people  
14 to not only think positively about Class 1 milk and drink it,  
15 but to also look for Producers Dairy products in the stores  
16 where they shopped. I have included Exhibit A to my testimony  
17 a picture of our early advertisements with Hoppy and a picture  
18 of my father with one of our Hoppy-branded delivery trucks.

19           In 1957, my father decided he could better control milk  
20 quality and help when supplies were tight by having his own  
21 dairy farm. As a result, he built our first dairy cow milking  
22 operation which he named Bar 20 Dairy after Hoppy's ranch.  
23 Over the years, our family continued to invest and expand our  
24 Bar 20 dairy cow milking operations to continue to control the  
25 quality of the milk that goes into Producer's Dairy products.

1           Operating a vertically integrated business allows us to  
2 protect the quality of our product, and in turn, the quality of  
3 our brand. Bar 20 Dairy's operations have been key and  
4 fundamental to Producers Dairy's reputation of providing some  
5 of the highest quality milk available in the market. Our first  
6 dairy farm included a glass viewing room to accommodate  
7 busloads of school children taking field trips there. We have  
8 connected our brand equity to Bar 20 Dairy's farm operations by  
9 our unwavering commitment to "healthier, happier cows" on our  
10 farms and exceptional milk quality. We are Validus certified  
11 for our farm practices and animal welfare. Attached as  
12 Exhibit F is an explanation of this certification.

13           We pride ourselves on operating an efficient plant,  
14 distribution system, and supply chain. We understand that  
15 price is critical component to our -- is a critical component  
16 to our business and we work hard to control and manage our  
17 operating costs. We re-invest in assets and technology to  
18 remain as efficient and as lean as possible in our operations.  
19 But we have great deal of urban market customers (in deficit  
20 areas), and we have to absorb the costs of shipping to those  
21 markets. We do not, and will not, receive any transportation  
22 funds for delivering to these deficit areas. The net impact is  
23 that it saves the pool money and this is a regulatory  
24 disadvantage to us as compared to our competitors.

25           Our customers appreciate our family-owned status, our

1 high-quality products (including our ability to effect and  
2 ensure quality all the way from our farm to our customers), our  
3 focus on customer satisfaction, the strength of our brands, our  
4 knowledge of the industry and farms, our reinvestment into the  
5 future, our philosophy and direction as a business, our control  
6 over our supply chain. These are the factors that will  
7 utilize, excuse me, these are the factors that we utilize to  
8 secure our customer base and compete against other fluid  
9 processors.

#### 10 Personal Background

11 For more than 50 years, I have been involved in our  
12 family dairy business. I have done everything in our  
13 operations from running tractors, milking cows, and holding  
14 various leadership roles. I received my Bachelor of Science  
15 degree in Business Administration from Fresno State College in  
16 1965. I'm currently on the Board of the Dairy Council of  
17 California (30 years), California Milk Processor Board (a  
18 founding director and Board Member for 22 years), the local  
19 California Milk Advisory Board (District 8 Committee for 15  
20 years), and the Milk Industry Foundation, a member organization  
21 of International Dairy Foods Association (for over 25 years and  
22 I was the past Secretary).

23 I have been a member of the Holstein Association for  
24 more than 40 years. I also sit on numerous local community and  
25 non-profit boards. Can I ad lib for a minute?



1 JUDGE CLIFTON: Certainly. You may depart at anytime and  
2 add to what we have in the exhibit.

3 MR. SHEHADEY: Okay. When I heard this availability was  
4 open at 3:00 today, I was supposed to be at the Valley  
5 Children's Hospital, I'm on the Foundation Board out there, so  
6 when it mentioned numerous local community and non-profit  
7 boards, I thought of that because that's where I'm supposed to  
8 be sitting right now.

9 JUDGE CLIFTON: And I see you are wearing the proper shirt  
10 to be there.

11 MR. SHEHADEY: To be there, right. But I'm happy to be  
12 here and fill in the time.

13 JUDGE CLIFTON: Thank you so much.

14 MR. SHEHADEY: Thank you.

15 I have previously been appointed and served on the  
16 California Department of Food and Agriculture ("CDFA") Quota  
17 Review Committee. That committee was tasked with reviewing the  
18 quota system and whether any feasible options existed to  
19 reasonably end it. The analysis done included an evaluation of  
20 quota, which was found to be worth over a billion dollars in  
21 value. The committee evaluated various options but concluded  
22 that the cost to buy out all the allocated quota and potential  
23 impact to the pool was too great. Therefore, no further action  
24 was taken.

25 The California Producer-Handler Association

1           Today, I present this testimony on behalf of not only  
2 Producers Dairy, but also the three other exempt quota holders.  
3 The CPHA is made up of: (1) Foster Dairy Farms, Inc.;  
4 (2) Hollandia Dairy, Inc.; (3) Producers Dairy Foods, Inc.; and  
5 (4) Rockview Dairies, Inc. Their farms own exempt quota, also  
6 known as "Option 70" producer-handlers. Option 70  
7 producer-handlers are fully-regulated, reporting to the pool  
8 for the Class 1 sales.

9           One CPHA is member is located in Fresno --

10 BY MS. HANCOCK:

11 Q. Mr. Shehadey, that last sentence was footnoted down at  
12 the bottom of page 3. Can you read that footnote as well?

13 A. Yes.

14           In contrast, "Option 66" producer-handlers are fully  
15 exempted from the pool for their entire production and do not  
16 participate in the quota system. CPHA members are not  
17 Option 66 producer-handlers.

18 Q. Thank you.

19 A. One CPHA member is located in Fresno County, one is  
20 located in Stanislaus County. The other two CPHA members are  
21 located in Southern California (San Diego County and San  
22 Bernardino County), which are deficit areas of milk production,  
23 which it is increasingly more -- where it is increasingly more  
24 difficult to maintain milk supply and dairy operations. These  
25 four members of the CPHA are California's final exempt quota

1 holders (out of the original 49) and we seek to preserve our  
2 asset, along with preservation of the rest of the quota system.  
3 Gonsalves Milk Pooling Act - Exempt Quota

4           When the Gonsalves Milk Pooling Act was enacted in  
5 1967, Producers Dairy had already been operating for many  
6 years, both its own dairy farm and processing plant, as well as  
7 carrying its own marketing efforts and building up demand for  
8 its Class 1 products.

9           During those years that preceded the Gonsalves Milk  
10 Pooling Act, the California milk industry was otherwise in a  
11 state of upheaval and turmoil as the extreme competition for  
12 Class 1 contracts existed among other producers. The Gonsalves  
13 Milk Pooling Act was primarily created to address industry  
14 problems that did not affect producer-handlers because all the  
15 milk from their dairy operations flowed to a dedicated Class 1  
16 plant.

17           JUDGE CLIFTON: I would like you to read that again because  
18 you wrote it "our dairy operations" and you read it "their  
19 dairy operations". So start again with that sentence, please.

20           MR. SHEHADEY: Okay.

21           The Gonsalves Milk Pooling Act was primarily created to  
22 address industry problems that did not affect producer-handlers  
23 because all the milk from our dairy operations flowed to a  
24 dedicated Class 1 plant. And what I meant by "our" there was  
25 "our", all four of us.

1           Legislators fashioned the California quota system under  
2 the Gonsalves Milk Pooling Act to provide for exempt quota in  
3 consideration and recognition of a producer-handler's unique  
4 structure in creating its own Class 1 market.

5           Through legislation, producers and producer-handlers,  
6 were allocated quota and exempt quota, both assets that over  
7 the last 50 years have become a valuable part of our business  
8 operations. Producers were issued regular quota that was  
9 assigned base on their historical production of raw milk that  
10 was sold to Class 1 handlers. Producer-handlers were likewise  
11 issued exempt quota for the historical production and sale of  
12 Class 1 milk. The producers were also assigned a base  
13 production volume, and anything produced beyond the base and  
14 quota assignments it was paid as overbase production. CPHA  
15 farms hold exempt quota, regular quota, and assignments for  
16 base. The majority of the milk produced by CPHA members is  
17 paid as overbase production. All of this milk and all handler  
18 sales are reported to the pool, including those volumes covered  
19 by exempt quota. Exempt quota is treated as a deduction from,  
20 or credit to, the pool. I have included as Exhibit B to my  
21 testimony, a document issued by the Department of the -- excuse  
22 me. I have included as Exhibit B to my testimony, a document  
23 issued by the Dairy Marketing Branch of the California  
24 Department of Food and Agriculture that more fully discusses  
25 the policy considerations that ultimately led to the existing

1 quota system in California.

2 Exempt quota can be converted to regular quota through  
3 relinquishment of exemption treatment (by notifying CDFA),  
4 through the sale of quota to another producer, through the  
5 sunsetting of the consanguinity requirements, or by falling out  
6 of compliance with the legislative limitations. If exempt  
7 quota is converted to regular quota, it is then entitled to the  
8 regular quota premium payments. So just as the farm side of  
9 our business (Bar 20 Dairy) holds the exempt quota value, it  
10 cannot receive other benefits from the pool.

11 Quota as a Producer -- excuse me -- Quota is a Producer, Not a  
12 Handler, Benefit

13 Producer-handlers operate two separate and distinct  
14 business units. Bar 20 dairy is our farm that is a stand-alone  
15 separate business entity that produces the milk. Producers  
16 Dairy is a processing plant that is a separate distinct  
17 business entity that processes the raw milk into a consumer  
18 product. They are separate legal entities and we operate them  
19 as separate business units with separate financial books. As  
20 with regular quota, Bar 20 Dairy, our producer side of the  
21 business, receives all of the value and benefit of exempt  
22 quota. Exempt quota is an asset for Bar 20 Dairy. It is a  
23 transferrable asset that holds accounting book value, and one  
24 to which Bar 20 assigns an asset value on its balance sheet.  
25 The California --

1 JUDGE CLIFTON: It's a very small difference, but just read  
2 again the ending of that sentence, beginning, second, second  
3 line up, "and one to which".

4 MR. SHEHADEY: And one to which Bar 20 Dairy assigns an  
5 asset value on its balance sheet.

6 JUDGE CLIFTON: Thank you.

7 MR. SHEHADEY: The California State Order regulates and  
8 audits the handler side of producer-handlers and Option 70  
9 producer-handlers are fully accountable to the pool in a  
10 California State Order system. Each of the CPHA members  
11 reports to the CDFA for all of the product that is processed by  
12 our handler arm of the business through the monthly CDFA 800  
13 report. The exempt quota is a deduction from, or credit to,  
14 the pool as a benefit to our dairy farms. Since the inception  
15 of the quota system in California, Producers Dairy pays Bar 20  
16 Dairy the Class 1 price for the milk received up to the amount  
17 of the exempt quota. The plant doesn't care where they buy  
18 their milk from, as long as it's quality milk. It costs the  
19 same whether they buy it from our farm as exempt quota milk or  
20 whether they buy it from CDI. Bar 20 Dairy receives the full  
21 benefit of the exempt quota value, other milk received from  
22 Bar 20 is paid at pool prices.

23 JUDGE CLIFTON: Now, anytime you read, anytime you say  
24 Bar 20 but you have written Bar 20 Dairy, we know that it's  
25 Bar 20 Dairy; is that correct?

1 MR. SHEHADEY: Yes.

2 JUDGE CLIFTON: Is there any other entity in the  
3 neighborhood also called Bar 20 other than the Bar 20 Dairy?

4 MR. SHEHADEY: No.

5 JUDGE CLIFTON: Okay. Good. All right.

6 MR. SHEHADEY: Not that I'm aware of. I'm used to calling  
7 it Bar 20, so correct me if you need it in the record properly,  
8 I'm happy to do that.

9 JUDGE CLIFTON: Okay. Well, then I would like you to do  
10 that sentence again, beginning just after CDI, period.

11 MR. SHEHADEY: Sure.

12 Bar 20 Dairy receives the full benefit of the exempt  
13 quota value; other milk received from Bar 20 Dairy is paid at  
14 pool prices. Approximately two-thirds the milk we receive from  
15 Bar 20 Dairy is paid at overbase price. Proposal Number 3  
16 preserves the quota system intact, allowing the quota benefit  
17 to the dairy farms who hold it to continue to preserve the  
18 investment they have made into that asset.

19 As an Option 70 producer-handler, Producers Dairy has  
20 never used the benefits from holding exempt quota to undercut  
21 or bid for fluid milk contracts with customers, because it does  
22 not have it to give. It is critically important for me to  
23 communicate that the plant side of our business (Producers  
24 Dairy) does not receive a price advantage from our exempt  
25 quota, as the plant does not have it to give.

1 BY MR. SHEHADEY:

2 Q. Mr. Shehadey, I want to pause there for just a moment.  
3 You have bolded text in that paragraph and in the preceding  
4 paragraph. Can you tell me what the purpose is of having the  
5 bolded language there?

6 A. Well, for the last 40 years I have heard from our  
7 competitors that we have a price advantage, and I'm trying to  
8 make it about as solid with my hand in the air and swearing to  
9 God as I can that this is a fact, and it's a fact, and it's a  
10 fact. We pay our dairy farm Class 1 for the milk, they have  
11 the exempt. The only thing they can do is give a load of  
12 manure with every new account we get. They don't have anything  
13 to give, all they have is cows and manure and milk.

14 They get the advantage, Producers Dairy does not have  
15 the advantage from a price standpoint. We pay the same price  
16 as everybody else that we compete with.

17 Q. And have you verified that that's the case with the  
18 other producer-handlers as well that have Option 70 exempt  
19 quota?

20 A. They have told me that that's the case, yes, and they  
21 will have a chance to verify that themselves.

22 Q. You can continue on.

23 A. Thank you. Producers Dairy pays the Class 1 price to  
24 Bar 20 Dairy. Bar 20 Dairy receives the full benefit of the  
25 exempt quota. Producers Dairy includes the Class 1 prices in



1 the cost of production for our fluid milk and it competes in  
2 the marketplace to sell our fluid products with customer  
3 service, with branding recognition, and based on the  
4 efficiencies we can build into our plant and distribution  
5 systems. We operate on a level playing field with all of the  
6 other handlers in the industry. Our exempt quota has never  
7 given Producers Dairy a competitive advantage over other  
8 handlers, as it is a benefit held by Producers or Bar 20 Dairy,  
9 and the two are operated as separate business units.

10 JUDGE CLIFTON: May I ask a question about that right here?

11 MR. SHEHADEY: Surely.

12 JUDGE CLIFTON: So we're almost to the bottom of page 4 of  
13 your testimony, which is Exhibit 152. Is there different  
14 ownership of Bar 20 Dairy than there is of Producers Dairy?

15 MR. SHEHADEY: There's a little different family ownership,  
16 but the way consanguinity works, it is the same family, so I  
17 would say yes and no.

18 JUDGE CLIFTON: All right.

19 MR. SHEHADEY: It's the same family. It's the Shehadey  
20 family and it is within the consanguinity, so it is all -- my  
21 brother and his children, and me and my children.

22 JUDGE CLIFTON: Thank you. And you may resume, you're at  
23 the last part paragraph, the bottom of page 4.

24 MR. SHEHADEY: Scott Hofferber with Farmdale Creamery  
25 testified about a hypothetical situation in which a

1 producer-handler could use the financial benefit from having  
2 exempt quota and using that to secure customers and displace  
3 other handlers. Other handlers testified that they worry that  
4 the CPHA has used its exempt quota price advantage to undercut  
5 bids or secure customer bids. That has never been the case  
6 with Option 70 producer-handlers. No Option 70  
7 producer-handler has ever used their exempt quota to win any  
8 customer account.

9           Simply put, the suggestion that CPHA members use  
10 their exempt quota to secure customer bids is not based in  
11 reality. Any sales we have won were not attributed to our  
12 exempt quota holdings, because that benefit goes entirely to  
13 the farm operations. Any sales that we have gained is because  
14 of our hard work, quality of product, and customer service.  
15 Price is always a factor in any competitive arena, and we work  
16 hard to ensure that we build in efficiencies to our business.  
17 We offer our customers a high-quality product with impeccable  
18 customer service. We have control over the quality of our  
19 product from the farm through to the final product that is sold  
20 to our customers. We have invested in modern technology, we  
21 control our cost through operating an efficient distribution  
22 system and supply chain. Hard work and dedication toward  
23 improving efficiencies on the handler side of our business is  
24 what provides the ability to submit competitive bids for  
25 customers business; it is not exempt quota and never has been

1 because the benefit goes to the farming operations. As  
2 Producers Dairy's mission has stated for over 20 years, it is  
3 to produce --

4 JUDGE CLIFTON: Let he have you start that sentence again,  
5 please.

6 MR. SHEHADEY: As Producers Dairy's mission statement has  
7 stated for over 20 years is "To produce the highest quality  
8 products, at the lowest cost per unit, while meeting customer  
9 expectations every time."

10 Producer's Dairy -- Exempt Quota Impact and Meaning

11 Producers Dairy was initially issued exempt quota in  
12 1969 and later purchased quota that was allowed to be converted  
13 to be exempt quote under the last '93 amendment to the  
14 Gonsalves Milk Pooling Act.

15 JUDGE CLIFTON: All right. So I'm confused. So Producers  
16 Dairy at that time was a dairy farm rather than a processor?

17 MR. SHEHADEY: No, we're calling my statement Producers  
18 Dairy, but it is both, the statement is for Producers Dairy and  
19 Bar 20 Dairy Farms.

20 JUDGE CLIFTON: Okay. So just look at this sentence with  
21 me. "Producers Dairy was initially issued exempt quota in  
22 1969."

23 MR. SHEHADEY: It should be our Bar 20 Dairy Farm  
24 operations.

25 JUDGE CLIFTON: Okay. Was it in existence then, that long

1 ago?

2 MR. SHEHADEY: '69, yes, it was.

3 JUDGE CLIFTON: Okay. So do you think that sentence should  
4 strike Producers Dairy and instead insert Bar 20 Dairy?

5 MR. SHEHADEY: Yes, I do.

6 JUDGE CLIFTON: Ms. Hancock, any objection?

7 MS. HANCOCK: No, not at all, your Honor, thank you.

8 JUDGE CLIFTON: All right. Ms. Frisius, we'll do that on  
9 page 5, right in the middle of the page. First two words under  
10 the heading Producers Dairy -- well, the first word. Let's  
11 look at the heading. Does the heading also need to be changed  
12 or no?

13 MS. HANCOCK: We can change the heading as well, your  
14 Honor. I guess this was meant because it's the party entity  
15 for the CPHA proposal member is Producers Dairy, but Bar 20 is  
16 the entity that owns it, so I think that that's more accurate  
17 if we change that as well.

18 JUDGE CLIFTON: All right. So Ms. Frisius, we'll replace  
19 Producers Dairy with Bar 20 Dairy in two places, the heading  
20 right in the middle of the page and the first two words that  
21 begin the paragraph. All right. And I have marked my copy  
22 accordingly.

23 So start again, if you will, in the middle of page 5,  
24 and begin to read the heading as we have amended it and  
25 continue on from there, if you will.

1 MR. SHEHADEY: Yes, that was a nice catch. That's makes  
2 accurate now.

3 JUDGE CLIFTON: You just drilled it into me.

4 MS. HANCOCK: She's known for those.

5 MR. SHEHADEY: Thank you. Appreciate it.

6 Bar 20 Dairy -- Exempt Quota Impact/Meaning

7 Bar 20 Dairy was initially issued exempt quota in 1969  
8 and later purchased quota that was allowed to be converted to  
9 be exempt quota under the last '93 amendment to the Gonsalves  
10 Milk Pooling Act. Over the years, we have invested millions of  
11 dollars to acquire additional quota. However, since the '93  
12 amendments as of March '94, we, along with all of the other  
13 Option 70 producer-handlers, have not been allowed to expand or  
14 grow the amount of exempt quota that we hold. As a result, the  
15 exempt quota we have had since '94 has remained fixed without  
16 the possibility to ever increase the exempt quota volumes. I  
17 have included as Exhibits C to my testimony, a redacted version  
18 of Bar 20 Dairy Dairy's Exempt Quota History.

19 JUDGE CLIFTON: That's probably fine. You probably, it's  
20 probably called.

21 MS. HANCOCK: Let's take a second and turn to Exhibit C in  
22 Exhibit 153, and we printed these before we realized we should  
23 have numbered them, so I apologize.

24 JUDGE CLIFTON: That's fine. No problem. Well, you have  
25 even got folio numbers on it, that's quite helpful actually.

1 MS. HANCOCK: Kinda fancy.

2 JUDGE CLIFTON: Yes, it is. So let's see, all right. So,  
3 Exhibit C, pretty much --

4 MS. HANCOCK: It has a big black block in the middle of the  
5 page. Mr. Shehadey, can you explain for us what Exhibit C is  
6 here?

7 MR. SHEHADEY: Exhibit C?

8 BY MS. HANCOCK:

9 Q. To your exhibit.

10 A. With the blocked out section?

11 Q. Yes.

12 A. Those are the purchases of quota we made over the  
13 years.

14 Q. And it starts with January 1 of 1996. Do you think  
15 that that is supposed to be --

16 A. That's wrong, it should be '69 instead of '96, that's a  
17 typo. It started, it's progressive from 1969 on through '95.

18 Q. And who produced this document? Where did you get this  
19 document from?

20 A. I think that came from the CDFA. I think that's from  
21 their records.

22 Q. Okay. And so, we have, can you tell us what is blocked  
23 out there in the black box?

24 A. Oh, it would be the, it says up at the top, the seller,  
25 fat, solids, quota, and the dollars paid, what it cost over the

1 time there.

2 Q. And why is it blacked out there?

3 A. It was confidential information that we didn't think  
4 that was necessary. The discussion was to present the amount  
5 or the years that we bought it and that we did buy it.

6 Q. So if this wasn't blocked out it would have numbers in  
7 each one of these columns?

8 A. Yes, it would.

9 Q. And including dollar amounts as well?

10 A. Yes, it would.

11 Q. Okay. And so we've blocked it out to protect the  
12 confidentiality of the information that you have that's  
13 individual to you, but we have totaled up the total sum paid by  
14 all of the Option 70 producer-handlers who we represent in this  
15 case, to get the number that we'll see in your testimony?

16 A. Yes, that's correct.

17 Q. Okay. And then if we walk down the second column there  
18 next to the date, tell me what those descriptions represent?

19 A. Well, that was, those are just original issue, that's  
20 what the pool issued, then the others are purchased.

21 Q. And then it has in November 1st --

22 A. The growth, excuse me, growth would be when Class 1  
23 went up and then purchased is when we purchased.

24 Q. Okay.

25 A. Now, the growth issued was probably, I don't have the

1 amounts here, but it was, there were nominal amounts. It was  
2 because they pretty much divvied it out to everybody, so there  
3 was small amounts that went out to everybody.

4 Q. That was part of the equalization?

5 A. It is the increase in Class 1, yeah.

6 Q. Okay.

7 A. I don't know what they called it, but when the Class 1  
8 went up, they had, and since quota was based on Class 1 sales,  
9 they gave out additional quota because Class 1 went up.

10 Q. And then if you move down, you have, on January 1,  
11 1978, converted to exempt 1, do you know what that refers to?

12 A. Yeah, that would be the legislation that went through  
13 in '77 or I think it was finalized in '78, that we could  
14 convert what we had purchased up to that time to exempt quota.

15 Q. And then it's asterisks. There's the asterisks as a  
16 cross-reference at the bottom, could you read that into the  
17 record?

18 A. Excuse me, which one?

19 Q. Where it has "January 1, 1978, converted to exempt,"  
20 and it has an asterisk and then a 1?

21 A. Oh, number 1?

22 Q. Yeah, on the bottom. Can you read what that legend  
23 says there?

24 A. It says, "Converted to exempt, number 1, quota  
25 purchased as non-exempt from '69 through '77 and converted to



1 exempt in '78." From that legislation or because of that  
2 legislation.

3 Q. So that would correspond to the 1978 amendments to the  
4 Pooling Act?

5 A. Yes, it would.

6 Q. Okay. And then you have additional growth down through  
7 March of '94 when it says that there were several purchases  
8 made. Do you see that?

9 A. Yes.

10 Q. And what does that reflect?

11 A. Just purchased quota from different sources, different  
12 people.

13 Q. So that's the window of time when you have a financial  
14 investment into your exempt quota, that's what that's referring  
15 to is that time period where you actually had dollars that were  
16 outlaid to purchase and acquire that quota?

17 A. Yes.

18 Q. Okay. And what does the, what does the asterisk refer  
19 to on January 1 of '96?

20 A. Lost exemption. That we bought some and it was passed  
21 the date, so it wouldn't qualify, so it's regular quota, it is  
22 not exempt quota.

23 Q. And then that refers to, I think Mr. Gonsalves  
24 testified this morning that it went retroactive where anything  
25 purchased after a certain date in March of '95 --

1 A. '95, I believe.

2 Q. Lost its exempt quota treatment?

3 A. Right. That's correct. So we do have a small amount  
4 of regular quota, Bar 20 does, owns a small amount of regular  
5 quota in addition to the exempt quota.

6 Q. And if you look at the top of that page, what does it  
7 say up there on that title?

8 A. Bar 20 Dairy Exempt Quota history.

9 Q. So who does it show owns that exempt quota? Which  
10 entity?

11 A. Bar 20 Dairy.

12 Q. Okay. All right. Let's --

13 JUDGE CLIFTON: Let's not leave this yet. Ms. Frisius,  
14 would you amend on this exhibit, the date that says '96 to '69  
15 on the record copies. All right. That's done.

16 All right. And now, Ms. Hancock, you may take us where  
17 you will.

18 BY MS. HANCOCK:

19 Q. Thank you, your Honor. I think we were at the  
20 paragraph beginning. "Exempt quota is a valuable asset" on  
21 page 5.

22 A. It's right after the comment on Exhibit C there.

23 JUDGE CLIFTON: Yeah, but don't go there yet because we  
24 want to make sure we have the right words that end the previous  
25 sentence. So do you think you should say, Mr. Shehadey, "I

1 have included as Exhibit C to my testimony, a redacted version  
2 of" and then do you think we should just have the very title  
3 that's on Exhibit C?

4 MR. SHEHADEY: Bar 20 Dairies -- Exempt Quota.

5 JUDGE CLIFTON: Okay. The title actually says Bar 20 Dairy  
6 Exempt Quota History.

7 MR. SHEHADEY: Uh-huh.

8 MS. HANCOCK: If we just strike the possessive Dairy's off  
9 of that sentence, I think it will read correctly.

10 MR. SHEHADEY: Take this word that has the 's off?

11 JUDGE CLIFTON: All right. So Ms. Frisius, that's what  
12 we'll do, we'll just strike one word, "DAIRY's". Thank you.  
13 All right. Good. Otherwise we have to say Bar 20 Dairies, Bar  
14 20 Dairy's Exempt Quota History, which is cumbersome.

15 MR. SHEHADEY: Well, this way it ties in with the  
16 Exhibit C directly.

17 JUDGE CLIFTON: Very good. All right. Thank you. So now  
18 you may continue to read with the words exempt quota.

19 MR. SHEHADEY: Thank you.

20 Exempt quota is a valuable asset owned by Bar 20 Dairy.  
21 In addition to exempt quota, Bar 20 also owns regular quota.

22 JUDGE CLIFTON: That's Bar 20 Dairy.

23 MR. SHEHADEY: Bar 20 Dairy also owns regular quota. We  
24 agree with Dr. Erba and Lon Hatamiya that quota has a value  
25 that is both measurable and immeasurable, as noted in

1 Exhibit 42 and 54 respectively. Regular quota has a two-fold  
2 value, (1) the value that comes from the premium pricing  
3 received for Class 1 milk production; and (2) the value that  
4 can be had as a transferrable asset in buying or selling  
5 regular quota. Exempt quota not only holds the values of  
6 regular quota, but also has an additional value in that the  
7 value of that volume of milk is deducted from the pool. The  
8 measure of the exempt quota value for our farm is the  
9 difference between Class 1 and quota prices that the farm would  
10 receive if it were paid from the pool.

11 MS. HANCOCK: So I want to pause for one second, your  
12 Honor. It is ten to 4:00 and I don't know if you want to sneak  
13 in a break or if you want us to plow through.

14 JUDGE CLIFTON: I think a break would be a really good  
15 idea. All right. So let us be back ready to go at 4:10.  
16 4:10. Brian wants you back at 4:05. We'll come back at 4:05.  
17 Good. Ms. Hancock, you may resume.

18 BY MS. HANCOCK:

19 Q. Mr. Shehadey, you were reading on your exhibit,  
20 prepared statement, that's in Exhibit 152, we're on the bottom  
21 of page 5, beginning with the title Quota and Exempt Quota  
22 Required Investments to Acquire.

23 A. Yes, found it.

24 Q. Do you want to go ahead and continue?

25 A. Yes.

1 Quota and Exempt Quota Required Investments to Acquire

2 Producers and producer-handlers incurred a cost in  
3 acquiring their respective quotas within the quota system. The  
4 original assignment was based on the historical production of  
5 milk used for Class 1 milk sales, so the investment came in the  
6 form of creating markets for the milk or the buyer  
7 relationships for that milk with the processor of that milk.

8 As the quota system evolved with the the 1978 and 1993  
9 amendments to the Gonsalves Milk Pooling Act, regular quota and  
10 exempt quota were assigned to producers and producer-handlers  
11 relative to their additional production and sales volumes  
12 reflecting additional market expansion of Class 1 sales.  
13 Producer-handlers were also allowed to acquire exempt quota by  
14 purchasing it through legislative allowances that were  
15 ultimately capped in 1994.

16 Q. I think that we established that that was March of 1995  
17 so should we change that?

18 A. That was capped in, yeah, March of '95.

19 JUDGE CLIFTON: All right. Ms. Frisius, do you see where  
20 he is at the top of page 6? All right. Five lines down we're  
21 going to strike 1994 and insert March '93; is that correct?

22 MR. SHEHADEY: '95.

23 JUDGE CLIFTON: '95, March 1995. Thank you.

24 MR. SHEHADEY: Thank you.

25 Bar 20 Dairy invested millions of dollars in acquiring

1 exempt quota. The California producer-handler (CPHA) has  
2 collectively invested an additional \$9,298,677.84 to acquire  
3 this exempt quota.

4 JUDGE CLIFTON: Now, let me refer back to page 1, I think  
5 that's where you tell us who is in CPHA. You will have to help  
6 me find it.

7 MS. HANCOCK: It is a little further on, your Honor. It is  
8 on --

9 JUDGE CLIFTON: The top of page 3.

10 MR. SHEHADEY: Page 3.

11 JUDGE CLIFTON: Okay. So when you say that the CPA has  
12 acquired or has invested, collectively invested, if we look to  
13 the top of page 3, is what we look at there the farms, the  
14 producers? Is that what's named there or are processors named  
15 there?

16 MS. HANCOCK: Your Honor, those are just entity titles for  
17 the members of the Producer Handler Association, but they will  
18 talk about, the individual witnesses will talk about their  
19 farms that actually made the acquisition, which have different  
20 names.

21 JUDGE CLIFTON: Okay. So that's a little confusing, folks,  
22 just sayin'.

23 BY MS. HANCOCK:

24 Q. Okay. So Mr. Shehadey, would it be more accurate then  
25 to say, "the farms of the CPHA have collectively invested" in

1 that last sentence that has --

2 A. You could say, "the dairy farms of CPHA have  
3 collectively invested an additional 9 million to acquire this  
4 exempt quota."

5 Q. Okay.

6 JUDGE CLIFTON: So let's do that, Ms. Frisius, we'll strike  
7 "the CPHA" and we will insert "the dairy farms" and help me  
8 with the wording, Mr. Shehadey.

9 MR. SHEHADEY: Of the CPHA.

10 JUDGE CLIFTON: Of the CPHA.

11 MS. HANCOCK: And I think we need to strike an additional,  
12 because I think the total for the four is that 9 million  
13 number.

14 JUDGE CLIFTON: Mr. Shehadey, do you agree that the word  
15 "additional" should, that we should strike it?

16 MR. SHEHADEY: Yes, it is inclusive of our purchases also,  
17 so it shouldn't be additional.

18 The dairy farms of the CPHA have collectively invested and,  
19 invested, instead of an, we should take that out, and  
20 additional, and it would just be "they have invested 9,298 to  
21 acquire this exempt quota."

22 JUDGE CLIFTON: All right. Does that include all of the  
23 money spent throughout the history of the each of these dairy  
24 farms to acquire the exempt quota?

25 MR. SHEHADEY: That's what I understand, yeah. It would be

1 over that same period of time that I had on Exhibit C was it?

2 JUDGE CLIFTON: Yes.

3 MR. SHEHADEY: Yes.

4 JUDGE CLIFTON: Okay. Thank you. So read the sentence  
5 again so Ms. Frisius can check the corrections she made.

6 MR. SHEHADEY: The dairy farms of the CPHA have -- I should  
7 say have instead of has -- have -- collectively invested  
8 \$9,298,677.84 to acquire this exempt quota.

9 JUDGE CLIFTON: Thank you.

10 BY MS. HANCOCK:

11 Q. Mr. Shehadey, before you get started again, just to be  
12 clear, has your plant ever invested any money in acquiring your  
13 exempt quota?

14 A. No.

15 Q. And so all of the funds that came out of an account to  
16 pay for the exempt quota came from which entity?

17 A. Bar 20 Dairy Farms.

18 Q. Okay. You're free to continue when you are ready.

19 A. Preservation of exempt quota also requires compliance  
20 with ongoing business structural limitations. In order to  
21 maintain exempt quota treatment. The producer and handler  
22 business units must be over 95 percent common ownership as  
23 compared to the original issuance of the exempt quota in 1969.  
24 Because of the original ownership requirement for exempt quota  
25 holders that is benchmarked against the original issuance of



1 quota, we have been prohibited from selling any part of our  
2 business, either the farm or plant side of our business.  
3 Knowing that we had to keep our business units intact to  
4 preserve our exempt quota treatment, we instead have made  
5 strategic business decisions, both at the farm and at the plant  
6 in order to ensure that the business units stay within the  
7 original 95 percent ownership requirements. All of these have  
8 been investments into obtaining, maintaining, and preserving  
9 our asset: Exempt quota.

10 In evaluating to adopt --

11 Q. I think we skipped a page. Should be a heading, Quota  
12 System is Integral.

13 A. Oh, excuse me.

14 Quota System is Integral to Operations

15 Exempt quota has essentially allowed us to maintain the  
16 business structure that my father had already created when the  
17 Gonsalves Milk Pooling Act was enacted. It has allowed us to  
18 continue to not only exist, but survive in an increasingly  
19 competitive industry that has consolidated significantly since  
20 the 1960's.

21 When Producers Dairy began, there were numerous  
22 producer-handlers in the Central Valley of California. But  
23 today, we are one of the few remaining in the Valley. When the  
24 Gonsalves Milk Pooling Act was originally enacted in 1967,  
25 there were 49 producer-handlers in California, but today there

1 are only four. Each of the four remaining producer-handlers is  
2 an independent, family-owned, and privately-held company, which  
3 is rare in today's dairy industry landscape that is otherwise  
4 composed of large corporate conglomerates and grocery-owned  
5 captives. If the exempt quota holders held such a price  
6 advantage, you would not have seen such a decline in these  
7 numbers for the 45 that are not here today. Farmers do not  
8 usually go out of business because they are making too much  
9 money.

10 Q. Mr. Shehadey, I have a question that I don't think we  
11 have covered so far in this hearing. When the exempt quota  
12 holders were originally granted in 1969, and then later on  
13 where there were opportunities to grow or increase exempt quota  
14 holders, could new exempt quota holders be created?

15 A. No.

16 Q. Okay. So --

17 A. It's a grandfather from 1969 and prior, but not after.  
18 No one could come in and become a producer-handler under  
19 Option 70.

20 Q. And then after March of '94 you couldn't expand any of  
21 your exempt quota holdings either?

22 A. That's correct.

23 Q. Okay.

24 A. Go on?

25 Q. Yes, please.

1 A. Quota system is integral to operations --

2 Q. Oh, you read that. We're on the paragraph, "in  
3 evaluating".

4 A. I'll get the right page here.

5 In evaluating whether to adopt a Federal Milk Marketing  
6 Order in California, Congress tasked the Secretary with  
7 recognizing quota value. 7 U.S.C. Section 7253(a)(2)  
8 ("California shall have the right to reblend and distribute  
9 order receipts to recognize quota value.") The Joint  
10 Explanatory Statement of the Committee of Conference reiterated  
11 the intent behind preserving the quota value, which meant  
12 recognize the quota system:

13 The managers intend for the Secretary --

14 JUDGE CLIFTON: Now, it appears that you're quoting here.  
15 Is this a quote?

16 MR. SHEHADEY: Yes.

17 JUDGE CLIFTON: Okay. Begin the quote then.

18 MR. SHEHADEY: It's taken from the statement of the  
19 committee. Should it be a quote?

20 MS. HANCOCK: Yes. You are just, she just wants you to  
21 identify it as a quote for the record.

22 MR. SHEHADEY: Right, because it's inset in here as a  
23 quote.

24 JUDGE CLIFTON: Right, inset, and then when you finish that  
25 inset, you can tell us that you have finished it.

1 MR. SHEHADEY: Unquote? Okay. To start:

2 The managers intend for the Secretary to conduct a  
3 hearing prior to the issuance of an order  
4 designating the State of California as an FMMO.

5 The provisions provides --

6 JUDGE CLIFTON: Now read it exact.

7 MR. SHEHADEY:

8 The provision provides the Secretary of  
9 Agriculture with the discretion if a California  
10 FMMO is requested, to recognize the long-standing  
11 California quota system.

12 MR. ENGLISH: Your Honor?

13 JUDGE CLIFTON: Mr. English?

14 MR. ENGLISH: I'm going to object to the next sentence with  
15 the legal interpretation of the only means to recognize.

16 JUDGE CLIFTON: Or "the only way by which"?

17 MR. ENGLISH: Yeah, is to preserve. I object to that for  
18 the reasons stated in the past, and I also know what your  
19 ruling is going to be.

20 JUDGE CLIFTON: Thank you, Mr. English, your objection is  
21 noted. I will ask that the United States Department of  
22 Agriculture employees utilize your objection as a caution.  
23 Nevertheless, I will accept into evidence this witness's  
24 interpretation as stated in this exhibit. So you may continue  
25 to read, Mr. Shehadey.

1 MR. SHEHADEY: The only way by which to recognize,  
2 "recognize the long-standing California quota system," is to  
3 preserve the value of both regular quota and exempt quota  
4 together, as they are both granted at the quota system's  
5 inception. The inception of the quota system granted to both  
6 regular producers, the value of regular quota, and granted to  
7 Option 70 producer-handlers the right to hold exempt quota.  
8 The value of quota for Option 70 producer-handlers is found  
9 only in their exempt quota, and if exempt quota were not  
10 adopted as part of the quota system, it would diminish the  
11 CPHA's quota value.

12 The California Food and Agriculture --

13 JUDGE CLIFTON: And should we conform that to what we did  
14 on the previous page? The quota value is actually not owned by  
15 the entities that you have identified as the CPHA, is it?

16 MS. HANCOCK: So it would be the dairy farms of the.

17 MR. SHEHADEY: It would be "the CPHA dairy farms".

18 JUDGE CLIFTON: Good. So Ms. Frisius, do you see where we  
19 are, end the first full paragraph on page 7? We'll just add,  
20 after CPHA, apostrophe "s", dairy farms, and then an apostrophe  
21 after the "s" on farms.

22 MR. SHEHADEY: Yes, that explains it.

23 JUDGE CLIFTON: And if you would now read that sentence  
24 again, Mr. Shehadey,

25 MR. SHEHADEY: Yes.

1           The value of quota for Option 70 producer-handlers is  
2 found only in their exempt quota, and if exempt quota were not  
3 adopted as part of the quota system, it would diminish the  
4 CPHA's dairy farms' quota value.

5 BY MS. HANCOCK:

6       Q. Thank you, your Honor.

7       A. The California Food and Agricultural Code has long  
8 since provided that the exempt quota value would not be  
9 diminished and we (Option 70 producer-handlers) as an ongoing  
10 business operation, have relied on that protection to continue  
11 to invest in the structure and business model that will allow  
12 us to preserve our exempt quota.

13 Cal. Ag. Code Section 62716(e) ("All pool quotas initially  
14 determined pursuant to Section 62707 shall be recognized and  
15 shall not in any way be diminished."); Section 62707 ("There  
16 shall be no downward adjustment of pool quota below the quota  
17 initially established pursuant to this chapter.")

18           As noted in the CPHA additional proposal, the  
19 producer-handlers quota exemption is relatively insignificant  
20 in terms of overall production in California. In July 2015, as  
21 reported by the CDFA, only .65 percent of total pooled milk  
22 fell under the exempt quota.

23           To look at the exempt quota through all perspectives  
24 based on the CDFA data, today exempt quota can be viewed as  
25 follows:

1           \* 0.65 percent of the total pool milk in California,  
2           (note that exempt quota is calculated in the total pool  
3           and then deducted.)

4           \* .26 percent of quota --

5           JUDGE CLIFTON: Now, read that second bullet point again,  
6 please?

7           MR. SHEHADEY: Second bullet point, 2.6 percent of quota,  
8 which is a 10 percent drop since 2007.

9           Next bullet point, 4.6 percent of the total Class 1  
10 pooled.

11           And the fourth bullet point, 17.4 percent of the CPHA  
12 Class 1 production (compared to 1985 when exempt quota made up  
13 66 percent of CPHA members' Class 1)

14 BY MS. HANCOCK:

15           Q. Now, Mr. Shehadey, if we could turn to Exhibit D in  
16 Exhibit 153?

17           A. Yes.

18           Q. You have a table there. Is this a table that you and  
19 your staff completed?

20           A. Yes, it's from the CDFA information.

21           Q. And when you say CDFA information, it's in part from  
22 Exhibit 61 table AC?

23           A. Some of it is, yeah.

24           Q. Okay. And then you have some additional information on  
25 1985 in there?

1 A. Yes.

2 Q. And what was that information from?

3 A. Well, it would all be from CDFA information we received  
4 at different times.

5 Q. And how is it that you had information from the 1985  
6 time period?

7 A. I don't recall the reason why we gathered it at that  
8 time.

9 Q. This is information you have been tracking over the  
10 years?

11 A. Yeah.

12 Q. And you have sat on various committees with the CDFA?

13 A. Yes.

14 Q. Review committees, reviewing, in effect, I think you  
15 testified earlier you reviewed a quota, the quota program as a  
16 whole?

17 A. That was in 2007, I believe.

18 Q. And prior to that you have attended other CDFA  
19 committee meetings as well?

20 A. Yes. Or if there was proposed legislation or some  
21 discussion, we might have gathered more information from CDFA  
22 at these different times.

23 Q. Okay. You can go ahead and continue on your testimony.

24 JUDGE CLIFTON: Let me ask about that last bullet point.

25 So we're talking here about Class 1 production, and so that,



1 does that Class 1 production actually come from the handlers?

2 MR. SHEHADEY: Yeah, it's actually their sales.

3 JUDGE CLIFTON: Okay. Thank you.

4 MS. HANCOCK: So it's not the total pool, it's just the  
5 total Class 1 production for the producer-handlers?

6 MR. SHEHADEY: Yes, sales. Class 1 sales.

7 JUDGE CLIFTON: Thank you.

8 MR. SHEHADEY: If you go to the Exhibit D --

9 JUDGE CLIFTON: Yes.

10 MR. SHEHADEY: That number is on here so it shows how it is  
11 calculated.

12 JUDGE CLIFTON: And just show me where to look for --

13 MR. SHEHADEY: Okay. That 17.4 percent is over to the left  
14 on the bottom, there's three lines; total producer-handler  
15 Class 1 sales, total producer-handler exempt quota, and then  
16 percent of the exempt, which is a calculation of those two.  
17 And that came from the Table AC, which I think was Exhibit 61.  
18 A prior exhibit.

19 BY MS. HANCOCK:

20 Q. Mr. Shehadey, is out-of-state milk production factored  
21 into this calculation?

22 A. No, I don't believe so.

23 Q. And if you added out-of-state milk Class 1 sales to  
24 this number, what would that do to your percentage?

25 A. Well, it wouldn't affect this percent, because this one

1 is just producer-handler sales.

2 Q. Okay. Oh, that's right.

3 A. But if you took it of the total sales, it would go down  
4 because the number would be bigger that you are dividing into.

5 Q. Okay. So the 4.6 percent of the total Class 1 pool, if  
6 out-of-state milk, and I'm back on Exhibit 152, you have 4.6  
7 percent of the total Class 1 pool, if out-of-state milk were  
8 factored into the Class 1 pool, what would that do to your  
9 percentage of the Class 1 pool?

10 A. That would go down.

11 Q. Okay. You would have an even smaller percentage of --

12 A. Percentage of the total pool including out-of-state,  
13 right.

14 Q. Okay.

15 JUDGE CLIFTON: Now, you may continue, Mr. Shehadey, just  
16 below the bullet points.

17 MR. SHEHADEY: Okay. Thank you.

18 These numbers reveal that the exempt quota as a  
19 percentage of the pool Class 1 production, and even as a  
20 percentage of Class 1, CPHA Class 1 production is shrinking as  
21 the years go by.

22 Over the years, many of the other 45 producer-handlers  
23 have relinquished the benefit of their exempt quota in order to  
24 make changes to their business structure or to sell the quota  
25 as regular quota to qualify, liquefy their asset. Exempt quota

1 holders have declined more than 91 percent since the enactment  
2 of the Gonsalves Milk Pooling Act, with 49 exempt quota holders  
3 in '69, 27 in 1975, but only four today.

4 Q. If we look back at Exhibit D one more time in your  
5 Exhibit 153, what you have calculated there on that bottom box  
6 is, it has January of 1985, March of 2009, and then there's a  
7 percentage. What does that percentage reflect?

8 A. Which one?

9 Q. On Exhibit D in that bottom box?

10 A. Yeah.

11 Q. You have the first column, which is January of 1985; is  
12 that right?

13 A. Yes.

14 Q. Then the next column is March of 2009; is that right?

15 A. Yes.

16 Q. So does that help you recall, you must have had this  
17 data in March of 2009. Is that the time that you were sitting  
18 on the committee with the CDFA evaluating quota?

19 A. I don't remember the date. I mean, why that was that.  
20 It seems like that committee was earlier than that, '07 or '08.

21 Q. Okay. And then the third column, you have change '85  
22 versus '09, what are you reflecting there?

23 A. That would be the growth from '85 to '09, of Class 1  
24 producer-handler sales.

25 Q. Okay. And then if we look at the next column for

1 August of 2015, has the total producer-handler Class 1 sales  
2 grown since March of 2009?

3 A. It is almost the same. The sales and the exempt quota  
4 has actually gone down some.

5 Q. Okay.

6 A. So the percentage went from 17.7 in '09 to 17.4 in  
7 2015.

8 Q. Okay. You are free to continue on with your statement.  
9 I think it starts with "as the number of exempt".

10 A. As the number, yeah. Okay. The reason I'm having  
11 trouble on these pages is, I had them print a large print for  
12 me so I could easily read it, but the pages don't coincide with  
13 everybody else's, so I'm going back and forth trying to be sure  
14 everybody understands what I'm trying to say.

15 Well, thank you. As the number of the exempt quota  
16 holders have decreased, so has the producer-handlers percentage  
17 of Class 1 sales. Between '85 and today, the exempt quota  
18 holders percentage of our total Class 1 sales has decreased  
19 from 66 percent to 17.4 percent since 1985, a 48.5 percent  
20 decrease in 30 years.

21 I have included in Exhibit D to my testimony, a  
22 document entitled, "Key California Milk Market Facts Regarding  
23 Producer-Handlers," which shows the decline of producer-handler  
24 production during various periods between '69 to 2009.

25 Exhibits E are the Class 1 prices that we used to calculate the

1 average over the last 20 years.

2 Q. And if you turn to Exhibit E, can you tell me where you  
3 received this information from?

4 A. That was all, it says at the bottom it is source CDFA,  
5 and that gives the website, it came off of their website.

6 Q. Okay. And over the past 20 years that you have charted  
7 here, what was the average Class 1 price?

8 A. If you go to the last page, the average is \$1.14  
9 difference between a Class 1 and quota, so that would be the  
10 exempt quota value average for 20 years.

11 Q. And how did you factor that amount?

12 A. How did I factor it?

13 Q. Yeah, how did you calculate that amount?

14 A. We added it up and just divided it by all of those  
15 months and came up.

16 Q. Tell me what the columns that are represented in  
17 Exhibit E are that you used to calculate that exempt quota  
18 difference?

19 A. Well, on the first page, the first column is a month,  
20 then the year -- the month, the year, Class 1 Northern  
21 California, Quota Hundredweight, and the difference.

22 Q. Okay. So then you took, you took the Class 1 amount,  
23 and you added that column up?

24 A. Well --

25 Q. Or did you do it month by month?

1 A. I think we added it all up.

2 Q. You have the difference there at the end of each month,  
3 right? So you have -- you have taken Class 1 price and  
4 subtracted the quota price for each, for each month?

5 A. Yeah, it's the average difference for the 20 years.

6 Q. So the average on the bottom there is just the average  
7 of the difference reflecting what the exempt quota value was  
8 for that 20 years?

9 A. Yeah, as you can see, some months it's positive, some  
10 months it's negative. If you go to July 1998, it was a minus  
11 177. So that's where the \$1.14 came in, it's a total of, total  
12 difference for 20 years for all those months.

13 But the \$1.14 is a hundredweight for the 20 years that  
14 the exempt quota would have been as a premium over quota to the  
15 producer-handlers.

16 Q. So some months --

17 A. In value.

18 Q. So some months exempt quota is a greater value than in  
19 other months?

20 A. Yes.

21 Q. And this is the value that Bar 20 receives?

22 A. Yes.

23 Q. And what about your plant, does your plant receive any  
24 of this value?

25 A. No, the plant pays it.

1 Q. Pays the Class 1 price?

2 A. Yes, for the exemption.

3 Q. Has there been a month ever since you have owned exempt  
4 quota that the plant did not pay that Class 1 price?

5 A. No. Every month it's been paying Class 1 price since  
6 the outset in 1969.

7 Q. Okay. We can continue on with your next heading.

8 JUDGE CLIFTON: Before you go there, Mr. Shehadey, looking  
9 at Exhibit E, is the Fresno area in the Northern California  
10 portion of the state?

11 MR. SHEHADEY: Yes, it is.

12 JUDGE CLIFTON: And of your three other holders of exempt  
13 quota, how many of them are in the Northern California portion  
14 of the state?

15 MR. SHEHADEY: One other, Foster Farms Dairy.

16 JUDGE CLIFTON: All right. So half of you are in the  
17 Northern California?

18 MR. SHEHADEY: That's correct.

19 JUDGE CLIFTON: And the other half are in the Southern  
20 California?

21 MR. SHEHADEY: That's correct.

22 JUDGE CLIFTON: Go ahead, Ms. Hancock. No, go -- you go  
23 ahead, Mr. Shehadey. You are starting with a new heading.

24 MR. SHEHADEY: New heading:  
25 California Exempt Quota is not the Same as Federal Order

1 Producer-Handler Exemptions

2 Exempt quota is not the same as Federal Order  
3 producer-handlers exemptions that were addressed in the 2010  
4 final rule from the USDA Agricultural Marketing Service. The  
5 quota system is a benefit asset held by a producer and it was  
6 the compensation and recognition given to the producers for  
7 creating a Class 1 market: regular quota was assigned to  
8 producers, and exempt quota was assigned to producer-handlers.  
9 This is a legislative grant of an asset to producers and  
10 producer-handlers who had created the Class 1 market.

11 The exempt quota is a booked asset for the producer  
12 business units, not the handler side of the business, and the  
13 financial value for the exempt quota is held by the producer.  
14 The handler side of our business is fully regulated and reports  
15 all sales to the pool. Exempt quota is treated as a deduction  
16 from (or credit to) the pool. Exempt quota is a finite amount  
17 that cannot be expanded or sold. The CPHA members cannot sell  
18 their business or transfer it to anyone outside of the original  
19 ownership family line. The exempt quota will eventually cease  
20 to exist once the generational transfers have been met, and the  
21 exempt quota will then be converted to regular quota.

22 Federal Order producer-handlers, on the other hand,  
23 were operationally and factually different from California  
24 exempt quota holders. In the Federal Order system,  
25 producer-handlers used to be fully exempted from the pool.



1 This was a benefit to the handler side of the business and  
2 there was, as there was no pool obligation for  
3 producer-handlers. There was no financial investment required  
4 to obtain their exemption benefit and they did not have any  
5 asset value for their exemption rights which the California  
6 quota system offers. Producer-handlers could sell their  
7 businesses as long as the joint ownership requirements were  
8 met. They did not have any legislative rights to a  
9 transferrable asset with book value. The exemption did not  
10 expire or sunset with the tables of consanguinity, as in the  
11 case with the CPHA. The sky was the limit and their exemption  
12 was unlimited as to scope, time, volume and potential. There  
13 was tangible evidence revealing that they had created disorder  
14 markets in the markets by their unlimited growth and market  
15 penetration.

16 As explained by Dr. Erba and Mr. Hatamiya, all of the  
17 justifications for preserving quota also apply to preserving  
18 exempt quota. Indeed, if the Secretary is going to preserve  
19 the quota system, he logically must include both regular and  
20 exempt quota. The Cooperatives have presented no evidence of  
21 disorderly market conditions created by the quota, and the  
22 Dairy Institute of California has repeatedly stated that there  
23 are no disorderly market conditions in California.

24 At most, some handlers have alleged perceived  
25 competitive concerns that have never materialized into an

1 actual evidence ("paranoia" as one handler described it).  
2 Preserving exempt quota does not present a risk of disorderly  
3 market conditions that were present in the Federal Order  
4 producer-handler hearings. Indeed --

5 JUDGE CLIFTON: Wait, wait, wait, okay. All right. I'm  
6 with you.

7 MR. SHEHADEY: Want me to restate that?

8 JUDGE CLIFTON: Yeah, would you just start with preserving  
9 exempt?

10 MR. SHEHADEY: Sure.

11 Preserving exempt quota does not present a risk of  
12 disorderly market conditions that were present in the Federal  
13 Order producer-handlers hearings. Indeed, after 50 years of  
14 exempt quota being part of the California State Order system,  
15 to my knowledge, there has never been a finding of disorderly  
16 market conditions, and no reports that any CPHA member has  
17 improperly priced product below cost because of the exempt  
18 quota. This is a further acknowledgement that the quota  
19 system, including the exempt quota, presents no significant  
20 disruption to the market.

21 Financial Impact Analysis

22 As the USDA economic analysis noted, there is  
23 essentially no economic impact or change from baseline if  
24 exempt quota is preserved. This makes sense, given that  
25 preserving the exempt quota simply preserves the status quo of

1 what has existed under the California State Order system since  
2 the inception of the Gonsalves Milk Pooling Act. Further, if  
3 exempt quota were to be eliminated, the net effect on the pool  
4 would be minimal, if any, for other producers. The exempt  
5 quota would be converted to regular quota so it would be paid  
6 at a premium and also qualify for transportation allowances.  
7 Based on our calculations, and as confirmed in Dr. Erba's  
8 testimony, this would result in plus or minus a penny a pound  
9 to the pool. A penny a hundredweight -- should that be  
10 hundredweight, I think?

11 MS. HANCOCK: Yeah.

12 MR. SHEHADEY: A penny a hundredweight to the pool.

13 JUDGE CLIFTON: So shall we change that? Are you sure?

14 MR. SHEHADEY: It should be cwt.

15 JUDGE CLIFTON: All right. Ms. Frisius, do you see where  
16 we are on page 9, the last part of the first paragraph under  
17 financial impact analysis? We're going to strike LB, and  
18 insert CWT.

19 MS. FRISIUS: Yes.

20 JUDGE CLIFTON: Thank you.

21 MR. SHEHADEY: If the Cooperative's proposal were adopted  
22 and exempt quota were not preserved, presumably the exempt  
23 quota would be converted to regular quota. CPHA would receive  
24 quota premium prices for its Class 1 milk, Class 1, over the  
25 last 20 years of that -- period.

1 MS. HANCOCK: That should say Bar 20 there or the dairy  
2 farms of the CPHA?

3 MR. SHEHADEY: CPHA dairy farms would receive quota  
4 premiums. Yeah, you should add dairy farms, I guess, just to  
5 clarify it.

6 JUDGE CLIFTON: All right. Ms. Frisius, do you see where  
7 he is? All right. So we're inserting, right after CPHA we're  
8 inserting "dairy farms" and would you read that sentence again,  
9 Mr. Shehadey?

10 MR. SHEHADEY: Yes, thank you. That's the start of a  
11 sentence, so: CPHA dairy farms would receive quota premium  
12 prices for its Class 1 milk (Class 1). Over the last 20 years,  
13 the difference between the Class 1 price and the quota price  
14 has averaged \$1.14 a hundredweight. That's in that Exhibit D I  
15 think it is, the one we were just looking at. By converting  
16 the exempt quota to regular quota, the California Producer  
17 Handler Association would then be entitled to transportation  
18 allowances, to which they are currently not entitled. In  
19 effect, the CPHA farms would lose a significant value that they  
20 obtained through investment and organizational structure  
21 preservation in return for near zero benefit to the pool.  
22 There is no financial explanation for eliminating exempt quota,  
23 there is only a financial justification to preserve exempt  
24 quota for its holders who have invested millions in obtaining  
25 and preserving those assets.

1 MS. HANCOCK: I think we have one more "dairy farms" that  
2 needed to be inserted in the middle there, "by converting the  
3 exempt quota to regular quota, the CPHA dairy farms," do you  
4 agree?

5 MR. SHEHADEY: By converting the exempt quota to regular  
6 quota, the CPHA dairy farm would then be entitled to  
7 transportation allowances.

8 JUDGE CLIFTON: Do you want us to insert dairy farms there,  
9 Mr. Shehadey?

10 MR. SHEHADEY: Yes, please.

11 JUDGE CLIFTON: All right. Ms. Frisius? Thank you.

12 MR. SHEHADEY: For clarification.

13 JUDGE CLIFTON: All right.

14 MR. SHEHADEY: Okay.

15 CPHA Proposal

16 The CPHA Proposal Number 3 seeks to supplement the  
17 Cooperatives' Proposal Number 1 by preserving the treatment for  
18 exempt quota as part of a California Federal Milk Marketing  
19 Order that attempts to preserve the quota system "intact."

20 CPHA proposes to provide for an express definition of  
21 exempt quota in Section 1051.17 by ensuring the value and  
22 calculations contained in the California Food and Ag Code  
23 Sections 62708, 62708.1, 62708.5, and 62722 are preserved.  
24 CPHA then proposes to modify the Cooperatives' proposal in  
25 Section 1051.60 to allow for a deduction of exempt quota

1 volumes prior to making any pool calculation payments for quota  
2 premium payments. CPHA believes that making these changes,  
3 along with any other changes that USDA deems necessary to  
4 effect preservation of exempt quota, will preserve the exempt  
5 quota along with the regular quota, for a collective  
6 preservation of the quota value and the California quota  
7 system.

8 Based on my discussions with representatives of the  
9 Cooperatives' proposal, we believe the Cooperatives will not  
10 oppose preservation of the exempt quota along with preservation  
11 of the quota system.

#### 12 Conclusion

13 In conclusion, any California Federal Milk Marketing  
14 Order that recognizes a quota system must also recognize the  
15 California quota system as a whole, including exempt quota for  
16 the State's exempt quota holders.

17 Exempt quota has been part of the Gonsalves Milk  
18 Pooling Act from the start and must be part of any quota system  
19 going forward. All of the justifications for preserving  
20 regular quota equally apply to preserving exempt quota as well.  
21 The exempt quota is critical for the last independent  
22 family-owned producer-handlers that remain in the California  
23 dairy industry. It's not only family-owned, but also  
24 family-invested -- and I should add family-run.

25 Thank you for your time and attention and consideration

1 of this testimony given.

2 JUDGE CLIFTON: I think we should add family-run. Is that  
3 true of all four of the family farms?

4 MR. SHEHADEY: Well, there's family involvement in all four  
5 of them.

6 MS. HANCOCK: It's required, isn't it?

7 MR. SHEHADEY: Ownership is a requirement, but in this  
8 case, they are all involved in the business at one point or  
9 other.

10 MS. HANCOCK: Where would you like to insert that?

11 MR. SHEHADEY: Right after family-invested it should say,  
12 not only family-owned, but also family-invested and family-run.

13 JUDGE CLIFTON: Ms. Frisius?

14 MS. FRISIUS: Yep.

15 JUDGE CLIFTON: Good. Thank you. All right. Done.

16 MS. HANCOCK: Your Honor, I would move for the admission of  
17 Exhibits 152 and 153.

18 JUDGE CLIFTON: You had one more sentence, Mr. Shehadey.

19 MS. HANCOCK: I thought he read it.

20 JUDGE CLIFTON: Oh, you already read that before we went  
21 back?

22 MR. SHEHADEY: Thank you for your time and attention and  
23 consideration of this testimony given.

24 JUDGE CLIFTON: Very good.

25 MR. SHEHADEY: Thank you.

1 JUDGE CLIFTON: All right. I have a whole different  
2 viewpoint. Why did they call it "exempt"? It caused me much  
3 consternation.

4 MR. SHEHADEY: I think it is because you actually take  
5 those sales and equivalent sales of a quota, and they call it  
6 exempt quota, but they take that sales out of the pool  
7 calculation, and the rest of it you pay into the pool for your  
8 Class 1, or 2, or 3, or 4 sales. But the exemption, you get to  
9 pay your own farm for your Class 1 sales. So if we had a  
10 hundred pounds of Class 1 sales, and let's say 20 of those  
11 pounds were exempt to our own farm, then we would pay the farm  
12 Class 1 for the 20 pounds, and we would pay into the pool for  
13 the other 80 pounds, which our processing plant is 95 percent  
14 Class 1, so that other 80 pounds would be 95 percent Class 1.

15 JUDGE CLIFTON: So you don't contribute to the pool for  
16 your own dairy farms' production?

17 MR. SHEHADEY: Exempt.

18 JUDGE CLIFTON: The exempt portion of the production.

19 MR. SHEHADEY: Yes, that's correct.

20 JUDGE CLIFTON: And that's why they call it exempt.

21 MR. SHEHADEY: That's correct.

22 JUDGE CLIFTON: It is exempt from a requirement to the  
23 pool?

24 MR. SHEHADEY: Yes.

25 JUDGE CLIFTON: Okay. All right. So could you expand,



1 Mr. Shehadey, on a footnote that you have? I know we're  
2 running out of time, and cross-examination we'll never get  
3 finished today, but -- or a different day if not tomorrow. But  
4 when you -- when you explain the difference between Option 70  
5 and Option 66 --

6 MR. SHEHADEY: Yes.

7 JUDGE CLIFTON: Could you explain to me a little bit about  
8 what you are not, that other option?

9 MR. SHEHADEY: Yeah, Option 66 are producers that are  
10 totally exempt, but it is a very small amount, I can't remember  
11 the exact amount, but it is very, very small, and they are  
12 exempt. They would be similar to the three million pound  
13 equivalent in a Federal Order. They stay under that amount.  
14 We are --

15 JUDGE CLIFTON: Did you say 300 million pounds?

16 MR. SHEHADEY: 3 million pounds. Is it per month? Or I  
17 think it is per month.

18 JUDGE CLIFTON: Right.

19 MR. SHEHADEY: I'm not that familiar with the Federal  
20 Order. But so they are exempt from reporting to the pool, and  
21 on a Federal Order I imagine they are exempt if they are under  
22 that 3 million pounds of reporting to the pool just have to  
23 prove they are under.

24 JUDGE CLIFTON: They have to report. They have to report.

25 MR. SHEHADEY: Do they?

1 JUDGE CLIFTON: Yeah. Okay.

2 MR. SHEHADEY: But the Option 70 is ourselves, and we are  
3 over that minimum, so that's why our quota is called exempt.

4 JUDGE CLIFTON: Over what minimum?

5 MR. SHEHADEY: We're over the minimum of the 66, Option 66.  
6 We're Option 70, so we fall under a different category.

7 JUDGE CLIFTON: Do you know what the minimum is that allows  
8 you to remain Option 66?

9 MR. SHEHADEY: No, I'm not sure what it is. It's very  
10 small though. Very small.

11 JUDGE CLIFTON: All right. So, Ms. Hancock, you move the  
12 admission of both these exhibits?

13 MS. HANCOCK: I do, your Honor.

14 JUDGE CLIFTON: All right. Is there anyone who wishes to  
15 question Mr. Shehadey before determining you have objections  
16 with regard to Exhibit 152 or 153? No one. Is there any  
17 objection to the admission into evidence of Exhibit 152? There  
18 is none. Exhibit 152 is admitted.

19 (Thereafter, Exhibit 152, was  
20 received into evidence.)

21 JUDGE CLIFTON: Is there any objection to the admission  
22 into evidence of 153? There is none. Exhibit 153 is admitted  
23 into evidence.

24 (Thereafter, Exhibit 153, was  
25 received into evidence.)

1 JUDGE CLIFTON: All right. Let's look at what time it is.  
2 It is eight minutes to 5:00. I just think starting cross would  
3 be foolish. Does everyone agree with me?

4 MS. HANCOCK: I have a little direct first, your Honor,  
5 so --

6 JUDGE CLIFTON: Okay.

7 MS. HANCOCK: -- I really do agree.

8 JUDGE CLIFTON: Very good. Ms. Hancock, you may resume.

9 MS. HANCOCK: Do you want me to continue now or do you  
10 want?

11 JUDGE CLIFTON: Yes.

12 BY MS. HANCOCK:

13 Q. Okay. Mr. Shehadey, you prepared your testimony  
14 several days ago; is that right?

15 A. Yes.

16 Q. Okay. And since then we have had some additional  
17 testimony here that you have been present for portions of it;  
18 is that right?

19 A. Yes, some of it.

20 Q. Okay. And we had Dean Foods present testimony. Were  
21 you here that day?

22 A. Yes, I was.

23 Q. Okay. And I think they described, Mr. Williams -- are  
24 you familiar with Mr. Williams?

25 A. Yes.

1 Q. Do you know him personally?

2 A. Yes.

3 Q. And what --

4 A. I have met him at industry meetings, I don't know him  
5 very well.

6 Q. And what about Mr. Blaufuss?

7 A. First time, really.

8 Q. Okay. And they have discussed in their testimony a  
9 national account that your entity and another entity, another  
10 producer-handler entity won against them in both 2012 and 2015.  
11 Do you recall that testimony?

12 A. Yes.

13 Q. And the national account, as your understanding is the  
14 same account for both those bids?

15 A. Yes.

16 Q. Okay. And without naming it, are you familiar with  
17 what national account is?

18 A. Yes, I am.

19 Q. Can you tell me what your recollection, what your  
20 recollection is about that bid process, and how you were able  
21 to win that bid?

22 A. Well, I think it was more than price because it was a  
23 national situation, and a national decision by the people in,  
24 that own that group of stores, and California was a small,  
25 relatively small percentage of the total stores that were

1 affected by it.

2 Q. And did you, in any way, have an opportunity to apply  
3 any of the benefits that you receive from exempt quota to help  
4 you price that bid to win that national account?

5 A. No, because the farm had that money, and the farm  
6 doesn't sell milk, they sell tanker loads of milk. The  
7 process, Producers Dairy acquired a portion of that bid and  
8 they didn't have any exempt quota to utilize, it went to the  
9 farm.

10 Q. And Mr. Williams identified several categories of  
11 information in his testimony that he believes are the variables  
12 that can be used in order to price bids, and made comments  
13 about which ones are flexible and which ones are inflexible.  
14 Can you talk about those categories as well?

15 A. Well, there's a lot of numbers that go into the cost of  
16 distribution, the cost of processing, your cost per gallon,  
17 gallons per man hour in your plant, and your distribution cost.  
18 Just how efficient your people are in doing their job. There's  
19 a lot of parts that go into that formula and the numbers that  
20 you put in on a bid.

21 He also mentioned that they took \$20 million worth of  
22 from the producer-handler association, or that we took  
23 20 million from them, and I can think of 10 million they took  
24 from us in the last five years, that's just one of the four  
25 producer-handlers. So I think if the other producer-handlers

1 are willing to put a number out there, it will probably be more  
2 than the 20 million they got back.

3 Q. So you are saying that Producers Dairies has lost bids  
4 to Dean Foods?

5 A. I can think of two, one in about 2010 and one in, let's  
6 see, what is it, about five years ago, so yeah, about 2010 and  
7 about 2013, each one was about five million.

8 Q. And do you Producers, does Producers Dairy lose bids to  
9 other handlers in the market?

10 A. Yeah, from time to time.

11 Q. And do you have any kind of price advantage that you  
12 are able to apply to those bids based on any profitability from  
13 your farms, even if it is not the exact exempt quota, are you  
14 able to apply the profits that you earn on your farm to your  
15 overall plant operations in making those bids?

16 A. No, it's a separate business, it's a separate P&L, it's  
17 a separate balance sheet, and the money that goes to them stays  
18 there. They will reinvest it in the farming side, but not in  
19 the processing side.

20 Q. And you were here for Mr. Rien Doornenbal's testimony,  
21 do you remember that?

22 A. Yes, I was.

23 Q. And he had asked for some comments about some losses to  
24 farms and to Producers. Do you recall that as well?

25 A. Yes, I do.

1 Q. And you actually stood up and testified, right?

2 A. He asked if there were any producers in the audience  
3 that would like to comment on the year 2009. I think I got up  
4 and supported him in his thoughts, because it's -- it's true.

5 Q. And tell me about 2009. Did you -- did your farm lose  
6 a lot of money that year?

7 A. Yes, we did.

8 Q. Do you recall how much you lost?

9 A. It was a round number, around a thousand dollars a cow.

10 Q. Okay. And how many cows do you have on the farm?

11 A. We milk about 7500.

12 Q. So approximately \$7.5 million in 2009 you lost in the  
13 farm?

14 A. Yes, that's correct.

15 Q. And that's even withholding exempt quota; is that  
16 right?

17 A. Yes.

18 Q. So how did you cover those losses for the farm?

19 A. Our family put money in, personal money into the  
20 business, into the farming business.

21 Q. Was your plant profitable that year?

22 A. 2009? Yeah, I think it was.

23 Q. Were you able to allocate any of the profits from your  
24 plant side to help offset the losses at your farm?

25 A. No, it's a separate business. You can't allocate

1 because they were separate businesses. And they -- they did  
2 not loan money to the farm, they did not give them any money,  
3 there was no money interchanged. Our family owns both  
4 businesses, so our family was responsible to take care of the  
5 farm when it was in trouble.

6 Q. How much of the milk that your farm produces is paid as  
7 overbase production?

8 A. About two-thirds.

9 Q. And the rest is either exempt quota or quota?

10 A. Yes.

11 Q. What impact does that two-thirds paid as overbase have  
12 on your farm?

13 A. Well, the impact, it puts us in the same position as a  
14 lot of other dairymen out there that don't have much quota. We  
15 have about 32 percent quota, which is a third. And with us,  
16 it's exempt quota, almost all exempt quota, so we were, are  
17 able to pay the Class 1 price as opposed to quota price, that  
18 helped us out some, but it was tough. We built a new dairy in  
19 2005, and so we were just building the herd, and so when you  
20 build a new dairy with, I'll call them "foreign" cows, cows  
21 that you have had to purchase, it takes many years for the  
22 genetics to work and for you to be self-sufficient where you  
23 are raising your own heifers for your own replacements. You  
24 know, the normal time period is about ten years. In fact, it's  
25 true, here we are at 2015 and we're just about to where we were



1 raising all our own replacements.

2 And in 2009 was only four years after 2005, so our  
3 dairy was inefficient on top of having the market crash. And  
4 yet, we had a highly modern, efficient operation, it just was  
5 not, you know, sorted out yet and perfected.

6 Q. Thank you. I have no further questions, your Honor.

7 JUDGE CLIFTON: I'm going to leave it to Mr. English and  
8 Mr. Beshore and Ms. Hancock to determine when the cross of this  
9 witness should occur. And I don't think we need to decide that  
10 right now. And for now, you may step down, Mr. Shehadey.  
11 Thank you so much. We'll need you back, though.

12 Mr. English, do you have any preview for tomorrow?

13 MR. ENGLISH: That preview would be the aforementioned  
14 discussion that you just said we would have off the record.  
15 Obviously, I would love to get my witnesses on, on the other  
16 hand, Ms. Hancock and Mr. Shehadey did a nice favor for us and  
17 the whole hearing by showing up this afternoon, so if they want  
18 to get started in morning and go first thing. Obviously, I  
19 would still like to get Rob Blaufuss on tomorrow, and off. If  
20 Sue Taylor doesn't, she understands what happened, and I know  
21 we have four dairy farmers tomorrow afternoon. But, you know,  
22 I, Mr. Shehadey and Ms. Hancock did a favor and if they want to  
23 go first tomorrow, I'm not going to object to that, but if they  
24 want to delay it, that's fine, too.

25 MR. BESHORE: Just in terms of the schedule tomorrow, I'm

1 notified that the four dairy farmers will be here about 3:00 in  
2 the afternoon. So I had asked them to come towards the end of  
3 the day, it might work, and that's when they are expected.

4 MS. HANCOCK: Nicole Hancock. I think we'll finish up with  
5 Mr. Shehadey in the morning, and then we can move to  
6 Mr. Blaufuss, and I think that still gives us time to have them  
7 off before we get to the producers tomorrow afternoon.

8 JUDGE CLIFTON: So have we given up all hope of finishing  
9 Ms. Taylor tomorrow?

10 MR. ENGLISH: No, I never give up hope. You know, the fact  
11 of the matter is, I will be more organized and hopefully  
12 shorter with any cross-examination of Mr. Shehadey tomorrow.  
13 We understand the risk by doing what we did, but our goal will  
14 be move ahead. We did well today, and you know, I would like  
15 to think that we can get Ms. Taylor done tomorrow.

16 JUDGE CLIFTON: Okay, then.

17 MR. ENGLISH: And I may be wrong.

18 JUDGE CLIFTON: Have a good evening. I'll see you all  
19 tomorrow morning at 9:00. We go off record at 5:03.

20 (Whereupon, the evening recess was taken.)

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	6861:3;6887:22; 6888:5;6891:9; 6892:22	<b>accountable (1)</b> 6949:9	6922:22;6933:13; 6935:17;6985:1	<b>additionally (1)</b> 6834:7
<b>\$</b>		<b>accountants (1)</b> 6935:10	<b>actually (47)</b> 6788:16;6800:15, 24,24;6806:20; 6808:11;6811:17; 6824:9;6827:24; 6839:4;6841:25; 6846:8;6854:20; 6859:13;6863:17; 6871:4;6872:11,16; 6874:6;6888:17; 6899:18;6902:12; 6917:20;6919:7,8,9, 19;6920:9;6922:23; 6923:24;6925:5,16; 6926:1;6930:20; 6931:4;6933:11,12; 6956:25;6960:15; 6962:5;6965:19; 6972:14;6976:1,2; 6979:4;6991:4; 6998:1	<b>address (3)</b> 6830:2;6946:13, 22
<b>\$1.14 (4)</b> 6980:8;6981:11, 13;6987:14	<b>abbreviation (1)</b> 6884:21	<b>accounting (3)</b> 6859:15,18; 6948:23		<b>addressed (6)</b> 6917:13,15,21; 6918:3,24;6983:3
<b>\$1.6171 (1)</b> 6913:19	<b>abides (1)</b> 6879:12	<b>accurate (5)</b> 6831:11;6877:25; 6955:16;6956:2; 6965:24		<b>adjust (1)</b> 6921:15
<b>\$1.70 (2)</b> 6829:10;6856:7	<b>ability (6)</b> 6829:11;6832:6; 6849:12;6932:18; 6943:1;6953:24	<b>achieve (1)</b> 6818:12		<b>adjusted (4)</b> 6890:20,22; 6898:7;6925:4
<b>\$13.64 (2)</b> 6859:8,24	<b>able (17)</b> 6785:10;6787:20; 6806:12;6820:2; 6822:15;6826:17; 6851:16;6869:15; 6898:15;6929:9; 6930:10;6932:20; 6995:20;6997:12,14; 6998:23;6999:17	<b>acknowledgement (1)</b> 6985:18		<b>adjuster (3)</b> 6903:17;6904:25; 6923:2
<b>\$16 (1)</b> 6812:23	<b>above (6)</b> 6874:13;6902:20; 6906:14;6919:7; 6922:7,11	<b>acquire (12)</b> 6822:15;6832:8; 6956:11;6960:16; 6963:22;6964:1,13; 6965:2;6966:3,21, 24;6967:8		<b>adjusters (2)</b> 6904:10;6905:2
<b>\$17.36 (3)</b> 6900:12;6901:1,6	<b>abrupt (1)</b> 6789:3	<b>acquired (6)</b> 6811:6;6826:9; 6832:9,10;6965:12; 6996:7		<b>adjusting (1)</b> 6895:21
<b>\$18.54 (2)</b> 6901:9;6902:4	<b>absolutely (2)</b> 6909:21;6910:6	<b>acquiring (3)</b> 6964:3,25; 6967:12	<b>AD (8)</b> 6887:22;6888:8,9; 6892:1,3,8;6908:13; 6943:25	<b>adjustment (2)</b> 6899:2;6973:16
<b>\$18.71 (3)</b> 6901:25;6902:7, 13	<b>absorb (1)</b> 6942:20	<b>acquisition (1)</b> 6965:19		<b>adjustments (3)</b> 6821:24;6861:3; 6908:8
<b>\$18.72 (1)</b> 6902:8	<b>abuse (1)</b> 6932:18	<b>acreage (1)</b> 6805:7	<b>add (19)</b> 6799:11;6810:22; 6812:7;6836:24; 6864:7;6869:4; 6885:15,17;6896:20; 6897:23;6901:6; 6902:5;6934:15; 6937:11;6944:2; 6972:19;6987:4; 6989:24;6990:2	<b>administration (2)</b> 6819:6;6943:15
<b>\$19.00 (1)</b> 6798:19	<b>AC (5)</b> 6887:22;6888:8,8; 6974:22;6976:17	<b>across (1)</b> 6901:16		<b>Administrator's (1)</b> 6878:14
<b>\$2.10 (1)</b> 6886:19	<b>accept (3)</b> 6818:6;6852:12; 6971:23	<b>Act (45)</b> 6816:3,16;6817:3, 23,25;6819:10,19; 6821:12,16;6822:8, 13,22,24;6824:17, 25;6825:12,16,18; 6827:1;6829:7; 6832:20;6833:5,9, 14;6851:25;6852:9, 11;6853:23;6862:8; 6864:23;6946:3,4, 10,13,21;6947:2; 6954:14;6956:10; 6960:4;6964:9; 6968:17,24;6978:2; 6986:2;6989:18		<b>admission (2)</b> 6819:6;6943:15
<b>\$20 (2)</b> 6809:11;6996:21	<b>acceptable (1)</b> 6818:13	<b>action (1)</b> 6944:23		<b>admissibility (3)</b> 6815:2;6824:12; 6835:9
<b>\$24 (1)</b> 6809:11	<b>accepted (1)</b> 6829:17	<b>active (1)</b> 6856:1		<b>admissible (1)</b> 6838:14
<b>\$24,000 (1)</b> 6809:4	<b>accepting (2)</b> 6823:1;6862:18	<b>actual (27)</b> 6836:10;6843:10; 6859:16,21;6880:11; 6881:3,4;6882:12, 13;6888:21;6889:15, 17;6893:7,13,17; 6895:22;6896:9,12, 14;6904:2;6909:19; 6917:14;6921:8;		<b>admission (14)</b> 6803:1;6835:5,6; 6836:17;6837:1; 6905:20;6906:5; 6911:4;6916:13,20; 6990:16;6993:12,17, 21
<b>\$7.5 (1)</b> 6998:12	<b>access (2)</b> 6785:21,25			<b>admissions (1)</b> 6842:11
<b>\$9,298,677.84 (2)</b> 6965:2;6967:8	<b>accommodate (4)</b> 6787:6,24; 6843:22;6942:6			<b>admit (3)</b> 6836:18;6909:13; 6915:5
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