

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

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

VOLUME XXXX

TRANSCRIPT OF PROCEEDINGS

November 18, 2015

Myra A. Pish, CSR No. 11613
400460



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BEFORE THE SECRETARY OF AGRICULTURE

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In re:) [AO]
) Docket No. 15-0071
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Milk in California)
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BEFORE U.S. ADMINISTRATIVE LAW JUDGE
JILL S. CLIFTON

Wednesday, November 18, 2015

9:01 a.m.

The Falls Event Center
4105 West Figarden Drive
Fresno, California 93722

TRANSCRIPT OF PROCEEDINGS

VOLUME XXXX

Reported by:

Myra A. Pish CSR
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APPEARANCES:

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SELECT MILK PRODUCERS: MILTNER LAW FIRM, INC.
BY: RYAN MILTNER, ESQ.

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I N D E X - V O L U M E 40
WITNESSES IN CHRONOLOGICAL ORDER

ELVIN HOLLON:

DIRECT EXAMINATION BY MR. BESHORE	8063
CROSS-EXAMINATION BY DR. SCHIEK	8068
CROSS-EXAMINATION BY MR. VANDENHEUVEL	8069
CROSS-EXAMINATION BY MR. ENGLISH	8071
CROSS-EXAMINATION BY MR. FRANCIS	8072
REDIRECT EXAMINATION BY MR. BESHORE	8073
DIRECT EXAMINATION BY MR. BESHORE	8074
CROSS-EXAMINATION BY MR. ENGLISH	8092
REDIRECT EXAMINATION BY MR. BESHORE	8098
RE-CROSS-EXAMINATION BY MR. ENGLISH	8100

ERIC ERBA:

DIRECT EXAMINATION BY MR. VLAHOS	8105
CROSS-EXAMINATION BY MR. ENGLISH	8119

DENNIS LUND:

DIRECT EXAMINATION BY MS. HANCOCK	8122
CROSS-EXAMINATION BY MR. VANDENHEUVEL	8129
CROSS-EXAMINATION BY MR. FRANCIS	8130

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1
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4
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6
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10
11
12
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I N D E X - V O L U M E 40

INDEX OF EXHIBITS

NO.	DESCRIPTION	I.D.	EVD.
192	TESTIMONY OF ELVIN HOLLON EIGHTH STATEMENT-REBUTTAL	8063	8068
193	DAIRY FARMERS OF AMERICA INGREDIENTS PLANTS	8085	8092
162A	DIFFERENCE BETWEEN FEDERAL ORDER PRICES AND DAIRY INSTITUTE OF CALIFORNIA PROPOSAL 2 PRICES 2014 ANNUAL TOTAL: THE NEW CALIFORNIA DISCOUNT	8105	8118
194	TESTIMONY OF DENNIS LUND	8121	8128
103	EXHIBIT 99, FIGURE 5 CALIFORNIA BASIS DATA POINTS		8133
104	EXHIBIT 99, FIGURE 5 PENNSYLVANIA BASIS DATA POINTS		8133

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1 WEDNESDAY, NOVEMBER 18, 2015 - - MORNING SESSION

2 JUDGE CLIFTON: We're back on record on November 18, 2015.
3 It's a Wednesday. It's approximately 9:01 in the morning.
4 We're in Fresno, California. This is Day 40 of the milk
5 hearing.

6 My name is Jill Clifton. I'm the United States
7 Administrative Law Judge whose been assigned to take in the
8 evidence at this rule making hearing. We'll be talking more
9 about the closing out of my function and then thereafter, the
10 filing of briefs, later on in the proceeding.

11 I would like to take appearances of others who are
12 participating. Beginning first with employees of the United
13 States Department of Agriculture, please.

14 MR. HILL: Good morning, I'm Brian Hill, and I'm an
15 Attorney for the Office of the General Counsel, Marketing
16 Regulatory and Food Safety Programs Division. Thank you.

17 MS. BECKER: Good morning, Lauren Becker, I'm an Attorney
18 in the Office of the General Counsel for USDA.

19 MR. FRANCIS: Good morning, Will Francis, USDA AMS Dairy
20 Program.

21 MS. MAY: Laurel May with USDA AMS Dairy Program.

22 MR. VIERRA: Brad Vierra with the Federal Milk Market in
23 Dallas, Texas, Order 126.

24 MR. SCHAEFER: Henry Schaefer, H-E-N-R-Y, S-C-H-A-E-F-E-R,
25 Agricultural Economist for the Upper Midwest Milk Marketing

1 Order Federal Order 30 on detail to USDA Dairy Programs.

2 MS. ELLIOTT: Hello, my name is Pamela Elliott,
3 E-L-L-I-O-T-T, I'm a Marketing Specialist with the USDA AMS
4 Dairy Program.

5 MR. CARMAN: Good morning, Clifford Carman, C-A-R-M-A-N,
6 Assistant to the Deputy Administrator, Dairy Programs. 40 days
7 and 40 nights.

8 MS. COALE: Good morning, Dana Coale, C-O-A-L-E, Deputy
9 Administrator, Dairy Programs, AMS U.S. Department of
10 Agriculture.

11 MR. BESHORE: Good morning, Marvin Beshore, M-A-R-V-I-N,
12 B-E-S-H-O-R-E, Counsel for Proponents of Proposal Number 1,
13 California Dairies, Inc, Dairy Farmers of America, Inc., and
14 Land O'Lakes, Inc.

15 MR. VLAHOS: Good morning, John, heading home, Vlahos,
16 J-O-H-N, V -- as in Victor -- L-A-H-O-S, with the law firm of
17 Hanson Bridgett in San Francisco, H-A-N-S-O-N, B-R-I-D-G-E-T-T.

18 MR. HOLLON: Good morning, Elvin Hollon, E-L-V-I-N,
19 H-O-L-L-O-N, Dairy Farmers of America and Proposal Number 1.

20 MR. SCHAD: Dennis Schad, S-C-H-A-D. I work for Land
21 O'Lakes.

22 MR. GARBANI: Pete Garbani, spelled G-A-R-B-A-N-I, with
23 Land O'Lakes.

24 MR. ERBA: Good morning, Eric Erba, E-R-I-C, E-R-B-A,
25 California Dairies, Inc., Senior Vice President and Chief

1 Strategy Officer.

2 MR. ENGLISH: Good morning, your Honor, and Ladies and
3 Gentlemen, for that Number 40. My name is Chip English,
4 E-N-G-L-I-S-H, and I'm an Attorney with the law firm of Davis,
5 Wright, Tremaine, with my principal office in Washington D.C.,
6 and I have been here for these last 40 days on behalf of the
7 Dairy Institute of California and its members, who are
8 Proponents of Proposal Number 2. Thank you. And thank
9 everyone for this proceeding.

10 MS. VULIN: Good morning, Ashley Vulin, A-S-H-L-E-Y,
11 V -- as in vacation -- U-L-I-N, also an Attorney with Davis,
12 Wright, Tremaine representing the Dairy Institute of
13 California, Proposal 2. And I just want to say I have really
14 enjoyed getting to work with everyone here and getting to know
15 you all, so thank you.

16 DR. SCHIEK: Good morning, William Schiek, S -- as in
17 Sayonara -- C-H-I-E-K, Economist with the Dairy Institute of
18 California.

19 MR. DeJONG: James DeJong, D-e, J-O-N-G, Dairy Policy
20 Economic Analyst with Hilmar Cheese, and I have no memorable
21 last words.

22 MS. HANCOCK: Nicole Hancock with Stoel Rives, representing
23 the California Producer Handlers Association and Ponderosa
24 Dairy.

25 MR. LAI: Good morning, Victor Lai with Producers Dairy

1 Foods, that's V -- as in Vlahos, Vulin, or Vetne -- I - C -- as
2 in Clifton, Coale, and Clifford -- T -- as in Taylor -- O-R --
3 as in Richmond. My middle initial is M -- as in Marvin, and
4 Megan -- and last name is L -- for Laurel and Lauren -- and A-I
5 -- as in I have no more letters to my name. And also I do wish
6 everyone a pleasant holiday season once these proceedings end.
7 Thank you.

8 MR. VANDENHEUVEL: Make up for the all the time we wasted,
9 Rob Vandenheuvel -- no spelling -- Milk Producers Council.

10 MR. MILTNER: Ryan Miltner, M-I-L-T-N-E-R Counsel for
11 Select Milk Producers, and honored to be the last person giving
12 introductions at this hearing. Thank you.

13 JUDGE CLIFTON: Is there anyone who has not yet come to the
14 podium who would like to identify himself at this time? No
15 one. Let us take preliminary matters and announcements.

16 MS. MAY: Laurel May with USDA. First of all, last night
17 somebody left this card here. You probably got to your hotel
18 and had to get another one, but if this is yours, come get it.

19 Our final day, but of course anybody who would like to
20 is welcome to testify at this hearing. Anybody who would like
21 to ask questions of any of the witnesses, may do so by simply
22 coming up here and letting us know.

23 We're trying to broadcast -- we are broadcasting via
24 live audio feed, that's available at www.ams.usda.gov/live.

25 The court reporter is working diligently at getting the

1 transcripts and exhibits back to us so that we can post them
2 online, and when they are ready, they will be available at the
3 AMS Dairy website.

4 And we were asked to provide you with addresses for
5 submitting proposed findings, briefs, and transcript
6 corrections, so we put together a little paper for you to, that
7 we will hand out. But I neglected to put our e-mail address on
8 there, so once we get them handed out, I will read that out to
9 you ask you can just pencil it in yourselves.

10 Get your pencils ready. Down at the bottom you can
11 write in our e-mail address so that you can send your courtesy
12 copies to us at this e-mail address, and again the size limit
13 for files to send to us that way is 20 megabytes. It is
14 AMSDairyComments -- all one word -- at ams.usda.gov. I'll say
15 it again: AMSDairyComments@ams.usda.gov

16 And note to yourself that it's 20 megabyte limit. We
17 will also post this information on our website, so if you
18 misplace this very valuable document, you will be able to go to
19 our website and find the same information.

20 Finally, yesterday we ended with Mr. Schad on the
21 stand, and I believe today that we are going to hear from
22 Mr. Hollon, Mr. Erba, and Mr. Lund. So I will -- last call for
23 this room key. All right.

24 JUDGE CLIFTON: I am so delighted that you prepared this
25 handout. This is very helpful. I also will add an e-mail

1 address for the Hearing Clerk, and I'll tell you why. I don't
2 want you to use it for your official filing of your briefs,
3 because I believe you owe it to the Hearing Clerk to bring your
4 hard copies or send your hard copies so that the Hearing Clerk
5 doesn't have produce them. But the Hearing Clerk would love as
6 a courtesy, an e-mail with a PDF attachment. And the reason is
7 that the Hearing Clerk places in the database, a PDF of your
8 filing. And if you will provide it as an e-mail attachment,
9 that would be very, very helpful as a courtesy. It would also
10 be a lovely courtesy, if you would, at the time of your very
11 first filing, which would probably be proposed transcript
12 corrections, enter your appearance. Give a one-page entry of
13 your appearance and indicate on your entry of appearance,
14 whether you are willing to receive any copies of filings by
15 e-mail, and that would be a tremendous courtesy to the Hearing
16 Clerk as well.

17 Then, the other thing you could do besides providing by
18 e-mail a courtesy copy of your filing in PDF form, and entering
19 your appearance, is you could show in what you file, to whom
20 you sent copies of your filing. For example, if the only thing
21 you did was send it to AMS, you could show that. If you also
22 sent it to the other attorneys who are proponents, if you also
23 sent it there, that would be helpful.

24 So if you need from one another your official
25 addresses, your e-mail addresses, please obtain those from one

1 another while you are still here.

2 So I want you to add to the written document, the
3 e-mail address for the Hearing Clerk, which I'm now going to
4 read to you. It's not case sensitive, it doesn't matter
5 whether it has any capital letters, it can be all small
6 letters: Oaljhearingclerks@ocio.usda.gov

7 OALJ Hearing Clerks, that's all one word, the OALJ just
8 stands for Office of Administrative Law Judges, and then
9 Hearing Clerks. So Oaljhearingclerks@ocio.usda.gov

10 I'll read it again, but I'll tell you what the OCIO
11 stands for, that's just Office of the Chief Information
12 Officer, and some of our e-mail addresses have that instead of
13 the actual unit that we're part of. My unit, for example,
14 happens to be Departmental Management, so if you were e-mailing
15 to me at my official USDA address, it would be, and I would
16 love to get an electronic version of your proposed transcript
17 corrections; it would be Jill.Clifton@DM.usda.gov and I'll read
18 again the Hearing Clerk's e-mail address;
19 Oaljhearingclerks@ocio.usda.gov.

20 MS. VULIN: Can you read yours one more time, please?

21 JUDGE CLIFTON: Jill.Clifton@DM.usda.gov. Mr. Hill?

22 MR. HILL: Brian Hill. I just want to make this perfectly
23 clear for anyone listening. Obviously, everyone here is very
24 savvy and knows exactly where this is supposed to go and who it
25 is supposed to go to, but for anyone listening, it is a

1 necessity for your briefs to go to the Hearing Clerk. Courtesy
2 copies are fine to other parties, but the four printed copies
3 must go to the Hearing Clerk for your brief to be recognized.

4 JUDGE CLIFTON: Thank you. And it is required by
5 regulation that four printed copies go. It doesn't matter, you
6 know, which one is the original, I mean, they are all treated
7 the same, but for identical copies. The Hearing Clerk will
8 stamp one as the original, and then the others normally, one
9 would go to the Laurel May because she's the only person who so
10 far has entered her appearance in that file. If other people
11 enter their appearance in that file, would be lovely if you say
12 you are willing to receive by e-mail just to lessen the burden
13 on the Hearing Clerk. But the Hearing Clerk will be receiving
14 the four printed copies.

15 The other thing that's very important that is on this
16 written document. I'm going to read it. All filings should be
17 received by the filing clerk no later than 4:00 p.m. Eastern
18 time on the date established by the Judge as the deadline.
19 This is true, that's the last hour for filing. And people have
20 been denied the opportunity to appeal by being late. They may
21 have submitted it on the same day, it may have been 4:30 where
22 they were, Pacific time, but it was already 7:30 p.m. Eastern
23 time. And if that becomes an issue, the Judicial Officer has
24 ruled that that's not timely and will not be considered. So
25 you don't want to wait until the last minute on these

1 deadlines.

2 Please allow adequate time for briefs to reach the
3 Hearing Clerk's Office by mail or parcel delivery. Now, the
4 problem with that is, it has been known to take three weeks for
5 that diversion for irradiation, so if you use ordinary mail,
6 you just cannot rely upon meeting your deadline. So I'm asking
7 you, please use a commercial carrier service such as Fed Ex or
8 a UPS or the like.

9 All right. So you need the phone number for the
10 Hearing Clerk for a couple of things. One is to confirm they
11 received your submission, one is if you are delivering it in
12 person, to have someone from that office come to the security
13 area and escort you to and from the Hearing Clerk's office.
14 That phone number for the Hearing Clerk's office is
15 (202) 720-4443, and it is on this page that we have handed out
16 within the room here.

17 All right. So I would like to know, do we want to talk
18 again about this timeframe for all of the post-hearing
19 submissions now or do we want to take evidence now and then
20 talk about it after? At the end? I think that's wise.

21 All right. And then I have one other thing. I would
22 like all of you who could, to wait after we have gone off
23 record and have finished, just for a short debriefing with
24 Will Francis just to indicate requests for next time or
25 comments on what went well or did not go to well. Just a help

1 to the Department. I personally am so happy with the way so
2 many things went, but everything could always be improved. And
3 Will Francis has requested this and I think that's wonderful.
4 So if you can stay a little bit after, it won't take long.
5 Mr. Hill?

6 MR. HILL: Brian Hill. One last thing. I think originally
7 when you gave the time you said 4:00 p.m., it's actually
8 4:30 p.m., just want to make sure that that's on the record,
9 and hopefully they get it before 4:00 p.m. but it's actually
10 4:30 p.m.

11 JUDGE CLIFTON: Yes, it' true. 4:30 p.m. is the last --

12 MR. HILL: Eastern.

13 JUDGE CLIFTON: 4:30 p.m. Eastern is when the filing day
14 ends so your submission would need to arrive before 4:30 p.m.
15 or by 4:30 p.m. Thank you, Mr. Hill. All right. Let us, are
16 there any other preliminary matters prior to our proceeding to
17 the next evidence? I see none. Mr. Beshore?

18 MR. BESHORE: Marvin Beshore. We are asking Mr. Hollon to
19 return to the stand for one final appearance. And, your Honor,
20 I would ask that a document which has been distributed, three
21 pages, which is identified as Testimony of Elvin Hollon, Eight
22 Statement, Rebuttal, title Transportation Credit Testimony on
23 the second page, that that be given the next exhibit number.

24 JUDGE CLIFTON: Ms. Elliott, I'm thinking this is 192. Do
25 you agree?

1 MS. ELLIOTT: That's correct.

2 JUDGE CLIFTON: Exhibit 192.

3 (Thereafter, Exhibit 192, was
4 marked for identification.)

5 DIRECT EXAMINATION

6 BY MR. BESHORE:

7 Q. Thank you. And Mr. Hollon, are you prepared to proceed
8 with your eighth statement?

9 A. I am.

10 Q. Exhibit 192, Transportation Credit and Testimony.

11 A. Correct.

12 Q. Take it away.

13 A.

14 Transportation Credit Testimony

15 The Cooperatives amend our proposal with regard to
16 transportation credits to allow milk from farms located inside
17 or outside of the marketing area to receive transportation
18 credits. At the same time, we support reducing the limit for
19 applying a payment to a maximum of 175 miles. As we have
20 further analyzed the milk supply available, 175 miles is a
21 sufficient area to attract necessary supplies. The language
22 supporting this change, is as follows:

23 Q. We would ask that the words "is as" be inserted for
24 follows.

25 JUDGE CLIFTON: Thank you. It is done.

1 MS. ELLIOTT: Okay.

2 MR. HOLLON: Section 1051.55, Transportation Credits.

3 (b) Transportation credits shall apply to the following:

4 (1) Bulk milk delivered directly from dairy farms to pool
5 plants described in (b)(2) in the following Transportation
6 Zones:

7 (i) Transportation Zone 1 -- deliveries to plants
8 located in the counties of Los Angeles, Orange,
9 Riverside, San Bernardino, San Diego, and Ventura,
10 originating from dairy farms located in the counties
11 of Riverside, delete San Diego, or San Bernardino.

12 JUDGE CLIFTON: Now, you left out the word "all", probably
13 on purpose, I'm not sure. Could you -- oh, I'm sorry. I'm
14 looking at (ii), I'm looking at 2 little (ii), I'm sorry, I'm
15 in the wrong place. Thank you.

16 MR. HOLLON:

17 (ii) Transportation Zone 2 -- deliveries to plants
18 located in the counties of Los Angeles, Riverside,
19 San Bernardino, San Diego, and Ventura --

20 BY MR. BESHORE:

21 Q. Mr. Hollon, could you begin on that one again? I think
22 we missed a word, "county".

23 A. (ii) Transportation Zone 2 -- deliveries to plants
24 located in the counties of Los Angeles, Orange,
25 Riverside, San Bernardino, San Diego and Ventura,

1 originating from dairy farms located in all counties,
2 strike the words within the marketing area except
3 Riverside, strike the words San Diego and
4 San Bernardino.

5 (iii) Transportation Zone 3 -- deliveries to plants
6 located in the counties of Alameda, Contra Costa,
7 Marin, Napa, Santa Clara, San Francisco, Santa Cruz,
8 San Mateo, Sacramento, Solano and Sonoma counties,
9 originating from dairy farms located in all counties,
10 strike the words within the marketing area;

11 (2) Pool plant(s) for which the month have utilization of
12 greater than 50 percent in Classes I and/or II.

13 JUDGE CLIFTON: Now, what you said means the same as what
14 is printed, but where you put the word "for" was different. So
15 do you want to re-read it exactly as printed?

16 MR. HOLLON: I will re-read it.

17 (2) Pool plant(s) which for the month have utilization of
18 greater than 50 percent in Classes I and/or II. The
19 utilization requirement may be met for the current month or
20 it may be met on the basis of utilization during the
21 preceding 12-month period, ending with the current month.

22 (c) Transportation credits shall be calculated at the following
23 rates:

24 (1) With respect to each delivery described in paragraph
25 (B)(1) of this section, the Market Administrator shall:

1 (i) Determine the shortest hard-surface highway mileage
2 between the shipping farm and the receiving plant. The
3 mileage determined by this calculation shall not be
4 greater than 175;

5 BY MR. BESHORE:

6 Q. And, Mr. Hollon, at that, on the last clause there, I
7 think it just says "great" on the exhibit that should be
8 "greater", correct?

9 A. That is correct.

10 Q. We would ask that that correction be made, your Honor.

11 JUDGE CLIFTON: Thank you.

12 MR. BESHORE: And for purposes of noting the change to the
13 published, the published proposal, we would ask that the
14 numbers "225" be inserted with the strike through before for
15 "175".

16 MR. HOLLON: That's correct, also.

17 MR. BESHORE: Okay.

18 JUDGE CLIFTON: All right. So, Ms. Elliott, the way I have
19 it, see if you agree, is this very last portion of the quoted
20 language reads, "by this calculation shall not be greater than
21 225" with a strike through it, followed by "175" as it is.

22 MR. HOLLON: Yes.

23 JUDGE CLIFTON: Okay.

24 MR. BESHORE: Thank you, your Honor.

25 MR. HOLLON: This concludes the Cooperatives' proposed

1 transportation credit language amendments.

2 BY MR. BESHORE:

3 Q. Do you have anything to add with respect to the
4 proposed amendments?

5 A. We did discuss the proposed amendments amongst our
6 group. We looked at some comparisons to the other two places
7 where there are transportation type programs and noted that
8 they did not have a geographic limit, strictly a mileage limit.
9 And in the case of Order 30, the limit there is 400 miles. And
10 in the case of the Southeastern Orders, the handler applying
11 for the credits generally absorbs the first 85 miles of cost
12 and then the system pays for the balance. So we felt like to
13 align with those principles, that we would do the same. And we
14 also reviewed the data that we had on mileage limits, and
15 again, discussed within our group, and felt like 175 miles
16 would be a sufficient area to attract necessary milk supplies,
17 so we also reduced the 225 down to 175.

18 Q. Very good. With that, Mr. Hollon, I would move for the
19 admission of 192, and Mr. Hollon would be available for
20 cross-examination on this topic.

21 JUDGE CLIFTON: Does anyone wish to question Mr. Hollon
22 before determining whether you object? No one. Is there any
23 objection to the admission into evidence of 192 -- Exhibit 192?
24 There are none. Exhibit 192 is admitted into evidence. Who
25 will begin with questions on this topic?

1 (Thereafter, Exhibit 192, was
2 received into evidence.)

3 CROSS-EXAMINATION

4 BY DR. SCHIEK:

5 Q. Good morning. William Schiek.

6 Good morning, Mr. Hollon.

7 A. Good morning, Dr. Schiek.

8 Q. Just a couple of questions. In Transportation Zone 1
9 and 2, maybe I missed this, you may have said it, I may have
10 been looking at something else, but why did you delete
11 San Diego from the counties?

12 A. That was no change from the first time around. We had
13 all that discussion on it, and I have to admit, I had forgotten
14 some of the points that I think Mr. English asked instead of
15 you, and you answered them to him on the side, instead of me.

16 Q. So I must know the answer.

17 A. Yes. We're happy at that point.

18 Q. Okay. Thank you. And this is how you tell it's been a
19 long hearing.

20 Your note, discussion of 175 being sufficient and there
21 were sufficient supplies within that zone. In your
22 discussions, did you have some -- I guess I'm wondering, were
23 you looking at current production or anticipation of future
24 production noting that Southern California milk production has
25 been on the decline?

1 A. I think we considered all of those options, as well as
2 the CDFA survey data and our own experience. And early on in
3 the prior testimony, we discussed the Cooperatives or the
4 preponderance, like 75 percent of the transportation credit
5 dollars, and so we felt like looking at supplies and looking at
6 demands, that that would be an adequate number. And probably
7 the burden for filling it would also fall on us.

8 Q. Okay. Thank you very much.

9 JUDGE CLIFTON: What other questions are there for
10 Mr. Hollon?

11 CROSS-EXAMINATION

12 BY MR. VANDENHEUVEL:

13 Q. Good morning, Mr. Hollon.

14 A. Good morning, Rob.

15 Q. Rob Vandenheuvel, Milk Producers Council.

16 Just one clarification. You mentioned some of the
17 other transportation credit systems that exist, particularly in
18 the Southeast. Is it true that that particular transportation
19 credit system is funded through an assessment on the Class I
20 plants and handlers?

21 A. That is correct.

22 Q. And so this program, and I know this has been discussed
23 earlier, but since this was brought up again through this
24 modification, this is funded essentially through producer
25 dollars in the form of a credit against the plant or handlers'

1 obligation to the pool?

2 A. It is funded through producer dollars.

3 Q. So that's a significant, a significant effort on behalf
4 of producers to play a role in facilitating these longer hauls
5 in deficit markets, wouldn't you say?

6 A. I would agree.

7 Q. All right. That's all I have. Thank you.

8 JUDGE CLIFTON: Thank you. I don't know, Mr. Hollon, I
9 don't have the whole section in front of me, nor do I want to
10 go get it out of Exhibit 1. Let me just ask you, since we have
11 changed the emphasis off strictly California, would it be,
12 would it be at all useful when we look at (b)(i) to add the
13 word "California" before the word "county" so that its delivery
14 to plants located in the "California counties of", it may not
15 be necessary, it may be totally understood.

16 MR. HOLLON: I don't think it would be any disadvantage.

17 JUDGE CLIFTON: And if it is useful, I would just ask if it
18 would be useful in two little (ii)'s as well.

19 MR. HOLLON: The answer would be the same.

20 JUDGE CLIFTON: And three little (iii)'s as well.

21 MR. HOLLON: And the answer would be the same there.

22 JUDGE CLIFTON: And then, you have made it clear that this
23 is available to all counties, but people who haven't heard you
24 testify wouldn't really realize that that's -- that that
25 includes those outside the marketing areas. Did you discuss

1 any language to make that perfectly clear?

2 MR. HOLLON: I think it is perfectly clear in (b)(i), (ii),
3 (iii), where the words "all" were there, and the people dealing
4 with this, both from a regulatory standpoint and a day-to-day
5 business standpoint, would immediately understand that.

6 JUDGE CLIFTON: All right. All right. Good. What other
7 questions are there for Mr. Hollon. Mr. English?

8 CROSS-EXAMINATION

9 BY MR. ENGLISH:

10 Q. Good morning, Mr. Hollon. Chip English.

11 A. Good morning.

12 Q. This is a follow up from Mr. Vandenheuvel. He was
13 referring to things that happened several weeks ago, so I guess
14 I need to as well.

15 He referred to this as producer money. Were you here
16 for the testimony of Mr. Schad when he talked about his class
17 price build up?

18 A. I don't think I was here that day. I think I was doing
19 some work on some later testimony that day.

20 Q. Have you read his testimony? Are you aware of what he
21 testified about?

22 A. I'm generally aware. I have read a draft or two of it.

23 Q. So would you agree that in his testimony when he
24 discussed the build up of a Class I differential, he referred
25 to, as an additional reason for the Class I differential, the

1 payment of these transportation credits?

2 A. I remember that conversation.

3 Q. Thank you.

4 JUDGE CLIFTON: What other questions are there for
5 Mr. Hollon on this topic? Mr. Francis?

6 CROSS-EXAMINATION

7 BY MR. FRANCIS:

8 Q. Will Francis, USDA.

9 Just want to clarify the counties and just to make sure
10 we're clear on all this. And so in (b)(1) you list the zones,
11 but they also have to meet the within 175 under (2) or under
12 (c).

13 A. Well, you can, you get payment up to 175 miles. So if
14 there's a delivery from one of those zones that's 176 miles,
15 you would get credit for 175, but not for 176.

16 Q. Okay. So maybe the way I should ask the question is,
17 have you explored what counties outside of California that
18 would potentially be eligible, dairy farmers located in what
19 counties outside of California could potentially be eligible to
20 receive credits? Have you looked at that?

21 A. No. I think any shipment would have the opportunity to
22 get 175 miles or whatever they actually travelled.

23 Q. Okay.

24 A. If it was 50 miles, they would only get 50 miles, if
25 that's what the actual transport was.

1 Q. Okay. But the intent of all counties is referring to
2 all counties in the U.S.

3 A. Somebody chose to send a delivery from the Louisiana to
4 Los Angeles, they could get 175 miles of transportation
5 assistance and they would eat the remaining 2,500.

6 Q. Okay. Just wanted to be clear.

7 A. Fair enough.

8 Q. Thank you.

9 JUDGE CLIFTON: What other questions are there before I
10 invite redirect? Mr. Beshore, redirect, please?

11 REDIRECT EXAMINATION

12 BY MR. BESHORE:

13 Q. Just one question on redirect, and maybe we should have
14 made this point earlier. Is it the intention, while we haven't
15 gone into language regarding payments here, is it the intention
16 that producers outside of the marketing area who may receive
17 transportation credits, would share in the expense of that from
18 the pool of those transportation credits?

19 A. That would also be true.

20 Q. I don't -- and so if there's some need to address other
21 language in the proposal that would make that clear, we're
22 going to do that on the brief?

23 A. That's correct.

24 Q. Okay. That's all.

25 JUDGE CLIFTON: Are there any further questions? None.

1 Thank you. That completes Mr. Hollon's testimony as to this
2 topic.

3 MR. BESHORE: Mr. Hollon will continue. We do not have a
4 prepared statement, but he does have some further testimony
5 which, which we will provide through examination.

6 DIRECT EXAMINATION

7 BY MR. BESHORE:

8 Q. Okay. So, Mr. Hollon, were -- you were not here
9 yesterday, but Mr. Schad, in his testimony -- maybe you read
10 this Monday while you, no, you weren't here then, either.
11 Okay. Mr. Schad, in his rebuttal testimony, presented some
12 information from Land O'Lakes with respect to sales in the year
13 2014, at less than Federal Order prices and some other
14 information with respect to Land O'Lakes sales in 2014. And he
15 asserted in that statement that you would provide similar
16 information with respect to Dairy Farmers of America's
17 operation in the Federal Order system during 2014. You are
18 aware of that?

19 A. I am aware.

20 Q. And are you prepared to provide information with
21 respect to those subjects for, or on behalf of Dairy Farmers of
22 America with respect to its operations?

23 A. Yes, I am.

24 Q. Okay. So let's begin, then, sort of proceed
25 geographically perhaps, or however you want to proceed. Let's

1 talk about sales at less than class prices.

2 Do you have information on what volume of sales in
3 Federal Order areas, DFA may have had during 2014? And let's
4 preface that for context, when you presented it before. Just
5 give us an overview of the areas, of the Federal Orders where
6 the DFA markets some milk and with which you are familiar with
7 their marketing of milk.

8 A. Okay. For the purpose of day-to-day business, DFA's
9 divided into seven operational areas, where one of the main
10 responsibilities of each of those areas, totally aside from
11 governance, but involved in marketing, is moving milk from farm
12 to plant on a daily basis. I think this week the estimate was
13 that we would be transporting 2,666 loads of milk a day all
14 across the country, and from California to the Atlantic.

15 Q. When you say loads, that's a, you are talking about
16 tanker loads?

17 A. A 50,000 pound tanker load of milk is the equivalent
18 unit of measure.

19 Q. Okay. So what Federal Order markets are then
20 encompassed in that operation?

21 A. That would encompass all Federal Order markets with the
22 exception of Order 131, where we do have a producer located in
23 that marketing area, but his milk is marketed in the Southwest
24 Order, and we have producers in the Pacific Northwest Order,
25 but those are marketed through Dairigold. All of the rest of

1 the Orders from those two the East are directly marketed by
2 DFA.

3 Q. Okay. So the Order 1 in the Northeast?

4 A. The Northeast Order, the Appalachian Order, the
5 Southeastern Order, the Florida Order, the Upper Midwest and
6 Central Orders, the Mideast Order, and the Southwest Order.

7 Q. Okay. Very good. Now, in 2014 in those orders, what
8 information do you have with respect to the extent of sales of
9 milk at less than Federal Order prices, pooled sales of milk at
10 less than Federal Order prices?

11 A. In the Southeastern Orders that number would be, for
12 2014, 5.1 percent, and that would be the largest of any. And
13 in that Order, in that geography, the Florida Order, the
14 Southeast Order, and the Appalachian Order. And our, to my
15 knowledge there are only three plants that do any seasonal
16 balancing. So a small cheese plant in Uniontown, Alabama; a
17 diversified plant in Glasgow, Kentucky; and that plant also
18 owns an operation in Springfield, Kentucky. And if you were to
19 have the entirety of those plants' capacity, which is not
20 possible, we would have 40 loads of milk a day. And at the
21 time when balancing is at its greatest, there are at least
22 seven different entities knocking on that door looking for that
23 space.

24 With regard to the Mideast Order --

25 Q. Let's stop, if you would. If I could interrupt you in

1 the Southeast Orders just for a minute. So those are high
2 Class I utilization Orders, correct?

3 A. Absolutely.

4 Q. So in, perhaps it's counterintuitive to discussions
5 that we have had at this hearing, but the need for market
6 clearing transactions out of the area and at, sometimes, at
7 prices less than class prices is greatest in high Class I areas
8 as opposed to manufacturing areas; is that correct?

9 A. That's generally true. Just again, as an example, we
10 have already started discussing those needs for this Christmas
11 holiday season, and noting the calendar that Christmas is on a
12 Friday, quite likely many of the customers will be down Friday,
13 Saturday, and Sunday. So that will be three days of milk that
14 will need to be balanced somewhere, much of which will leave
15 the geography of the Southeast Order and be balanced in Texas,
16 some in New Mexico, some in Indiana, some in Ohio. And in the
17 Upper Midwest, there will be milk into Minnesota and Wisconsin
18 that contributes to that volume.

19 And I would also mention that Mr. Williams, from
20 Georgia, when he testified, he made note of the same scenario,
21 the same situation, that balancing capacity was very limited in
22 the Southeast.

23 Q. Okay. So when you say plants are down, just for
24 clarity, you mean customers that commercial, that are
25 commercial outlets that are buyers for milk in the Southeast,

1 processors of milk in the Southeast are not operating during
2 those days?

3 A. That's right. The Class I and Class II demand
4 customers, which are the overwhelming predominance of purchase
5 power in that market would close their plants for, some three,
6 all three of those days, some two of those days.

7 Q. Okay. But the cows don't take those days off?

8 A. We haven't figured that out yet.

9 Q. Okay. So let's go on then, to other Order areas and
10 your, the incidents of low class sales in 2014.

11 A. In the Southeast Order, which would encompass Texas and
12 New Mexico, 7/10th of one percent of our sales there would be,
13 have been in any way below class, and that would encompass not
14 only our own business, but there's a common marketing agency
15 there accounts for just under 80 percent of the marketplace
16 sales.

17 Q. And when you say the marketplace, you are talking about
18 the Southwest Federal Order?

19 A. Correct.

20 Q. Okay. So the .7 percent is then the percentage of 80
21 percent approximate, almost 80 percent of the Southwest Order's
22 total volume during 2014?

23 A. That would be right.

24 Q. Now, the balance of sales in Southwest Order, is it
25 fair to say then, that the balance of the sales are at, and the

1 overwhelming amount of them are substantially above Federal
2 Order minimum prices?

3 A. That would also be correct.

4 Q. Including the sales to cheese plants in that Order?

5 A. That would be correct, also.

6 Q. Okay. And there are several, two, you know, major
7 large cheese plants in New Mexico that are supplied with milk
8 from that Order, correct?

9 A. That is correct.

10 Q. Okay. By the way, are the -- are there plans that have
11 recently been announced for substantial investment in cheese
12 manufacturing capacity in the Southwest Federal Order area?

13 A. That is correct. The Southwest cheese plant, which is
14 jointly owned by three of the, the three members of the agency
15 and Glanbia, announced a tremendous expansion over the next two
16 and a half to three years of the plants in Clovis, will
17 increase the milk throughput, as well as some of the other,
18 some of the whey processing.

19 Q. Okay. And I think I saw some, you know, newsletters,
20 \$130, \$140 million investment. Does that sound about right?

21 A. That sounds reasonable. I don't remember the numbers,
22 but it's a tremendous investment.

23 Q. Okay. And that's an investment that's being made by
24 the owners of that plant in order to continue to, in order to
25 expand the production of cheese at prices, at Federal Order or

1 above, correct?

2 A. That is correct.

3 Q. Okay. So let's go on, then, to the next Order or
4 regional area.

5 A. The next the next three are combined. And that would
6 be the DFA Central area, which includes geography from the
7 Texas/Oklahoma border north to the Canadian border, and from
8 the Kansas/Colorado border on the west, east to the
9 Indiana/Illinois border, and that would encompass pretty much
10 all of Federal Orders 32 and 30. Also, DFA's Mideast
11 operational area which markets primarily in the Order 33, and
12 DFA's Northeast area which markets primarily in Order 1. And
13 data from those three states indicate for 2014, a range of 1.4
14 to 1.9 percent, any sales were made to an underclass price.

15 Q. Okay. Now, in those areas, do you have information
16 with respect to the other 98 plus percent of sales for
17 Class III purposes, for cheese making purposes, and the range
18 of prices that were applicable to those sales?

19 A. I do. In the Northeast area, our marketing staffs
20 there indicated for calendar 2014, prices for cheese or
21 Class III sales, ranged anywhere from \$1.20 to \$1.25 per
22 hundredweight over Class III for our range of customers
23 primarily in the Order 1 area. In the Order 32 and 30 area,
24 give some geographic breakdown further there, but in the
25 Minnesota and Wisconsin sections of that market, our sales

1 there averaged between \$1.40 per hundredweight and \$1.85 per
2 hundredweight, to a wide range, a broad range of Class III
3 customers.

4 JUDGE CLIFTON: Are you saying more than Class III?

5 MR. HOLLON: Yes, ma'am.

6 JUDGE CLIFTON: Okay.

7 MR. HOLLON: And in the Iowa and Kansas City and Southern
8 Kansas and Oklahoma markets, to Class III customers in those
9 areas, anywhere from \$1.82 to \$2.08 over Class III for calendar
10 year 2014. I think that covers the geography.

11 And there would be a wide, a large number of
12 manufacturing plants in which we sell to, most are done on a
13 contractual, they are all done on a contractual basis of some
14 sort that specify volumes, prices, and duration.

15 BY MR. BESHORE:

16 Q. Okay. To your knowledge, are the prices, DFA's prices
17 of sales to cheese plants in those areas, representative of the
18 prevailing prices in of the marketplace?

19 A. They are representative of the prevailing prices in the
20 marketplace. Obviously, looking back at order statistics there
21 is a high Class III utilization, so there's a tremendous amount
22 of, first of all, a large number of plants and a large
23 competitive environment, so that would be reflective of what
24 the competitive footprint is in that area.

25 Q. Okay. In all of those plants we can, in all of those

1 areas then, we can look at the cheese in terms of the
2 competitive value of milk in the Federal Order system, for use
3 to produce cheese for the entire year 2014, we can look at the
4 volumes in those Orders, and with your price information, and
5 have a good idea of the cost of milk for cheese making for
6 Federal Order, for plants purchasing in the Federal Order
7 system in 2014?

8 A. Absolutely.

9 Q. Okay. Did you have a weight, a weighted average for
10 those areas in aggregate?

11 A. Not in aggregate, but in the Upper Midwest areas, a
12 weighted average, when I referred to Minnesota, Wisconsin,
13 Iowa, St. Louis, Oklahoma, that weighted average of all premiums
14 included, including the negative premiums I referred to
15 earlier, was \$1.69 per hundredweight. And in the Order 1 area,
16 that range was vary narrow from \$1.20 to \$1.25, so the weighted
17 average would be very tightly bound inside that number.

18 Q. Okay. Now, you mentioned, Mr. Hollon, that DFA and DFA
19 system, you're responsible for marketing in excess of 26,000
20 tanker loads of milk from farm to plant everyday. Correct?

21 A. Correct.

22 Q. Okay.

23 JUDGE CLIFTON: Could you give me that number again, if you
24 have it handy? I didn't get it all written down.

25 MR. HOLLON: 2,666 was the estimate for this week.

1 JUDGE CLIFTON: And that's loads of milk per day?

2 MR. HOLLON: Correct.

3 BY MR. BESHORE:

4 Q. So a week in November, just, how does that relate to
5 production on a year-round basis? It is towards the low point?

6 A. It would be towards the low point. If you used a
7 seasonal swing of 20 percent, you would have 120 percent times
8 that for March and April, May, June.

9 Q. Is 20 percent approximate seasonal swing in aggregate
10 you might experience?

11 A. That would probably be a reasonable -- it's obviously
12 much higher in the Southeast. You might even approach 30 or 35
13 percent there. When you get into the Southwest area would be
14 smaller. The Northeast and Mideast and Upper Midwest would be
15 in between those numbers.

16 Q. Okay. So I want you to now just -- just tell us how
17 that milk is directed, how it's sold in terms of where the
18 first, where the first milk goes, where the second milk goes,
19 and where that final market clearing milk goes, and I want, I
20 want you to think about the context of the discussion that we
21 have had in this hearing about the, whether there is a need for
22 the Class III price to be a market clearing price.

23 A. In our system where those volumes are a good market on
24 a daily basis, again, much contractual, much on the agreements
25 with, long-standing agreements with customers across all

1 classes, and so most everyday Class I milk moves according to
2 the demand orders of those customers. There is no market
3 clearing that takes place in the Class I space. We have sales
4 to Class II customers that fit that same definition; yogurt
5 plants, ice cream plants to some extent, cultured product
6 plants, that are also on a demand basis and have their, place
7 their orders. So a much more, I'd say balancing arrangement,
8 we'll have ice cream customers that will take weeks off at a
9 time, and obviously early in the spring heads into summer, want
10 large volumes of milk.

11 Our Class III customers are described by demand sales.
12 Those take place in all the Orders we operate in. Those are
13 numbers of loads and volumes of milk per day, negotiated
14 prices. At times there is seasonal balancing that's priced
15 into those sales, but that's part of the demand terms. I think
16 Ms. Taylor mentioned, in her understanding of Leprino's
17 relationships with DFA, that there is some seasonal balancing
18 that goes into those prices where their plants runs five days,
19 six days, or seven days, but those are all pre-agreed demand
20 and at prices over minimum.

21 With regard to Class IV sales, we have a very small
22 amount of Class IV fat demand sales. We do have some. And we
23 have a very small amount of Class IV, nonfat dry milk or milk
24 powders demand sales. But we operate a range of a dozen plants
25 scattered around the country. Those plants are in Adrian,

1 Michigan; we'll do them alphabetically.

2 Q. Let me get the exhibit.

3 A. Okay.

4 Q. Which -- you have a map?

5 A. I have a map.

6 Q. That shows those locations. And I would like to ask
7 that this document be marked as the next exhibit, your Honor.

8 JUDGE CLIFTON: Very fine. It will be 193.

9 (Thereafter, Exhibit 193, was
10 marked for identification.)

11 JUDGE CLIFTON: We're distributing the map. It's been
12 marked as Exhibit 193. Please raise your hand if you still
13 need a copy. It appears that everyone has one.

14 Mr. Beshore, you may proceed.

15 BY MR. BESHORE:

16 Q. Okay. Now, I interrupted you, Mr. Hollon, as you were
17 beginning to describe the locations of certain Dairy Farmers of
18 America plants. So do you have Exhibit 193 now?

19 A. I do.

20 Q. Okay. And could you just continue with your, with your
21 testimony and referencing Exhibit 193 as appropriate?

22 A. Geographically, looking in the northeast, there are
23 plants in Reading and Middlebury Center, Pennsylvania; in
24 Linwood, New York, those plants do a variety of milk powders
25 and skim products. I would also say in New England we have an

1 arrangement with the Cooperative member of DFA's St. August
2 Co-op, and they have a drying and condensed milk facility in
3 Vermont that fits this definition.

4 Q. That's not -- that's not, it doesn't show in 193?

5 A. That's correct, it is not on this map, but it is part
6 of the network. Cass City, Michigan, is a condensing
7 operation; Adrian, Michigan, is a condensing and drying
8 operation; Goshen, Indiana, is a condensing and drying
9 operation; Winthrop, Minnesota, is a condensed milk
10 manufacturing facility. In Portales, New Mexico there is a
11 very large drying facility. Fort Morgan, Colorado, also a very
12 large drying facility. Beaver, Utah, is a condensed milk and
13 small, a condensed milk facility, there's no drying there. In
14 Fallon, Nevada, is a milk drying facility. And in Hughson,
15 California, a milk drying, condensing and a small amount of
16 butter manufacturers there.

17 And so these facilities are invested in by the
18 Cooperatives. There is some amount of demand business there,
19 but we simply can't devote a tremendous amount of capacity
20 because it's needed for market clearing transactions when those
21 take place.

22 I would perhaps point out that the plant in Portales,
23 New Mexico, I think it's at full capacity. It's approximately
24 150 loads per day. Today, I think the schedule indicates 20
25 loads of milk will be there. Probably in about six weeks,

1 there will be 150 loads scheduled to go through the plant, with
2 as many as 150 more sitting on the lot waiting to be processed.
3 And all of those, when you get to that point, all of that
4 product pretty well ends up in nonfat dry milk powders, for
5 which there is not necessarily a committed or demand sale for.
6 So there is where the market balancing capacity takes place.
7 And the market balancing, to consider cheese manufacturing as
8 market balancing simply doesn't, the data doesn't fit that
9 definition. And that's not to say that there is zero, because
10 again, at the peak balancing times, there will be some milk
11 balanced in cheese manufacturing, but a very, very small
12 amount.

13 Q. Okay. So is it fair to say, in conclusion, that cheese
14 manufacturing in the dairy marketplace today in the Federal
15 Milk Marketing Orders in the United States, is a demand-driven
16 business in terms of its production?

17 A. That would be our experience and knowledge of the
18 marketplace. That it is a demand-driven arrangement. We have
19 very few sales to cheese plants where they are building
20 inventory for an Order that doesn't exist.

21 Q. Some of that, I suppose, could relate to the fact that
22 there is no longer a Commodity Credit Corporation sale for
23 cheese, or market for cheese, as at one time there was, so that
24 if cheese plants wanted to produce inventory for that market
25 they could.

1 A. That would be one factor.

2 Q. Okay. So do you have any other comments about the, you
3 know, the overall operations of marketing 2660 or more tanker
4 loads of milk from farm to plant everyday, and which uses fit
5 into the demand versus the market balancing elements of that?

6 A. I do not.

7 Q. Okay. One final, I would like to just ask for your
8 comments or thoughts on one final topic. With respect to the
9 proposed pooling arrangements for the California Federal Order
10 that have been put on the table or suggested in the Proposal 2.
11 Now, those have been modeled, testimony has indicated under,
12 modeled under the Order 30 regulations. You are aware of that?

13 A. Yes.

14 Q. And you have, you market milk in Order 30 and have some
15 experience with those with those provisions, correct?

16 A. That is correct.

17 Q. Okay. So do you have any thoughts about how those
18 would operate in a California marketplace?

19 A. Well, in reviewing some of the proposal language, if
20 you look at Section 7.E, it does allow for a unit of handlers.
21 I can't say that every single Order allows for that, but I
22 think they do. And many Orders, we operate with other
23 cooperatives as the unit of handlers for pooling purposes and
24 to more efficiently serve the market. If we were to have that
25 provision available in California, we -- a California Order, as

1 we have indicated, the three cooperatives would account for
2 about 75 percent of the milk.

3 Under a pooling, depooling, repooling arrangement as
4 outlined by the language in Proposal 2, at approximately
5 anytime we could take 20 percent of our unit, our supply, our
6 supply plant unit, if you will, take it off the market in one
7 month and put it back on in the next month with absolutely no
8 limitation under that. So that our 75 percent of the market,
9 and taking 20 percent of our 75 percent off, would be 15
10 percent of the pool or in the range of 500 million pounds of
11 milk a month. And with the 125 and 130 percent depooling,
12 repooling limits, arrangement, there would simply be no
13 limitation to the desire to do that, which would create a, at
14 the very least, an interesting pricing arrangement where one
15 month Class IV handler may have a price advantage in paying
16 producers, the next month the Class III handler, flipping back
17 the following month. And in order to maximize that, you may
18 look at doing it two or three months at a time, if you think
19 you are that good at projecting prices.

20 When you compare that to the situation in Order 30, two
21 things sort of jump out. One is certainly the presence of
22 quota and the impact on the blend price in the California
23 Order, but you also have a significant difference in the
24 concentration of handlers. A similar Order unit system in
25 Order 30 is composed of, I think, certainly more than 50

1 entities. And the ability for those 50 entities to do
2 something is somewhat constrained especially by the sheer
3 number of them. In the proposed California Order, there would
4 be a lot less or a lot fewer number of handlers, and the
5 Cooperatives themselves would represent a very large slice of
6 those handlers, so the Proposal Number 2 would, in our view,
7 result in some fairly unruly pooling, repooling maneuvers,
8 which we discussed in earlier testimony, and so we think that
9 would not contribute to orderly marketing.

10 Q. So the market structure in Order in California, is much
11 more concentrated on the buy side as well as the on the sell
12 side than it is in Order 30?

13 A. Absolutely.

14 Q. Okay. Do you have anything else you want to add at
15 this point? Last chance.

16 A. I think I would make one other comment about just the
17 general price level of manufactured goods and the indication
18 that prices would, if there was a California Order, that prices
19 for manufactured goods would deteriorate greatly because of,
20 you know, perhaps the perceived large increase in milk supply,
21 which we discussed we don't think would be the case. But I
22 would note if we look backwards in the industry over the last
23 ten years, there have been at least three instances where there
24 have been tremendously charge cheese plants who, you know,
25 Greenfield, one would be in Clovis, New Mexico, Southwest

1 Cheese. Just a few years later in Dalhart, the Hilmar group
2 built an extremely large plant, and the most recent large plant
3 is the Leprino plant in Greeley, Colorado. And based on, you
4 know, our market information, if you were to take the Upper
5 Midwest and Northeast plant expansions and aggregate them, you
6 would aggregate them into a plant that was at least as big
7 collectively as any one of these. And yet, U.S. cheese prices
8 haven't sunk to world levels, the market has absorbed it. It
9 didn't do it instantly, but it recalibrated.

10 I just think it is -- it's not credible to think that,
11 you know, a California Order resulting in an increased milk
12 supply, which is not necessarily our view, would destroy cheese
13 prices.

14 Q. Okay. Thank you. No further questions for Mr. Hollon.

15 JUDGE CLIFTON: Who will be the first to ask additional
16 questions of Mr. Hollon? Mr. English, thank you.

17 MR. BESHORE: Your Honor, if I might?

18 JUDGE CLIFTON: Yes, Mr. Beshore.

19 MR. BESHORE: I neglected to move for the admission of
20 Exhibit 193. At this time, I would like to do that.

21 JUDGE CLIFTON: Does anyone wish to question Mr. Hollon
22 about Exhibit 193 before determining whether you object? No
23 one. Is there any objection to the admission into evidence of
24 Exhibit 193? There is none. Exhibit 193 is admitted into
25 evidence.

1 (Thereafter, Exhibit 193, was
2 received into evidence.)

3 CROSS-EXAMINATION

4 BY MR. ENGLISH:

5 Q. Chip English.

6 Good morning, again, Mr. Hollon.

7 A. Good morning, Mr. English.

8 Q. So first, you talked about DFA having 2,666 tanker
9 loads of milk a day, correct?

10 A. Correct.

11 Q. I was looking online while you were testifying, and it
12 looks like for 2014 there was total milk production in the
13 United States of 206,046,000,000 pounds. Would you that sound
14 right to you?

15 A. Say it again?

16 Q. 206,046,000,000 pounds of milk production, does that
17 sound right?

18 A. Yes.

19 Q. And using the 50,000 pound tanker, that came out to
20 about 11,300 tankers per day?

21 A. Sounds right.

22 Q. Okay. Which would mean that DFA has the market share
23 of approximately 23 and a half or 23.6 percent. Does that
24 sound about right?

25 A. That sounds about right.

1 Q. So that leaves about 8,500 tanker loads a day that you
2 don't have information about, correct?

3 A. Correct. No, I would say that's incorrect because we
4 do operate in the marketplace, and we do have knowledge of
5 other activities. I won't say we have knowledge of all,
6 whatever your number was, but to say zero would be incorrect.

7 Q. All right. But you don't have necessarily direct
8 knowledge of what's happening in the pricing of those 8,500
9 tanker loads, correct?

10 A. Not direct knowledge, but again, you know, markets are
11 competitive, and so what you are able to charge or negotiate is
12 somewhat in relationship to what others do.

13 Q. Okay. So one of those areas where you might get market
14 information is Dairy Market News, correct?

15 A. Yes.

16 Q. Okay. And I note, you weren't here yesterday, so I'm
17 going to ask you some of the same questions I asked Mr. Schad.
18 You provided data, some information with respect to 2014 and
19 not 2015, correct?

20 A. Correct.

21 Q. And it's annual data, not monthly or even weekly data,
22 correct?

23 A. Correct.

24 Q. So would you agree with me, looking at the May 29,
25 2015, Dairy Market News, that there certainly are times when

1 milk is reported as selling as surplus milk and selling below
2 class prices, correct?

3 A. I would agree.

4 Q. So for instance, if that report from May 29 of this
5 year says a few loads of Midwest surplus milk sold at \$10 below
6 class this week, more loads are selling near \$7 below, and milk
7 more widely available as to timing location now sells at \$6
8 under, you wouldn't have information to disagree with that
9 statement from Dairy Market News, would you?

10 A. I wouldn't have any information that would directly
11 collaborate that. I'm not aware that we sold any milk at those
12 price ranges that I know of, but I understand the Dairy Market
13 News system and how it works.

14 Q. Now, actually, that does raise a digression question.
15 When you talked about this, these issues, those were DFA sales
16 of DFA milk that you were talking about?

17 A. It was -- there's -- there are some markets where we do
18 market milk for other people, but that's part of the network.
19 So to say that it is a hundred percent DFA milk, I don't know
20 that I can say that.

21 Q. Well, what about sales to DFA plants of non-DFA or
22 non-DFA sort of affiliated sales in the milk? Do you -- do you
23 have information about sales to DFA plants by entities for
24 which DFA does not have, it's not even DFA milk or sales that
25 DFA is responsible for?

1 A. I'm sorry, I got lost in your question. Do it again.

2 Q. What about purchases by DFA plants of milk that is not
3 DFA milk or milk that DFA regularly markets for others?

4 A. I'm going to try to parse your question the way I heard
5 it. First, you said purchases by DFA.

6 Q. Purchases, you have all these plants you talked about
7 in your exhibit, correct?

8 A. Yes.

9 Q. Do you receive milk at those plants at times that is
10 milk other than DFA milk or other than milk that is marketed
11 regularly by DFA?

12 A. Very rarely.

13 Q. Okay. So going back to Dairy Market News, and I think
14 an answer to a question from Mr. Beshore, that that same
15 page -- that same page, Page 3 of the that Dairy Market News,
16 says, "Some of the production will go to current demand and
17 some will be held in inventory for future sales." So some,
18 when people can buy milk below class, that means that they
19 actually do lay product aside for future sales, correct?

20 A. Yes, that can happen.

21 Q. And then the next sentence is, "Most cheese makers are
22 happy to increase schedules to the max to accommodate
23 discounted milk." Are you familiar with that?

24 A. I don't think I would characterize it "to the max" and
25 with that direction, but at holiday periods those are known in

1 advance that they are going to happen, so if cheese makers have
2 capacity, they will negotiate for volumes.

3 Q. Does Dairy Farmers of America have a Board directive to
4 not sell milk under class, under long-term contract?

5 A. I don't -- I don't know if there's a Board directive or
6 not. That's obviously not the practice, that's not the goal,
7 and you obviously wouldn't be around very long if you did that,
8 but I can't tell you if there is or there is not a Board
9 directive.

10 Q. But are you aware that DFA does have a spot agreement
11 to buy milk at \$5.00 and \$10.00 under regular basis?

12 A. To buy spot milk?

13 Q. To buy spot milk at \$5.00 to \$10.00 under?

14 A. I am not aware that we have agreements to buy spot milk
15 at \$5.00 or \$10.00 under class price on a regular basis.

16 Q. Does DFA, in West Texas and New Mexico, shouldn't I
17 say, doesn't DFA in West Texas and New Mexico pay below minimum
18 class prices to the dairy farmers?

19 A. I would say at times, yes.

20 Q. Okay.

21 A. I think we discussed marketing in West Texas and New
22 Mexico in earlier testimony, correct?

23 Q. I believe we did, and I'm sure I've forgotten what we
24 discussed.

25 A. At least one of the points that we discussed was the

1 capacity in that market is not adequate to clear all the time,
2 so we do move milk out of West Texas and New Mexico to balance,
3 and a portion of that balancing cost is reflected in the
4 question you just asked.

5 Q. How much milk has Dairy Farmers of America sold to
6 Hilmar below class in the last three years?

7 A. I don't have a number.

8 Q. Would you agree that you have, DFA has sold milk to
9 Hilmar at prices that are under class prices?

10 A. On a spot basis, I would agree.

11 Q. Given your position about pooling or depooling at this
12 proceeding, are you going to, does DFA anticipate going to the
13 other Federal Orders and ask the depooling provisions be
14 removed?

15 A. I do not anticipate that.

16 Q. If I may confer just for a moment. One of the
17 blessings of this hearing, and I'll be talking about that in
18 answer to Mr. Francis' questions, is the wonderful fact that we
19 have this on the Internet. That can also be a curse.

20 JUDGE CLIFTON: I would like five minutes to get something
21 to drink. So let us all stretch for about five minutes, and
22 then expect to go back on record in about 10:27.

23 (Whereupon, a break was taken.)

24 JUDGE CLIFTON: We're back on record at 10:27. Now it is
25 10:28. Mr. English?

1 MR. ENGLISH: Your Honor, I was asked off the record, that
2 was the report for the week of May 25 to 29 of this year, it
3 was Page 3, it was referring to the Upper -- not the Upper --
4 the Midwest markets, just for clarity.

5 Your Honor, I am prepared to yield the floor. I may
6 get some questions from my team, and if they come, if they do
7 happen, they happen while he's still on the stand, then I would
8 ask them. And if they don't happen at all or if they happen in
9 an untimely way, then I'm done.

10 JUDGE CLIFTON: Thank you, Mr. English. Who next has
11 questions for Mr. Hollon?

12 MR. HOLLON: As they say on the Exchange, going once, going
13 twice --

14 JUDGE CLIFTON: You are not a commodity.

15 MR. HOLLON: I think thanks.

16 JUDGE CLIFTON: Redirect, Mr. Beshore?

17 REDIRECT EXAMINATION

18 BY MR. BESHORE:

19 Q. Two real quick things. The days in May that were
20 referenced in the, that time period in May that was, of this
21 year, that was referenced in the Dairy Market News reports,
22 does that have any significance in terms of milk marketing?

23 A. No, that would be right on top of the Memorial Day
24 weekend, which is when Memorial Day weekend, Thanksgiving week,
25 Christmas Eve, Christmas Day, the day after, New Year's Eve,

1 New Year's Day, the day after, those are typically the most
2 difficult balancing periods. And for example, when I referred
3 to the fact that our own plants during that time would be full,
4 then our own plants would be full. And it was just a
5 tremendous amount of milk during this Memorial Day season, and
6 so that would be, again, one of the most difficult times to
7 have. And you would expect, I suspect, if we went to Memorial
8 Day weekend in the prior year, Dairy Market News, there would
9 be discussion of extra milk moving around the Upper Midwest.

10 Q. Okay. And just one final question, then. Your
11 testimony about the price in the various markets, of course,
12 directly represents DFA and DFA marketing agency transactions,
13 such as the -- the agency in the Southwest, I don't know if we
14 got the name of that in the record, but just to be clear,
15 that's involved in marketing 80 percent of the milk in that
16 Order, what's that called?

17 A. Great Southwest Agency, GSA is its acronym and what
18 it's known by.

19 Q. Okay. So your information, your direct information is
20 for DFA itself and its affiliates in terms of marketing
21 agencies and combinations. But we also have information from
22 Land O'Lakes, from Mr. Schad yesterday. You are aware of that?

23 A. He did put in similar information, correct.

24 Q. And it's DFA's, it's necessary in DFA's business, and
25 it's your job and all those working for DFA's dairy farmers, to

1 know the marketplace, and know the prices and conditions of the
2 marketplace; is that correct?

3 A. That's part of being a business in the marketplace, and
4 we're no different. And yes, we have people in every
5 marketplace that do that kind of day-to-day intelligence
6 information, buy, sell, call on customers, make sales, get
7 turned down for sales.

8 Q. And is it your testimony that the information you have
9 presented for this record in terms of DFA sales, and the
10 information that Dennis Schad has presented in terms of LOL
11 sales, plus your knowledge of the marketplace, that those are
12 representative of the Federal Order marketplace throughout the
13 country for last year?

14 A. That would be accurate. I would agree.

15 Q. Thank you.

16 JUDGE CLIFTON: Mr. English?

17 RE-CROSS-EXAMINATION

18 BY MR. ENGLISH:

19 Q. Chip English.

20 You recognize, of course, that I just pulled out an
21 example of the Dairy Market News? Isn't it true that for a
22 good part of this year, Cooperatives, and others, in the Upper
23 Midwest and the Northeast were so stressed with milk, that milk
24 was being literally dumped for a good part of the year, not
25 just related to the holiday, correct?

1 A. Correct. There has been situations this year in
2 balancing that has required milk to be dumped in Upper Midwest,
3 Mideast, Northeast.

4 Q. So, for instance, moving away from the holiday and now
5 I'm looking at the report precisely two weeks later than the
6 one we were talking about for June 8 and June 12, if Dairy
7 Market News says, "The world view from cheese plants this week
8 is similar to last week," which would be the week after
9 Memorial Day, correct?

10 A. Uh-huh, yeah. I'm assuming you got the right week.

11 Q. Yeah. So -- "Surplus milk is available in many
12 locations. Reports of surplus milk at \$5.00 below class are
13 heard in Wisconsin, Iowa and South Dakota. In Ohio, some
14 surplus milk is being shipped around \$4.00 below class."

15 Would that, based upon your memory and, you know,
16 Mr. Beshore's questions of you, or your knowledge of the
17 marketplace, would that be consistent with your recollection of
18 the marketplace?

19 A. That could have happened in the marketplace. I would
20 add to that, that while there's no quantities in the Dairy
21 Market News' report of fluid milk, that those would represent a
22 small percentage of the market.

23 Q. A small percentage of the market is, you know, marginal
24 price for taking care of clearing the market, correct, sir?

25 A. Say it again?

1 Q. That's what's clearing the market, that last loads of
2 milk, correct?

3 A. Correct.

4 Q. Thank you. I have nothing further.

5 JUDGE CLIFTON: Are there other questions for Mr. Hollon on
6 this topic? Mr. Hollon, I think you are finished, and I thank
7 you so much for all of the work that you have put in throughout
8 this proceeding.

9 MR. HOLLON: Thank you.

10 MR. BESHORE: Your Honor, our final rebuttal witness is
11 Dr. Erba, and he will be presented by Mr. Vlahos.

12 JUDGE CLIFTON: An exhibit is being distributed, and
13 Ms. Elliott, I believe we'll be marking it as Exhibit 194. Do
14 you agree?

15 MR. VLAHOS: Your Honor, may I make a suggestion on that?
16 This is actually a completion of a document that was previously
17 identified. During the testimony of Ms. Taylor the, by
18 Mr. Beshore, it was marked for identification Exhibit Number
19 62 -- 162, excuse me -- but the actual arithmetic was left open
20 to be completed by another witness. Dr. Erba is going to be
21 that other witness.

22 During that testimony, there was inserted in the first
23 column from Ms. Taylor's testimony and her exhibits, the price
24 difference for hundredweight between the Proposal Number 2
25 using their WPC method of incorporating whey value in the

1 formulas, versus the existing Federal prices under Milk
2 Marketing Orders, but the actual multiplication of that number
3 that in the first column by the number in the second column,
4 couldn't be done from the stand. So it was agreed that it
5 would be done later by another witness, and Dr. Erba has done
6 that. So I would suggest that rather than marking this 190,
7 whatever that was, that it be marked 162A.

8 JUDGE CLIFTON: All right. That sounds good. Thank you.
9 I'm looking at the 162 that I have left over, I didn't fill in
10 anything on my 162 while Ms. Taylor was testifying, so I don't
11 know about that part. Mr. English?

12 MR. ENGLISH: Chip English. I don't object to doing it
13 that way. I note that the document is different in one way, in
14 that the column that was on 162 after the Roman numeral Classes
15 was Price Difference for Hundredweight, and now it's Price
16 Difference for Hundredweight Using WPC Options, because
17 Ms. Taylor was asked, and did provide, two different numbers
18 for Class I and Class III based upon the two different --
19 again, I don't have an objection to being 162A, but I wanted to
20 make sure the record was clear that the two exhibit numbers are
21 different in that respect as well.

22 JUDGE CLIFTON: Do you remember precisely the two different
23 numbers that Ms. Taylor testified to, Mr. English?

24 MR. ENGLISH: Well, we wrote them down, and I don't know
25 whether --

1 JUDGE CLIFTON: No, I don't mean that. I'm sorry. So one
2 was the dry whey price and the other was the WPC was a
3 concentration of 35 or something like that?

4 MR. ENGLISH: Yes, 34.

5 JUDGE CLIFTON: 34?

6 MR. ENGLISH: Yes, and that was for Class I and Class III.
7 Right, your Honor? I just wanted to make sure that we had
8 that.

9 JUDGE CLIFTON: What did you just add just now? And that
10 was for Class I and Class III?

11 MR. ENGLISH: Class I and Class III only had those
12 differences, because Class II and Class IV, the differences
13 don't factor into those calculations.

14 JUDGE CLIFTON: Thank you.

15 MR. ENGLISH: And again, I'm just trying to clarify the
16 record, I'm not trying to get in Mr. Vlahos' way and say it is
17 162A.

18 JUDGE CLIFTON: Right. We'll just have to look back at
19 Ms. Taylor's testimony.

20 MR. VLAHOS: And I appreciate that clarification.
21 Actually, the added language that Mr. English was referring to
22 makes it clear which version we're talking about, so it's
23 really a clarification.

24 JUDGE CLIFTON: Yes, thank you. So, Ms. Elliott, you and I
25 will mark this document as Exhibit 162A.

1 MS. ELLIOTT: Okay.

2 MR. VLAHOS: Thank you, your Honor.

3 DIRECT EXAMINATION

4 BY MR. VLAHOS:

5 Q. Good morning, Dr. Erba.

6 A. Good morning.

7 Q. And I understand you have some testimony that you would
8 like to offer in response to some of the issues that have been
9 raised in this hearing, and some further concluding testimony
10 to offer.

11 But first, let's take up, tie up the loose end with
12 Exhibit number 162A.

13 A. Before we proceed any further.

14 Your Honor, don't you have to recognize I have been
15 sworn in?

16 JUDGE CLIFTON: Thank you. I appreciate that. Dr. Erba,
17 you remain sworn, but I would like you to again state and spell
18 your name.

19 DR. ERBA: Of course. Eric Erba, E-R-I-C, E-R-B-A.

20 JUDGE CLIFTON: You know, this group can run this without
21 me from now on. I love it.

22 BY MR. VLAHOS:

23 Q. Dr. Erba, we had some discussion here about this
24 Exhibit 162A, and just for, make sure it is clear on the
25 record, could you tell us what this represents?

1 A. The title of this is, Difference Between Federal Order
2 Prices and Dairy Institute of California's Proposal 2 Prices,
3 2014 Annual Total. And it's subtitled The New California
4 Discount. And as you have mentioned, this has been entered, at
5 least in part, in previous Exhibit 162.

6 Q. All right. Could you explain what the numbers in the
7 first column under the heading Price Difference Per
8 Hundredweight Using WPC Option are?

9 A. The numbers that appear there are the ones that were
10 drawn from, as you said, Sue Taylor's testimony, plus the
11 exhibits that she had in that data. I don't remember which
12 one, I think it was 161, but I'm not positive about that.

13 Q. What about the numbers in the second column headed,
14 Pounds, where do those numbers come from?

15 A. That was actually a part of Exhibit 162 at the day it
16 was entered. Those pounds come -- those are annual totals
17 derived from CDFA data, one of the exhibits that was entered by
18 CDFA.

19 Q. Now, the numbers in the first column have parens around
20 them, which means that under the proposal, Proposal Number 2,
21 using the WPC option, the differential in each Class was that
22 the Proposal Number 2 was less than the Federal Milk Market
23 Order prices, with the numbers indicated in parentheses,
24 correct?

25 A. That's correct.

1 Q. And then, what about the numbers in the final column,
2 Difference?

3 A. Well, those were not filled in, and I was selected from
4 a very esteemed group to be the provider of that information,
5 and would you like me to go through those ones by one?

6 Q. Yes, please do.

7 A. Sure. So for Class I it's just a simple calculation.
8 The price difference that appears in that Column 2, the
9 negative \$0.7781, multiplied by the 5.2 billion pounds of milk
10 in Class I, results in a difference of, a lower difference of
11 \$40.79 million.

12 Q. Stop right there. Just to make it clear, so that means
13 for Class I, the Proposal Number 2, with, using the WPC option,
14 would have resulted in a difference of less \$40.79 million than
15 the Federal Order prices, correct?

16 A. That's correct.

17 Q. Okay. Now continue.

18 A. The same type of explanation for the row labeled Class
19 II, the negative \$0.52, \$0.52 a hundredweight, multiplied by
20 the 3.5 billion pounds that appears in the next column, results
21 in a net difference, a lower difference, \$18.08 million.

22 Keep going?

23 Q. Keep going, yes.

24 A. The next row down labeled Class III, a difference of
25 \$2.03 per hundredweight on 18.8 billion pounds of milk, a lower

1 number, a lower difference of \$381.56 million, and a final row
2 with the Roman Numerals Number IV, a negative \$0.60 cents per
3 hundredweight, multiplied by the 13.5 billion pounds of milk
4 marketed as Class IV, a negative difference of \$81.3 million.

5 The final row in that table labeled Total, on
6 41 billion pounds of milk, that's the total milk produced, 2014
7 in California, a difference of negative \$521.73 million.

8 Q. Can you compare that number, \$521.73 million, with the
9 general average monthly value of dollars in the pool, total
10 dollars in the pool?

11 A. Sure. The pool, total pool revenues in the last few
12 months, September and August, are right around \$500 billion, so
13 this negative difference for the entire year represents one
14 entire months' worth of pool value from September or August or
15 July, they are all about the same.

16 Q. Thank you. Now, I understand you have some comments on
17 the subject of exempt quota.

18 A. I do.

19 Q. Is that correct?

20 A. I do. And this is the, a statement regarding the
21 California Producer Handlers Association, their proposal,
22 Proposal 2.

23 We recognize that exempt quota is rooted in the same
24 California statutes as regular quota and was granted by the
25 state or was purchased from other producers, just as regular

1 quota was. When we understand the concerns expressed by
2 Class I handlers regarding the uniformity of minimum Class
3 prices, however, we see that exempt quota has some unique
4 features in that it is confined to just four vertically
5 integrated farms, and is subject to other limitations such as
6 consanguinity provisions and lack of legislative authority,
7 lack of legislative authorization to expand exemption. We have
8 analyzed, to the fullest extent possible, the impact on the
9 producer blend price to allow them the continuation of exempt
10 quota, taking into account geographic locations, the amounts of
11 exempt quota involved, the conversion of exempt quota to
12 regular quota, the eligibility for transportation credits, and
13 the application of regional quota adjusters, we estimate the
14 net impact on the pool of recognizing exempt quota is less than
15 one-half cent per hundredweight, per month.

16 In light of these various considerations, the three
17 Cooperatives, California Dairies, Inc., Dairy Farmers of
18 America, Inc., and Land O'Lakes, Inc., do not oppose the
19 California Producer Handler Proposal, also called Proposal
20 Number 3. We express no opinion on the sufficiency or adequacy
21 of the language proposed for the implementation of Proposal 3.

22 Q. Does that complete your testimony on that subject,
23 Dr. Erba?

24 A. Yes.

25 Q. Now, also, could you go on to explain the issue of the

1 term transportation credits in the California system, and their
2 not, non-use of that concept in Proposal Number 1?

3 A. Not non-use? Is that what you said?

4 Q. Well, I know it's a double negative. Remove one of the
5 negatives.

6 A. I'm just clarifying for the record.

7 Q. Oh, that's good.

8 A. There is something called transportation credits that
9 exist today in California under the State Order. And it
10 represents plant-to-plant shipments of market milk, skim,
11 condensed skim, but not cream, and has specific designations
12 for receiving plants being certain counties, so in
13 Southern California might be: Los Angeles, San Diego,
14 San Bernardino, Riverside County, Orange County.
15 In Northern California, that might include: Santa Clara,
16 San Francisco and Alameda.

17 What I want to explain is that our proposal, Proposal
18 Number 1, does not include the same features, that we do not
19 have something that represents a plant-to-plant shipment of
20 milk in terms of a subsidy from the pool. And there's a couple
21 reasons for this. We decided not to include, because it's
22 really not used very much anymore. If you look at some of the
23 monthly exhibits from the Department of Food and Agriculture,
24 California Department of Food and Agriculture, you will see
25 that the number runs between 10 and \$30,000 a month, compared

1 to say over 3 million for transportation allowance, so one-one
2 hundredth of the same impact in terms of pool. And
3 administratively, we have just figured it would be more
4 difficult to monitor and administer than it is really worth to
5 the California system. So we have excluded what is known today
6 as transportation credits from our Proposal Number 1, it
7 doesn't exist.

8 Q. I know this has been done in the record before, but I'm
9 sure it can still be confusing because the term Transportation
10 Credits is used in Proposal Number 1. But that term, as used
11 in Proposal Number 1, is different than the term Transportation
12 Credits as used in the California system. So could you explain
13 that difference?

14 A. Sure. What we have proposed in terming Transportation
15 Credits of Proposal Number 1 is an equivalent of transportation
16 allowances as they exist today.

17 Q. As they exist in the current California system?

18 A. Yes, exist in the California State Order.

19 Q. Okay. And Dr. Erba, do you have some comments of the,
20 on your view of the state of the dairy industry in California
21 as it stands now in 2015?

22 A. I do. And we have talked about a lot of different
23 pieces of data, mounds of data really, and I don't want this to
24 get lost in all the data that we have talked about over the
25 last 40 days. And that is, what is our status today?

1 If we look at the -- what's happening to the three
2 co-ops that submitted Proposal 1, and look at the year-to-date
3 milk production, and taking all of our information into
4 account, we are 5.2 percent lower year-to-date through October
5 than we were last year for the same time period.
6 Unfortunately, what we have all seen is that this is
7 accelerating, so we have actually gotten worse if you look at
8 the more recent months. And I'll just give you the example.
9 If we look at just October of 2015 and October of 2014, that
10 average is not 5.2, it is now almost 7.69 percent. And again,
11 that represents data from the three co-ops combined.

12 Q. Do you foresee any continuation of the trend?

13 A. Unfortunately, yes. That acceleration that we have
14 seen in 2015 is not a mistake. There's been a lot of changes
15 in the structure of the industry. We have seen this all year
16 long. There are a lot of choices out there. We have heard
17 about that for, again, the last 40 days from different
18 witnesses, including producers, about the different competition
19 risks for resources, and I am thinking of land and water
20 specifically. And the producers that have chosen to stay with
21 the dairy industry are looking to diversify, get into other
22 parts of agriculture perhaps, not just strictly dairy. And
23 there are some that have said, I'm done with the dairy
24 industry, I'm going to sell my land, or perhaps I'll turn my
25 land into orchards, or trees, or other permanent crops, and I

1 don't -- those dairies aren't coming back. So the fact that
2 this trend is accelerating is more than a little bit alarming
3 to us.

4 Q. Do you think that adoption of Proposal Number 2 would
5 have any impact on that trend?

6 A. I don't think it would change anything in terms of the
7 trend itself, it may even make it worse. Things are going to
8 happen, and there may be, the different proposals may have
9 different impacts. But for certain, Proposal 1 is actually one
10 that would actually save some of this from happening,
11 Proposal 2 would not.

12 Q. Do you have some comments about the testimony of
13 Dr. Schiek concerning quota?

14 A. I do. Unfortunately, I wasn't here the day he
15 delivered his testimony, and I'd just like to make a few
16 comments about some of the things that are included.

17 If you look at Page 2 of Exhibit 145, Dr. Schiek
18 mentioned CMAB's commissioning the study of California Dairy
19 Institute, in which McKinsey and Company was ultimately hired
20 to undertake that task. And that led to a publication of two
21 separate reports called Options for a Consumer-Driven Dairy
22 Growth Strategy, Parts 1 and 2.

23 The report from McKinsey and Company suggests that
24 quota could be bought out using some kind of a debt instrument,
25 and they suggest maybe a bond would be that debt instrument.

1 And the cost of that would be paid back by extracting revenue
2 from the pool. And it sounds incredibly simple, I mean, this
3 is back in 2007, incredibly simple, but hasn't been done yet,
4 so why is that?

5 And I just want to emphasize that the McKinsey and
6 Company suggested an idea and it was really just an idea with
7 no road map, no blueprint to how to carry out the idea. And
8 what the California dairy industry found, at least the producer
9 side found out, when they repeatedly pressed McKinsey and
10 Company for some of those details on how to get started, really
11 captured in a quote I found in a book that I read, and I want
12 to just share that with you. The book is called The Smartest
13 Guys in the Room: The Amazing Rise and Scandalous Fall of
14 Enron, by Bethany McLean and Peter Elkind. And I'll just read
15 the quote as it is, this is directly from that book: "McKinsey
16 and Company's ideas often sound incredibly compelling, even
17 pure, in a way that makes it impossible to believe they could
18 ever be corrupted, but McKinsey consultants tend to be
19 designers of ditches, not diggers of ditches. When it comes to
20 executing their lofty theories, well, consultants lean toward
21 leaving those messy valleys to the companies themselves." And
22 so basically what we have in California dairy industry was an
23 idea with no idea how to even get started on this.

24 If you look at Page 3 of, again, of Exhibit 145 from
25 Dr. Schiek, he mentioned the Quota Review Committee as

1 appointed by California Secretary Kawamura in 2007. And the
2 Quota Review Committee produced a table very similar to what
3 Dr. Schiek produced yesterday in his Exhibit 191, more
4 condensed, but basically the same kind of thing. And what it
5 is, is just an amortization table of sorts. And it represents
6 a mechanical exercise, really not a plan for how to buy out
7 quota. The difficulties that they encountered to try to
8 execute a buy-out program are not captured in Dr. Schiek's
9 Exhibit 191, and certainly not captured in the reports received
10 by McKinsey and Company.

11 After the Quota Review Committee concluded its work in
12 2007, California Dairies, Inc., the company I work for, decided
13 to look for that next step, how do you actually get started on
14 this road map, this missing road map.

15 I met with a gentleman by the name of David Johnson,
16 who is the Managing Director of Wells Fargo Institutional
17 Securities, and discussed, over a period of months, what a plan
18 might look like. And we have never publically released our
19 work, but I do want to share with you some of the ideas that
20 came out of our discussions over those couple of months'
21 period.

22 We believed, the two of us as we talked, we would need
23 new legislation or amendments to the Gonsalves Milk Pooling
24 Act, as well as changes to existing regulation. The new
25 provisions or amendments to the California Food and

1 Agricultural Code would be necessary to create a structural
2 framework and flow of funds of the dairy pooling program to
3 facilitate a successful financing. Conceptually, the
4 amendments would include the establishment of a new
5 quasi-governmental entity with the authority to collect and
6 pledge and assign quota payments to a trustee conduit or bond
7 holder. I should say that was point number 1.

8 2. Authorize a new quasi-governmental entity to make a
9 first priority claim ahead of producers, against the Milk
10 Producer Security Trust Fund for non-payment of diverted quota
11 payments.

12 3. Authorization for issuance of bonds or other
13 financing mechanisms.

14 4. Make changes in the reporting billing and payment
15 system of the producers, processors, and equalization fund.

16 5. Make changes to the duties of the Milk Pooling
17 Branch.

18 6. Develop legislation that disallows material changes
19 to legislation of the Milk Pooling Program and new legislation
20 while any bonds are outstanding,

21 7. Develop legislation to end quota payments once all
22 bonds are repaid.

23 8. Develop legislation to irrevocably eliminate
24 producers' rights to quota payments once diverted to new
25 quasi-governmental entity.

1 So the cross-examination of Dr. Schiek by various
2 parties yesterday concerning Exhibit 191, demonstrated that the
3 amortization table is not a well-thought out and conceived plan
4 for a quota buy-out, does not recognize via quota, and is
5 administratively and perhaps legally, infeasible.

6 Q. Does that complete your comments on the quota issue?

7 A. It does.

8 Q. Do you have some final comments about the producer
9 position of the matters at issue here in these proceedings?

10 A. I'd just like to add in addition to that rebuttal I
11 just provided, that we have heard in the last nine weeks, and
12 seen, and witnessed, strong producer support for continuation
13 of the quota program in an unchanged fashion.

14 I think just a concluding comment that I would like to
15 make. We have seen producers united in support of a California
16 Federal Order, and we were fortunate, really fortunate, to have
17 a very strong turnout of producers who can tell their own
18 stories. They came in representing different co-ops, they are
19 representing different sizes of farms, different locations
20 within the state, they all had different histories, different
21 experiences. I have been able to hear them all. I have had an
22 opportunity to engage with them and ask them questions and
23 further their cause about their experiences. And what I would
24 say is, despite all these differences that we have seen with
25 the producers who have come through here and taken their time

1 to testify, the one common element was that each one voiced
2 strong support for the California Federal Order as found in
3 Proposal Number 1, and that's a proposal that was submitted
4 jointly by the three Cooperatives.

5 Q. Do you have anything further you would like to add,
6 Dr. Erba?

7 A. Actually, I do, it has nothing to do with this. I want
8 to express my sincere thanks to the folks at USDA, our court
9 reporter, our sound guy over there who is hiding in the corner,
10 and lastly, Judge Clifton, for your tireless commitment to this
11 cause, and your dedication, and you absolutely have my
12 admiration for what you have done over the last 40 days. It's
13 been very impressive. And that does conclude my comments.

14 Q. Thank you, Dr. Erba. At this time, your Honor, I would
15 like to move into evidence Exhibit 162A.

16 JUDGE CLIFTON: Does anyone have questions for Dr. Erba
17 before you determine whether you object? No one. Are there
18 any objections to the admission into evidence of Exhibit 162A?
19 There are none. Exhibit 162A is admitted into evidence.

20 (Thereafter, Exhibit 162A, was
21 received into evidence.)

22 MR. VLAHOS: Thank you, your Honor. Now, Dr. Erba is
23 available for further examination.

24 JUDGE CLIFTON: Thank you. Who will go first? Thank you,
25 Mr. English.

1 CROSS-EXAMINATION

2 BY MR. ENGLISH:

3 Q. Good morning, Dr. Erba.

4 A. Good morning.

5 Q. No thanks for us?

6 A. I didn't thank my side, either.

7 Q. Okay. Good morning. So I really only have one set of
8 questions.

9 A. That's perfect.

10 Q. And that's about the exempt quota issue. If I
11 understood the co-ops non-objection, is it's that you appear to
12 be recognizing, in your view, the interconnection between quota
13 and exempt quota based upon what happened when the Gonsalves
14 Pooling Act was adopted; is that correct?

15 A. That is correct.

16 Q. Now, isn't it also the case when the Gonsalves Milk
17 Pooling Act was adopted, that CDFA's response as to
18 out-of-state milk was to provide this treatment, this
19 accounting treatment, that left it as a wash at the end plant
20 blend, correct?

21 A. Correct.

22 Q. Okay. And isn't it the case that CDFA has, even before
23 Congress, testified that that is, or was, the treatment of
24 out-of-state milk.

25 A. Now, that I couldn't tell you.

1 Q. Okay. So why not continue the treatment of
2 out-of-state milk at the end plant blend based upon that same
3 principle?

4 A. That is a position we are still considering, and I'm
5 fairly certain we'll be addressing that in our briefs.

6 Q. The original brief, not the reply brief, right?

7 A. I don't know.

8 Q. All right. Thank you. That's all I have.

9 JUDGE CLIFTON: Who next has questions for Dr. Erba?
10 Mr. Vlahos, I see no questions. Do you have any redirect?

11 MR. VLAHOS: Can I say it from here?

12 JUDGE CLIFTON: You may.

13 MR. VLAHOS: No.

14 JUDGE CLIFTON: Thank you. Mr. Vlahos said no.
15 Dr. Erba, is there anything you would like to add? Actually, I
16 don't want you to say another thing, I'm still basking in what
17 you gave all of us in the way of support, and I appreciate that
18 very much.

19 DR. ERBA: Then I think I'll leave it at that.

20 JUDGE CLIFTON: Thank you, you may step down.

21 DR. ERBA: Thank you.

22 MR. BESHORE: Marvin Beshore. Your Honor, with the
23 conclusion of Dr. Erba's testimony, that concludes the rebuttal
24 case for Proponents of Proposal 1. We rest.

25 JUDGE CLIFTON: Thank you, Mr. Beshore. Mr. English, will

1 there be any further testimony, either in opposition to
2 Proposal 1 or in support of Proposal 2?

3 MR. ENGLISH: Your Honor, maybe I can answer that question
4 after Ms. Hancock puts on her witness. I think the answer is
5 no, but there's some debate going on. And I would ask also I
6 think that maybe we could have a morning break. I, at least,
7 need a little break.

8 JUDGE CLIFTON: I think -- oh, my goodness, it is 11:00.
9 Yes. It's 11:05. Please be back and ready to go, it will be
10 with Mr. Lund testifying, so that would be at 11:20. Be back
11 and ready to go at 11:20.

12 (Whereupon, a break was taken.)

13 JUDGE CLIFTON: We're back on record at 11:21. We have got
14 a document and I would like to give it the next exhibit number.
15 Ms. Elliott, I believe it will be Exhibit 194. Do you agree?

16 MS. ELLIOTT: Yes.

17 (Thereafter, Exhibit 194, was
18 marked for identification.)

19 JUDGE CLIFTON: Exhibit 194. And that is Testimony of
20 Dennis Lund. Mr. Lund, you remain sworn.

21 MR. LUND: Yes.

22 JUDGE CLIFTON: I would like you to again state and spell
23 your name.

24 MR. LUND: Dennis Lund, L-U-N-D.

25 JUDGE CLIFTON: Thank you. Ms. Hancock, you may identify

1 yourself and then you made proceed.

2 MS. HANCOCK: Nicole Hancock, representing the California
3 Producer Handlers Association for purposes of this testimony.

4 DIRECT EXAMINATION

5 BY MS. HANCOCK:

6 Q. Mr. Lund, is this your prepared written statement that
7 you have as Exhibit 194?

8 A. Yes.

9 Q. Would you mind reading that into the record?

10 A. My name is Dennis Lund. I am Foster Dairy's Director
11 of Cost Accounting. I appear before you today on behalf of all
12 the exempt quota holders and the California Producer Handlers
13 Association for the limited purpose of addressing a question
14 raised by Judge Jill Clifton regarding valuation of exempt
15 quota. It remains the position of CPHA that we would like to
16 preserve the exempt quota treatment, along with the
17 preservation of any quota system in a California Federal Milk
18 Marketing Order. We do not want to sell our exempt quota or
19 have it cashed out. We offer this valuation only in the event
20 that it is the only method the Secretary deems to value the
21 quota system in California.

22 If quota is to be diminished through a purchase of some
23 sort, CPHA understands that Lon Hatamiya has presented
24 testimony that establishes the regular quota value. The
25 testimony in these proceedings is uncontroverted that exempt

1 quota has a value above and beyond that of regular quota. I am
2 here to offer one way to recognize and value exempt quota.

3 For purposes of valuing the exempt quota, we adopt the
4 valuation method proposed by Ted DeGroot discussed last week.
5 Exempt quota has a value above and beyond regular quota, that
6 can be measured as the difference in price between Class 1 and
7 quota. Class 1 prices are set differently in
8 Southern California than they are in Northern California, so
9 the valuation of exempt quota is slightly different between
10 these two regions.

11 Attachment 1 to my testimony shows the monthly
12 hundredweight values for Class 1 prices in Northern and
13 Southern California. I use the Class 1 price for each region
14 and subtract the quota price for each corresponding month. The
15 calculated difference between the two, determines the
16 additional value of exempt quota over regular quota for each
17 month from October 2010 through September 2015. I averaged the
18 exempt quota value for those last five years. I took that
19 exempt quota value and divided it by the quota premium of \$1.70
20 per hundredweight to determine the ratio of exempt quota value
21 above and beyond that of regular quota value.

22 Using this methodology, I calculated the ratio of the
23 values of exempt quota to regular quota for Northern California
24 to be 1:1.96. The ratio of the values of the quota, exempt
25 quota to regular quota for Southern California is 1:2.12. In

1 Northern California, every pound of exempt quota is the
2 equivalent in value of 1.96 pounds of regular quota. In
3 Southern California, every pound of exempt quota is the
4 equivalent to 2.12 pounds of regular quota.

5 Using \$525 per pound of quota valuation, that would
6 mean that each exempt quota pound in Northern California is
7 equal to \$1,029 per pound, and each exempt quota pound in
8 Southern California is equal to \$1,113 per pound. This next --

9 JUDGE CLIFTON: Mr. Lund, repeat that number again, because
10 your voice wasn't totally clear.

11 MR. LUND: The last number?

12 JUDGE CLIFTON: Yes, please.

13 MR. LUND: \$1,113 per pound.

14 JUDGE CLIFTON: Thank you.

15 MR. LUND: Then next sentence has a two-word correction,
16 I'll read it the way it should read.

17 According to the California Department of Food and
18 Agriculture, there is a total of 57,914.1 pounds of exempt
19 solids nonfat quota.

20 JUDGE CLIFTON: All right. Let us, right now, fix that.
21 Of exempt, tell me again?

22 MR. LUND: Of exempt "SNF quota".

23 JUDGE CLIFTON: So we're inserting two words "of exempt",
24 just after "pounds".

25 MR. LUND: As of August 2015(CDFA Exhibit 61, Table AC).

1 JUDGE CLIFTON: And would you read it one more time,
2 Mr. Lund, although you need not reference the CDFA exhibit.

3 MR. LUND: Okay.

4 According to the California Department of food and
5 Agriculture, there is a total of 57,914.1 pounds of exempt SNF
6 quota as of August 2015. Of the total SNF exempt quota,
7 40,244.51 pounds of SNF exempt quota are produced in
8 Northern California, which equates to a value of
9 \$41,411,600.79. There are 17,669.59 pounds of SNF exempt quota
10 in Southern California, which equates to a value of
11 \$19,666,253.67. If exempt quota were to be purchased, these
12 amounts reflect what should be paid to the farmers who own the
13 exempt quota.

14 BY MS. HANCOCK:

15 Q. And is that the chart that's reflected on the bottom of
16 Page 3 of Exhibit 194, is just reflective of the numbers you
17 just read into the record?

18 A. It is a summary of what I just read, yes.

19 Q. Okay. And then Page 4, your one sentence?

20 A. Oh, yeah.

21 Thank you for allowing me to testify before you today.

22 Q. Mr. Lund, in addition to the quota price, or I guess,
23 with the respect to the quota price, are you familiar with how
24 RQA's work in the California state system?

25 A. Somewhat, yes.

1 Q. Okay. What is your understanding of how that would
2 impact quota and your calculations in this exhibit?

3 A. Well, the Regional Quota Adjuster, it ranges anywhere
4 from 5 to 25 cents per hundredweight depending on the county
5 that the producer is in, and it is a reduction in the \$1.70
6 hundredweight advantage quota has. So that is, so if you
7 included that differential, depending on what county we were
8 in, that differential of Class 1 to quota would actually be
9 higher.

10 Q. So the numbers would actually increase if you were able
11 to break it down into the various regional quota adjuster
12 factors?

13 A. Yes, it would increase the value calculated that I just
14 read.

15 Q. Okay. Have you in your role with Foster Farms, looked
16 at the return on quota?

17 A. Yes. If we bought quota now, we would get the \$1.70
18 hundredweight advantage over non-quota milk, and would not be
19 exempt, and we have discussed buying that from time to time.

20 Q. And have you calculated what the return on investment
21 is for quota?

22 A. Recently we took a look at it, and it's about a 12
23 percent return, and depending on your assumptions of the future
24 cost of money, it is about an 8 and a half to 12-year payback.

25 Q. Okay. Your Honor, at this time I would move the

1 admission of Exhibit 194.

2 JUDGE CLIFTON: Let's have the witness identify this
3 attachment. These two pages.

4 BY MS. HANCOCK:

5 Q. Oh, thank you.

6 Mr. Lund, can you talk about the last two pages on
7 Exhibit 194?

8 A. It's a summary of Class 1 and quota hundredweight
9 prices and the difference between the two, going back, I
10 believe, to 2010, five years. And it's the basis for
11 calculating my testimony on the value of exempt quota over
12 quota.

13 Q. And on the last two pages you have several columns or
14 several number highlighted. Can you tell us what those numbers
15 are?

16 A. Those would be the yearly average of the differentials
17 between quota and non-quota, exempt quota and quota.

18 Q. And then on Page 1 of 2 on that last, on the last two
19 pages, on the far right hand four columns, you have
20 highlighting there as well, what are those four numbers that
21 are highlighted?

22 A. The average of the last five years for Northern
23 California, between quota and Class 1 hundredweight is \$1.63,
24 and the difference for the last five years of Class 1 and quota
25 for Southern California is \$1.90. And then we took the ratio

1 of those factors divided by the \$1.70 a hundredweight for
2 quota, and got the ratio of quota to exempt quota.

3 Q. And that's reflected for Northern California as 1.96?

4 A. Yes.

5 Q. And then Southern California is 2.12?

6 A. Yes. And then we multiply that times the market value,
7 current market value of quota to get the relative market value
8 of the exempt quota.

9 Q. So for Northern California that's the \$1,029 per pound,
10 that's what you're valuing for the exempt quota in Northern
11 California?

12 A. Yes.

13 Q. And then \$1,113 per pound of exempt quota for Southern
14 California?

15 A. Yes.

16 JUDGE CLIFTON: Does anyone wish to ask Mr. Lund questions
17 before determining whether you object? No one. Is there any
18 objection to the admission into evidence of Exhibit 194? There
19 is none. Exhibit 194 is admitted into evidence.

20 (Thereafter, Exhibit 194, was
21 received into evidence.)

22 MS. HANCOCK: That's all I have at this time, your Honor.

23 JUDGE CLIFTON: Who will ask the first cross-examination
24 questions of Mr. Lund?

25 Mr. Vandenheuvel?

1 CROSS-EXAMINATION

2 BY MR. VANDENHEUVEL:

3 Q. Good morning. Rob Vandenheuvel, Milk Producers
4 Council.

5 We heard -- we heard testimony earlier in this hearing
6 that some of the producer-handler exemption was issued as part,
7 a majority of the producer-handler exemption was issued at the
8 beginning of the Gonsalves Milk Pooling Act in the 1960's, but
9 that there was some additional exemption purchased by the -- it
10 was unidentified by who, but by at least one or more of the
11 current producer-handlers in the state. Are you aware of that?

12 A. Yes, I am. I don't know the ratio between what was
13 issued and what was purchased later, but I know that's true.

14 Q. And it was sometime in the 1990's that those
15 opportunities existed I think is the most recent time that
16 those were available?

17 A. 1994.

18 Q. Okay. 1994. When that opportunity was made available,
19 was there a calculation of, or analysis run similar to this as
20 to a conversion factor of traditional quota into
21 producer-handler quota, or was it a pound-for-pound conversion?

22 A. In determining whether it was a good idea to purchase
23 this quota knowing it will be exempt, there was an analysis of
24 what the, basically return on investment would be.

25 Q. An internal analysis by the potential purchaser?

1 A. Yes.

2 Q. But in terms of the actual accounting by the state of
3 converting quota into exempt quota, was it done on a
4 pound-for-pound basis or was some adjustment factor included?

5 A. As far as I know, we purchased quota as if we were
6 purchasing quota as if anybody else was purchasing quota. In
7 our case, it was exempt. Other than that, the State didn't
8 offer any other explanation or calculations to us.

9 Q. So it's true that a single pound of quota purchased in
10 that opportunity of traditional quota, would have been, was
11 converted into a single pound of exempt quota in that
12 calculation?

13 A. Yes.

14 Q. Okay. Thank you very much.

15 JUDGE CLIFTON: Who next has questions for Mr. Lund?
16 Mr. Francis?

17 CROSS-EXAMINATION

18 BY MR. FRANCIS:

19 Q. Thank you. Will Francis, USDA.

20 The \$525 per pound of quota valuation that you used is
21 a fixed number, but it's my understanding that that value has
22 varied historically?

23 A. Yes.

24 Q. Did you consider factoring any other historical values
25 into that calculation? Or what does that \$525 represent?

1 A. That represents, for the most part, current market
2 value of quota. We looked at the last 12 months of quota
3 purchases, and I believe 525 is about the average.

4 Q. So that's the average for the month most recent 12
5 month's of data?

6 A. From what I remember, yes.

7 Q. Okay. That's all I have.

8 JUDGE CLIFTON: Are there other questions for Mr. Lund
9 before I invite redirect? I see none. Is there any redirect?

10 MS. HANCOCK: No, your Honor.

11 JUDGE CLIFTON: All right. The answer is no. Thank you so
12 much, Mr. Lund. I appreciate your returning and helping us
13 with this difficult issue.

14 MR. LUND: Thank you.

15 JUDGE CLIFTON: Mr. English, do you have any further
16 evidence?

17 MR. ENGLISH: No.

18 JUDGE CLIFTON: Ms. Hancock, do you have any further
19 evidence?

20 MS. HANCOCK: No, your Honor.

21 JUDGE CLIFTON: The answer was no, your Honor.

22 This concludes the evidence. Mr. Beshore?

23 MR. BESHORE: I have two minor problems, two tiny loose
24 ends I wanted to note. I had previously stated when Dairy
25 Institute made a motion relating to file a brief related to the

1 request to have a negative inference be imposed, that we
2 present a brief in opposition to that motion during the
3 hearing.

4 We have a brief. I'm not going to file it or read it
5 now, but we will present those legal arguments in response in
6 our opening brief. I didn't want to leave that hanging in the
7 record.

8 The other -- the other thing that just occurred to me
9 is, Exhibit 103 and 104 were identified and discussed, but I do
10 not believe were offered at the time, or admitted. Now, they
11 have been -- they have been referenced again and further
12 testimony presented with respect to them, but I would like to
13 move their admission into the record, if they have not been
14 admitted. They were graphs that were used in cross-examination
15 of Mr. DeJong.

16 JUDGE CLIFTON: Ms. Elliott, do you show whether 103 and/or
17 104 were admitted?

18 MS. ELLIOTT: No, your Honor, they needed to be entered, or
19 admitted rather.

20 JUDGE CLIFTON: Mr. English?

21 MR. ENGLISH: Chip English. I'm going to help shortcut
22 this a little bit. They were not authenticated at the time,
23 but I assume that Mr. Beshore has a witness who could be put on
24 the stand who would provide authentication, and if he makes
25 representation to that effect, then rather than putting that

1 witness back on the stand and going through that formality, I
2 would --

3 MR. BESHORE: It was in Mr. Schad's rebuttal testimony, I
4 believe.

5 MR. ENGLISH: I'm not going to object, your Honor. I would
6 just say, move along little doggy.

7 JUDGE CLIFTON: Mr. Schad, will you be offended if we don't
8 recall you?

9 MR. SCHAD: The answer is no.

10 JUDGE CLIFTON: The answer is no. Is there any objection
11 to the admission into evidence of Exhibit 103? There is none.
12 Exhibit 103 is admitted into evidence.

13 (Thereafter, Exhibit 103, was
14 received into evidence.)

15 JUDGE CLIFTON: Is there any objection to the admission
16 into evidence of Exhibit 104? There is none. Exhibit 104 is
17 admitted into evidence.

18 (Thereafter, Exhibit 104, was
19 received into evidence.)

20 JUDGE CLIFTON: This concludes our hearing. We will go
21 forward now, while we're still on the record, and get our time
22 tables for submission of transcript corrections and briefs. It
23 is not necessary that everyone in the room remain for that.
24 You are welcome to, you are not required to. I know that
25 submitting briefs is going to be a team effort, it's not just

1 the lawyers, it's the lawyers in combination with those who
2 support their work, so you are all welcome to stay, but that's
3 our next order of business. Then, when we have completed that,
4 while off record, we'll meet with Mr. Francis for a postmortem.

5 MR. ENGLISH: Chip English and Marvin Beshore. And you
6 know, let me say again, that, you know what is extraordinary
7 about this proceeding is the comradery, the friendships, and we
8 might fight like heck as we zealously represent our clients,
9 but we also try to work together on procedural matters. I
10 think we really have done that throughout this hearing in any
11 number of ways.

12 So we considered things overnight, and Mr. Beshore and
13 I spoke this morning. And with one caveat at the end of this,
14 we have sort a, we have a proposal that I think if I state
15 correctly, is the joint position here.

16 MR. BESHORE: If you state it correctly, it is joint.

17 MR. ENGLISH: Okay. So we tried to pull this sort of from
18 the other direction, and listening to Mr. Beshore's concerns
19 about the briefing. So we are thinking about the original
20 briefs being due on Thursday, March 31st, and the reply briefs
21 being due on Monday, May 16th. We thought about 45 days, that
22 would put you on a Sunday. So Monday, May 16th.

23 And then working backwards, but in a way delinking,
24 using a different phrase than depooling, delinking the
25 transcript from the briefs. With the understanding that we

1 expect the transcripts to be ready no later than January 1st,
2 that Mr. Beshore and I, for our teams, would submit our
3 proposed corrections to the transcript on January 15th, which I
4 believe is a Friday. And then that would give whatever time
5 you decide, two weeks or three weeks for others to get
6 corrections in. And with the anticipation that the transcript
7 would be certified before March 1st, but with March 1st being
8 sort of a date that we were thinking connecting all of these
9 dots.

10 Now, if the transcript is not available on January 1st,
11 we would then ask for whatever days there are after January 1st
12 to be added to the days that we have to finish. But with the
13 understanding that that doesn't automatically mean anything,
14 because hopefully we built enough time for the transcript to be
15 certified by March 1st anyway.

16 If we get to March 1st and the transcript hasn't been
17 certified, then rather than automatically moving the dates, we
18 would give us an opportunity to have a conversation and maybe
19 then the dates move based upon that. But, candidly, on
20 January 15th, if we have what we hope to be the majority, the
21 vast majority of the corrections, and given the fact the
22 corrections are not supposed to change the substance, that
23 really isn't going to change what people write in their brief,
24 it changes where they put their citations, which hopefully 30
25 days is more than enough to put that in.

1 MR. BESHORE: I concur. And from our perspective, it's
2 important if it is possible, and I think it is possible, it is
3 important to have firm dates for the briefing to be done. And
4 also from our perspective, it is important that they not be any
5 further delayed than we have proposed, because it is, as I said
6 yesterday, it is extremely important for my client's
7 perspective that we move this as deliberately, but as quickly
8 as we can.

9 MR. ENGLISH: And I don't disagree with my colleague. I
10 just want to note that obviously we are leaving some room here
11 if something happens. We have really appreciated Myra, and but
12 I know she may have some other commitments with things, so it
13 is always conceivable that something down the road will go
14 wrong, and if we don't have the transcript say by March 15th we
15 might have an issue, but that's why we're not creating an
16 automatic extension.

17 JUDGE CLIFTON: If you don't have the transcripts by what
18 day?

19 MR. ENGLISH: I was just saying if we don't have them --

20 JUDGE CLIFTON: By what date? If you don't have them by
21 what date?

22 MR. ENGLISH: If you don't have the transcripts certified
23 by March 1st. I was just giving an example. But my point is,
24 we have agreed with Mr. Beshore not to create this automatic
25 mechanism if the transcript is not certified by March 1st, that

1 that moves the briefing dates, that that would then give us a
2 chance to have a conversation and decide what to do, but
3 without an automatic extension. And then my caveat was that,
4 and again, there's no automatic extension, but I want to at
5 least put on the record the possibility, obviously we don't
6 know, but there could be another USDA rule making sometime in
7 the spring. And if there were, and if it went longer than a
8 week, that could impact reply briefs. Again, I'm only raising
9 it now as a potential thing that we might have a conversation
10 about, but I agree with Mr. Beshore that we have hard dates
11 that don't move automatically.

12 So if I can summarize:

13 Based on a January 1st expected "no later" date for
14 transcripts to be available, that Proponents of Proposal 1 and
15 Proposal Number 2 would submit their proposed corrections to
16 the record no later than, I believe Friday, January 15th.

17 JUDGE CLIFTON: Say that word again, your voice dropped.

18 MR. ENGLISH: Friday, January 15th. That whether it's two
19 weeks or three weeks, and I leave that to others in the room to
20 speak to, that there be a deadline of either January 29th or
21 February 6th, for any other transcript corrections to come in.
22 And that we anticipate that that would mean that the transcript
23 be certified no later than March 1st. It could certainly be
24 certified prior to that date, that we are going to file
25 original briefs on or before Thursday, March 31st, and reply

1 briefs on or before Monday, May 16th, with the understanding
2 that those dates are fixed, but that if something happens with
3 the transcript and/or extraordinary scheduling circumstances,
4 that parties will agree, if they have a conversation, and if
5 necessary come back. But those would be fixed dates.

6 JUDGE CLIFTON: Mr. Beshore?

7 MR. BESHORE: Well, I agree as stated. And the moving of
8 those dates would be, moving of any of these dates, of course,
9 is always subject to motion, but, you know, we would, you know,
10 earnestly expect that the briefing dates would not have to be
11 moved.

12 JUDGE CLIFTON: Who else would like to be heard on this
13 topic? All right. I like it. This is what I propose. I
14 propose that the counsel for, representing Proposals Number 1
15 and 2 file with the Hearing Clerk their proposed transcript
16 corrections no later than January 15, 2016, assuming that they
17 have available all of the transcripts and exhibits on the AMS
18 Dairy website by at least the last day of 2015.

19 I propose that anyone else who wishes to be heard on
20 the issue of transcript corrections, file no later than
21 February 5, 2016, with the Hearing Clerk, any such additional
22 information for my consideration. Be as sparing in your
23 language as possible. For example, if you can accept all
24 that's been done and filed, you may say that, and then go on
25 from there. I will certify the transcript. I will file with

1 the Hearing Clerk my certification of the transcript, and I
2 will send by e-mail that document to anyone who has filed a
3 Notice of Appearance in the Hearing Clerk's file, and given me
4 an e-mail address in that Notice of Appearance, so I will file
5 and e-mail my certification of the transcript no later than
6 March 1, 2016. And I note that that will be kind of a fun time
7 for me to do that, because just a few days earlier I will have
8 completed 15 years with the United States Department of
9 Agriculture on February 26th, 2016.

10 All right. Then the opening briefs will be filed with
11 the Hearing Clerk no later than March 31, 2016, and if there is
12 to be any Official Notice requested, it must be contained in an
13 opening brief. If there's to be anything that would change
14 your proposal, such as we just had mention of today something
15 that may be fine-tuned or tweaked or changed, it must be in the
16 opening brief so that people can respond to it.

17 Those opening briefs are essential. Those are due no
18 later than March 31, 2016, by 4:30 p.m. Eastern in the Hearing
19 Clerk's office.

20 If any of the Proponents are going to brief, they must
21 begin with an opening brief. They will not be permitted to
22 chime in at the reply date.

23 Reply briefs are welcome so long as filed no later than
24 May 16, 2016, must be filed on or before May 16, 2016, with the
25 Hearing Clerk. Reply briefs are welcome from anyone, even if

1 you did not file an opening brief, unless you were part of a
2 Proposal, then you must have filed an opening brief in order to
3 be permitted to file a reply.

4 This schedule avoids any deadlines on Dr. Martin Luther
5 King, Junior's birthday, which is January 18, so you have
6 chosen good dates.

7 Any time a schedule is set, if there is an inability to
8 comply with it and a request is made for relief, it is your
9 obligation, if you are leading that request, to determine from
10 the others who might have objection, whether they object. So
11 you would at least have to canvass those who are part of a
12 Proposal team.

13 What else needs to be added? As we said when we first
14 started today, when you file with the Hearing Clerk, four
15 printed copies of filings are necessary. The Hearing Clerk
16 makes one of those the original and may distribute the others.
17 At least, one will be sent to Laurel May. If you provide the
18 Hearing Clerk with your e-mail address, the Hearing Clerk, in
19 an entry of appearance, the Hearing Clerk will also forward it
20 to you, an e-mail copy.

21 For everyone's -- as a courtesy to everyone, if you
22 could be mindful that if you will send an electronic version as
23 a courtesy, if you, as a courtesy, will forward to one another
24 by e-mail what you have filed, it will just facilitate the
25 replies, which will be very helpful.

1 Who else has ideas or thoughts on that? Mr. English?

2 MR. ENGLISH: Chip English. And this is more going
3 forward. And I realize it's not in control of anybody in this
4 room, but I do want to say it, because it's a pet peeve of mine
5 and I don't think I'm alone, you can electronically file
6 pleadings with almost every Federal Court in this country. A
7 rule that prevents electronic filing with the Hearing Clerk in
8 November of 2015, is absurd.

9 JUDGE CLIFTON: Yeah. That's a good point. You know,
10 another problem in that regard is, if you have looked at the
11 regulation that governs this proceeding, the way it is worded,
12 it is required that the Hearing Clerk make the changes that are
13 mentioned in my transcript certification on hard copy of the
14 transcript. I don't like it for two reasons. One is, I don't
15 think it's necessarily accurate; and number 2 is, if there is a
16 court proceeding, the court wants electronic submissions and
17 probably would prefer to have the electronic copies of the
18 transcripts, the electronic copies of the proposed corrections,
19 the electronic copy of my certificate, and they won't be
20 looking at those manually-completed changes. So it's make-work
21 that is not helpful. So there are some antiquated provisions
22 that need to be updated, I agree.

23 I know that the Secretary of Agriculture is always
24 mindful when asked for some proposed changes in regulations of
25 what else in the universe of things agricultural is involved

1 in publication in the Federal Register, and that often limits
2 what will be undertaken. All right. Other ideas? Copies?
3 Comments? None. Does anyone else have anything procedural
4 before we close for the day? I see nothing.

5 It's almost 12 noon, it is the 40th day, we have 194
6 exhibits, this just seems the perfect time to close. And I
7 thank each of you for the opportunity to participate in this
8 amazing undertaking. Yes, it's been costly, it's been costly
9 in time, energy, the health of the participants, you have all
10 worked way too hard. But what -- what a wonderful and enormous
11 undertaking. It truly is historic. And I congratulate each of
12 you for your part in it.

13 This concludes our record at 12 noon.

14 (Whereupon, the proceedings were concluded.)

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	8108:12	activities (1)	8127:1;8128:18;	8096:10
\$	\$521.73 (2)	8093:5	8132:13;8133:11,15	agreements (3)
	8108:7,8	actual (5)	admit (1)	8083:24,25;
\$0.52 (2)	\$525 (3)	8059:13;8072:25;	8068:13	8096:14
8107:19,19	8124:5;8130:20,	8102:19;8103:2;	admitted (10)	Agricultural (3)
\$0.60 (1)	25	8130:2	8067:24;8091:24;	8053:25;8116:1;
8108:2	\$6 (1)	actually (16)	8118:19;8128:19;	8141:25
\$0.7781 (1)	8094:7	8062:7,9;8072:22;	8132:10,14,17,19;	Agriculture (9)
8107:9	\$7 (1)	8094:14;8095:19;	8133:12,17	8053:13;8054:10;
\$1,029 (2)	8094:6	8102:16;8104:21;	adopt (1)	8110:23,24;8112:22;
8124:7;8128:9	\$81.3 (1)	8106:15;8112:7;	8123:3	8124:18;8125:5;
\$1,113 (3)	8108:4	8113:9,10;8115:13;	adopted (2)	8139:9;8141:23
8124:8,13;		8118:7;8120:15;	8119:14,17	ahead (1)
8128:13	A	8126:8,10	adoption (1)	8116:9
\$1.20 (2)		add (10)	8113:4	A-I (1)
8080:21;8082:16	ability (1)	8057:25;8059:2;	Adrian (2)	8056:4
\$1.25 (2)	8090:1	8067:3;8070:12;	8084:25;8086:7	Alabama (1)
8080:21;8082:16	able (4)	8090:14;8101:20;	advance (1)	8076:16
\$1.40 (1)	8057:18;8093:11;	8104:9;8117:10;	8096:1	Alameda (2)
8081:1	8117:21;8126:10	8118:5;8120:15	advantage (3)	8065:6;8110:16
\$1.63 (1)	above (5)	added (3)	8089:15;8126:6,	alarming (1)
8127:23	8079:1;8080:1;	8104:21;8135:12;	18	8113:2
\$1.69 (1)	8123:1,5,21	8140:13	affiliated (1)	align (1)
8082:15	Absolutely (5)	addition (2)	8094:22	8067:13
\$1.70 (4)	8077:3;8082:8;	8117:10;8125:22	affiliates (1)	allow (4)
8123:19;8126:5,	8089:7;8090:13;	additional (5)	8099:20	8061:2;8063:16;
17;8128:1	8118:11	8071:25;8091:15;	again (32)	8088:20;8109:9
\$1.82 (1)	absorbed (1)	8123:16;8129:9;	8057:12,15;	allowance (1)
8081:9	8091:8	8138:21	8059:10,18;8061:18;	8111:1
\$1.85 (1)	absorbs (1)	address (10)	8064:21;8067:15;	allowances (1)
8081:1	8067:11	8057:7,11,12;	8069:23;8077:9;	8111:16
\$1.90 (1)	absurd (1)	8058:1;8059:3,15,	8082:23;8083:24;	allowing (1)
8127:25	8141:8	18;8073:20;8139:4;	8087:10;8092:6,15;	8125:21
\$10 (1)	AC (1)	8140:18	8093:10;8095:1;	allows (1)
8094:5	8124:25	addresses (4)	8099:6;8101:25;	8088:21
\$10.00 (3)	accelerating (2)	8057:4;8058:25,	8103:19;8104:15;	almost (4)
8096:11,13,15	8112:7;8113:2	25;8059:12	8105:17;8112:10,17;	8078:21;8112:10;
\$130 (1)	acceleration (1)	addressing (2)	8114:24;8121:22;	8141:6;8142:5
8079:20	8112:13	8120:5;8122:13	8124:9,21;8132:11;	alone (1)
\$140 (1)	accept (1)	adequacy (1)	8134:6;8137:4,8,17	8141:5
8079:20	8138:23	8109:20	against (2)	along (2)
\$18.08 (1)	accommodate (1)	adequate (3)	8069:25;8116:9	8122:16;8133:6
8107:21	8095:22	8061:2;8069:6;	agencies (1)	alphabetically (1)
\$19,666,253.67 (1)	according (3)	8097:1	8099:21	8085:1
8125:11	8084:1;8124:17;	Adjuster (2)	agency (5)	although (1)
\$2.03 (1)	8125:4	8126:3,11	8078:14;8079:14;	8125:2
8107:25	account (3)	adjusters (1)	8099:12,13,17	always (4)
\$2.08 (1)	8089:1;8109:10;	8109:13	aggregate (5)	8062:2;8136:13;
8081:9	8112:4	adjustment (1)	8082:10,11;	8138:9;8141:23
\$30,000 (1)	accounting (3)	8130:4	8083:9;8091:5,6	Amazing (2)
8110:25	8119:19;8122:11;	administer (1)	ago (1)	8114:13;8142:8
\$381.56 (1)	8130:2	8111:4	8071:13	amend (1)
8108:1	accounts (1)	Administrative (2)	agree (15)	8063:15
\$4.00 (1)	8078:15	8053:7;8059:8	8062:25;8066:19;	amendments (6)
8101:14	accurate (2)	administratively (2)	8070:6;8071:23;	8067:1,4,5;
\$40.79 (2)	8100:14;8141:15	8111:3;8117:5	8093:24;8094:3;	8115:23,25;8116:4
8107:11,14	acronym (1)	Administrator (3)	8097:8,10;8100:14;	America (7)
\$41,411,600.79 (1)	8099:17	8054:6,9;8065:25	8102:14;8121:15;	8054:13,19;
8125:9	across (2)	admiration (1)	8137:10;8138:4,7;	8074:22;8085:18;
\$5.00 (4)	8075:14;8083:25	8118:12	8141:22	8096:3;8097:5;
8096:11,13,15;	Act (4)	admission (10)	agreed (2)	8109:18
8101:12	8115:24;8119:14,	8067:19,23;	8103:4;8136:24	America's (1)
\$500 (1)	17;8129:8	8091:19,23;8118:18;	agreement (1)	8074:16

amongst (1) 8067:5	8053:11	8055:10	8094:7;8101:11;	8120:16
amortization (2) 8115:5;8117:3	appears (3) 8085:13;8107:8, 20	A-S-H-L-E-Y (1) 8055:10	8118:23;8129:16,18;	Beaver (1) 8086:12
amount (9) 8079:1;8081:21;	applicable (1) 8080:18	aside (2) 8075:10;8095:19	8135:10;8137:14;	Becker (2) 8053:17,17
8084:22,23;8086:15, 18,19;8087:12;	application (1) 8109:13	asserted (1) 8074:15	8138:17	becomes (1) 8060:23
8099:5	apply (1) 8064:3	assessment (1) 8069:19	average (10) 8082:9,12,13,17;	begin (4) 8064:21;8067:25;
amounts (2) 8109:10;8125:12	applying (2) 8063:19;8067:10	assign (1) 8116:6	8108:9;8112:10;	8074:24;8139:21
AMS (7) 8053:19,21;	appointed (1) 8115:1	assigned (1) 8053:7	8127:16,22;8131:3,4	Beginning (3) 8053:12;8085:17;
8054:3,9;8057:3;	appreciate (4) 8104:20;8105:16;	assistance (1) 8073:5	averaged (2) 8081:1;8123:17	8129:8
8058:21;8138:17	8120:17;8131:12	Assistant (1) 8054:6	aware (10) 8071:20,22;	behalf (4) 8055:6;8070:3;
AMSDairyComments (1) 8057:14	appreciated (1) 8136:11	Association (4) 8055:23;8108:21;	8074:18,19;8088:12;	8074:21;8122:11
AMSDairyComments@amsusdagov (1) 8057:15	approach (1) 8083:12	8122:3,13	8094:11;8096:10,14;	below (9) 8078:13;8094:1,5,
amsusdagov (1) 8057:14	appropriate (1) 8085:21	assume (1) 8132:23	8099:22;8129:11	6;8095:18;8096:17;
analysis (3) 8129:19,23,25	approximate (2) 8078:21;8083:9	assuming (2) 8101:10;8138:16	away (2) 8063:12;8101:4	8097:6;8101:12,14
Analyst (1) 8055:20	approximately (4) 8053:3;8086:23;	Atlantic (1) 8075:14	B	Bernardino (6) 8064:9,11,19,25;
analyzed (2) 8063:20;8109:8	8089:4;8092:23	attachments (1) 8126:23	B1 (2) 8065:25;8072:10	8065:4;8110:14
and/or (4) 8065:12,18;	April (1) 8083:8	attorney (4) 8053:15,17;	b2 (1) 8064:5	Beshore (44) 8054:11,11;
8132:16;8138:3	area (20) 8061:13;8063:17,	8055:4,11	back (18) 8053:2;8057:1;	8062:17,18,18;
Angeles (5) 8064:8,18,24;	821:10;8065:2,10;	attorneys (1) 8058:22	8081:20;8089:7,16;	8063:6;8064:20;
8073:4;8110:13	8067:16;8073:16;	attract (2) 8063:21;8067:16	8095:13;8097:22,24;	8066:5,12,17,24;
announced (2) 8079:11,15	8075:23;8077:6;	audio (1) 8056:24	8104:18;8113:1;	8067:2;8073:10,12;
announcements (1) 8056:15	8079:12;8080:4,6,	August (5) 8086:1;8108:12,	8114:1,3;8121:9,10,	8074:3,7;8081:15;
annual (3) 8093:21;8106:3, 16	8081:24;8082:15;	14;8124:25;8125:6	13;8127:9;8133:1;	8083:3;8085:14,15;
answered (1) 8068:15	8083:13	authenticated (1) 8132:22	8138:5	8091:17,18,19;
anticipate (3) 8097:12,15;	areas (15) 8070:25;8075:3,5,	authentication (1) 8132:24	backwards (2) 8090:22;8134:23	8095:14;8098:16,18;
8137:22	9,10;8077:7,8;	authority (2) 8109:6;8116:5	balance (4) 8067:12;8078:24,	8102:10,18;8120:22,
anticipation (2) 8068:23;8135:6	8078:9;8080:15;	authorization (2) 8109:7;8116:12	25;8097:2	22,25;8131:22,23;
antiquated (1) 8141:21	8081:9,17;8082:1,	Authorizer (1) 8116:8	balanced (3) 8077:14,15;	8132:23;8133:3;
anymore (1) 8110:22	10,11;8093:13	automatic (4) 8136:16,24;	8087:11	8134:5,12,16;
Appalachian (2) 8076:4,14	arguments (1) 8132:5	8137:3,4	balancing (14) 8076:16,21;	8135:2;8136:1,2,4;
appeal (1) 8060:20	arithmetic (1) 8102:19	automatically (3) 8135:13,17;	8077:21;8084:7,14,	8137:10;8138:6,7
appear (3) 8106:9;8119:11;	around (7) 8068:12;8084:25;	8137:11	17;8087:6,7,8,10;	8137:10;8138:6,7
8122:11	8096:7;8099:9;	available (14) 8056:24;8057:2;	8088:5;8097:3;	B-E-S-H-O-R-E (1) 8054:12
appearance (10) 8058:12,13,13,19;	8101:14;8106:19;	8063:20;8067:19;	8099:2;8101:2	8054:12
8060:10,11;8062:19;	8108:12	8070:23;8088:25;	based (7) 8091:3;8101:15;	Beshore's (2) 8101:16;8134:18
8139:3,4;8140:19	arrangement (6) 8084:7;8086:1;		8103:18;8119:13;	besides (1) 8058:17
appearances (1) Ashley (1)	8087:18;8089:3,12, 14		8120:2;8135:19;	Bethany (1) 8114:14
	arrangements (1) 8088:9		8137:13	beyond (3) 8123:1,5,21
	arrive (1) 8062:14		basically (3) 8114:22;8115:4;	bi (2) 8070:12;8071:2
			8129:24	big (1) 8091:6
			basis (11) 8065:20;8075:12;	billing (1) 8116:14
			8081:13;8083:5,24;	billion (6) 8107:9,20,25;
			8084:6;8096:11,15;	8108:3,6,12
			8097:10;8127:10;	birthday (1) 8140:5
			8130:4	bit (3) 8062:4;8113:2;
			basking (1)	8132:22

<p>blend (4) 8089:22;8109:9; 8119:20;8120:2 blessings (1) 8097:17 blueprint (1) 8114:7 Board (3) 8096:3,5,8 bond (2) 8113:25;8116:6 bonds (3) 8116:12,20,22 book (3) 8114:11,12,15 border (4) 8080:7,7,8,9 both (1) 8071:4 bottom (2) 8057:10;8125:15 bought (2) 8113:24;8126:17 bound (1) 8082:17 Brad (1) 8053:22 Branch (1) 8116:17 break (5) 8097:23;8121:6,7, 12;8126:11 breakdown (1) 8080:24 Brian (3) 8053:14;8059:22; 8062:6 Bridgett (1) 8054:17 B-R-I-D-G-E-T-T (1) 8054:17 brief (15) 8060:3;8073:22; 8120:6,6;8131:25; 8132:2,4,6;8135:23; 8139:13,16,20,21; 8140:1,2 briefing (4) 8134:19;8136:3; 8137:1;8138:10 briefs (18) 8053:10;8057:5; 8058:2;8060:1; 8061:2;8120:5; 8133:22,25;8134:20, 20,25;8137:8,25; 8138:1;8139:10,17, 23,25 bring (1) 8058:3 broad (1) 8081:2 broadcast (1)</p>	<p>8056:23 broadcasting (1) 8056:23 brought (1) 8069:23 build (2) 8071:17,24 building (1) 8087:19 built (2) 8091:2;8135:14 Bulk (1) 8064:4 burden (2) 8060:12;8069:7 business (8) 8071:5;8075:8; 8078:14;8086:18; 8087:16;8099:24; 8100:3;8134:3 butter (1) 8086:16 buy (8) 8090:11;8095:18; 8096:11,12,13,14; 8100:6;8115:6 buyers (1) 8077:25 buying (1) 8126:19 buy-out (2) 8115:8;8117:4</p>	<p>8115:1,12,25; 8117:15;8118:2; 8122:2,12,17,21; 8123:8,8,13,23,25; 8124:1,3,6,8,17; 8125:4,8,10,24; 8127:23,25;8128:3, 5,9,11,14 California's (1) 8106:2 call (2) 8057:22;8100:6 called (5) 8099:16;8109:19; 8110:8;8113:21; 8114:12 came (3) 8092:19;8115:20; 8117:18 can (29) 8057:1,9,10,11; 8059:5,20;8062:4; 8072:13;8081:25; 8082:1,3;8094:20; 8095:18,20;8097:19; 8105:20;8108:8; 8111:9;8117:17; 8120:11;8121:3; 8123:6;8127:6,14; 8136:8;8137:12; 8138:23;8139:16; 8141:5 Canadian (1) 8080:7 candidly (1) 8135:19 canvass (1) 8140:11 capacity (8) 8076:19;8077:21; 8079:12;8086:19,23; 8087:6;8096:2; 8097:1 capital (1) 8059:5 captured (3) 8114:11;8115:8,9 card (1) 8056:17 care (1) 8101:24 CARMAN (2) 8054:5,5 C-A-R-M-A-N (1) 8054:5 carrier (1) 8061:7 carry (1) 8114:7 case (8) 8059:4;8067:9,10; 8090:21;8119:16,22; 8120:24;8130:7</p>	<p> cashed (1) 8122:19 Cass (1) 8086:6 cause (2) 8117:23;8118:11 caveat (2) 8134:13;8137:3 CDFA (6) 8069:2;8106:17, 18;8119:22; 8124:25;8125:2 CDFA's (1) 8119:17 cent (1) 8109:15 Center (1) 8085:23 Central (2) 8076:6;8080:6 cents (2) 8108:2;8126:4 certain (4) 8085:17;8110:12; 8113:9;8120:5 certainly (5) 8089:21,25; 8093:25;8115:9; 8137:23 certificate (1) 8141:19 certification (3) 8139:1,5;8141:13 certified (7) 8135:7,15,17; 8136:22,25;8137:23, 24 certify (1) 8138:25 chance (2) 8090:15;8137:2 change (7) 8063:22;8066:12; 8068:12;8113:6; 8135:22,23;8139:13 changed (2) 8070:11;8139:15 changes (9) 8112:14;8115:24; 8116:14,16,18; 8135:24;8141:12,20, 24 characterize (1) 8095:24 charge (2) 8090:24;8093:11 chart (1) 8125:15 Cheese (27) 8055:20;8076:16; 8079:4,7,11,13,25; 8080:17,20;8081:17; 8082:1,3,5;8087:7,</p>	<p>11,13,19,23,23,24; 8090:24;8091:1,7, 12;8095:21;8096:1; 8101:7 Chief (2) 8054:25;8059:11 C-H-I-E-K (1) 8055:17 chime (1) 8139:22 Chip (8) 8055:3;8071:10; 8092:5;8100:19; 8103:12;8132:21; 8134:5;8141:2 choices (1) 8112:16 chose (1) 8073:3 chosen (2) 8112:20;8140:6 Christmas (4) 8077:10,11; 8098:25,25 circumstances (1) 8138:3 citations (1) 8135:24 City (2) 8081:7;8086:6 claim (1) 8116:9 Clara (2) 8065:7;8110:15 clarification (3) 8069:16;8104:20, 23 clarify (2) 8072:9;8104:15 clarifying (1) 8110:6 clarity (2) 8077:24;8098:4 Class (67) 8069:19;8071:16, 24,25;8075:1; 8077:2,7,7;8078:3,3, 10,13;8080:17,21, 22;8081:2,4,8,9,21; 8083:22;8084:1,3,4, 11,21,22,23; 8089:15,16;8094:2, 6;8095:18;8096:4, 15,18;8097:6,9; 8101:12,14;8103:18, 18;8104:6,6,10,10, 11,11,12,12; 8106:21;8107:7,10, 13,18,24;8108:4; 8109:2,2;8123:6,7, 12,13;8126:8; 8127:8,23,24 Classes (4)</p>
	C			

8065:12,18; 8084:1;8103:14 clause (1) 8066:6 clear (14) 8059:23;8070:22; 8071:1,2;8072:10; 8073:6,21;8097:1; 8099:14;8103:20; 8104:22;8105:24; 8107:12;8124:10 clearing (7) 8077:6;8083:19, 22;8084:3;8086:20; 8101:24;8102:1 Clerk (26) 8058:1,3,4,5,7,16; 8059:3;8060:1,3,7, 13,13,17;8061:10; 8138:15,21;8139:1, 11,25;8140:14,15, 18,18,19;8141:7,12 Clerks (2) 8059:7,9 Clerk's (6) 8059:18;8061:3, 13,14;8139:3,19 clients (1) 8134:8 client's (1) 8136:6 Clifford (2) 8054:5;8056:2 CLIFTON (95) 8053:2,6;8056:2, 13;8057:24; 8059:21;8060:4; 8062:11,13,24; 8063:2,25;8064:12; 8065:13;8066:11,18, 23;8067:21;8069:9; 8070:8,17,20,22; 8071:6;8072:4; 8073:9,25;8081:4,6; 8082:23;8083:1; 8085:8,11;8091:15, 18,21;8097:20,24; 8098:10,14,16; 8100:16;8102:5,12; 8103:8,22;8104:1,5, 9,14,18,24;8105:16, 20;8118:10,16,24; 8120:9,12,14,20,25; 8121:8,13,19,22,25; 8122:14;8124:9,12, 14,20,23;8125:1; 8127:2;8128:16,23; 8130:15;8131:8,11, 15,18,21;8132:16, 20;8133:7,10,15,20; 8136:17,20;8137:17; 8138:6,12;8141:9 close (3)	8078:5;8142:4,6 closing (1) 8053:9 Clovis (2) 8079:16;8090:25 CMAB's (1) 8113:18 Coale (3) 8054:8,8;8056:2 C-O-A-L-E (1) 8054:8 Code (1) 8116:1 collaborate (1) 8094:11 colleague (1) 8136:9 collect (1) 8116:5 collectively (1) 8091:7 Colorado (2) 8086:11;8091:3 column (10) 8102:23;8103:3,3, 14;8106:7,13,19; 8107:1,8,20 columns (2) 8127:13,19 combination (1) 8134:1 combinations (1) 8099:21 combined (2) 8080:5;8112:11 coming (2) 8056:22;8113:1 comment (2) 8090:16;8117:14 comments (11) 8061:25;8088:2,8; 8108:16;8111:19; 8113:12,16;8117:6, 8;8118:13;8142:3 commercial (3) 8061:7;8077:24, 25 commissioning (1) 8113:18 commitment (1) 8118:10 commitments (1) 8136:12 committed (1) 8087:5 Committee (3) 8114:25;8115:2, 11 Commodity (2) 8087:22;8098:14 common (2) 8078:14;8118:1 companies (1)	8114:21 Company (6) 8113:19,23; 8114:6,10;8115:10, 12 Company's (1) 8114:16 compare (2) 8089:20;8108:8 compared (1) 8110:25 comparisons (1) 8067:6 compelling (1) 8114:16 competition (1) 8112:18 competitive (4) 8081:23,24; 8082:2;8093:11 complete (2) 8109:22;8117:6 completed (3) 8102:20;8134:3; 8139:8 completes (1) 8074:1 completion (1) 8102:16 comply (1) 8140:8 composed (1) 8089:25 comradery (1) 8134:7 conceivable (1) 8136:13 conceived (1) 8117:3 concentrated (1) 8090:11 concentration (2) 8089:24;8104:3 concept (1) 8110:2 Conceptually (1) 8116:3 concerning (2) 8113:13;8117:2 concerns (2) 8109:1;8134:18 conclude (1) 8118:13 concluded (2) 8115:11;8142:14 concludes (5) 8066:25;8120:23; 8131:22;8133:20; 8142:13 concluding (2) 8105:9;8117:14 conclusion (2) 8087:13;8120:23	concur (1) 8136:1 condensed (6) 8086:2,9,12,13; 8110:11;8115:4 condensing (4) 8086:6,7,8,15 8100:1 conditions (1) 8116:6 conduit (1) 8097:16 confined (1) 8109:4 confirm (1) 8061:10 confusing (1) 8111:9 congratulate (1) 8142:11 Congress (1) 8119:23 connecting (1) 8135:8 consanguinity (1) 8109:6 consider (2) 8087:7;8130:24 consideration (1) 8138:22 considerations (1) 8109:16 considered (3) 8060:24;8069:1; 8134:12 considering (1) 8120:4 consistent (1) 8101:17 constrained (1) 8090:2 consultants (2) 8114:18,20 Consumer-Driven (1) 8113:21 contained (1) 8139:12 context (2) 8075:4;8083:20 continuation (3) 8109:9;8112:12; 8117:12 continue (5) 8074:3;8079:24; 8085:20;8107:17; 8120:1 Contra (1) 8065:6 contract (1) 8096:4 contractual (3) 8081:13,13;	8083:24 contribute (1) 8090:9 contributes (1) 8077:18 control (1) 8141:3 conversation (5) 8072:2;8135:18; 8137:2,9;8138:4 conversion (3) 8109:11;8129:20, 21 converted (1) 8130:11 converting (1) 8130:3 Co-op (1) 8086:2 Cooperative (1) 8086:1 Cooperatives (9) 8063:15;8069:3; 8086:18;8088:23; 8089:1;8090:5; 8100:22;8109:17; 8118:4 Cooperatives' (1) 8066:25 co-ops (4) 8112:2,11; 8117:18;8119:11 copies (14) 8057:12;8058:4,4, 14,20;8060:2,2,5,7, 14;8140:15;8141:17, 18;8142:2 copy (5) 8058:18;8085:13; 8140:20;8141:13,19 corner (1) 8118:9 Corporation (1) 8087:22 correction (2) 8066:10;8124:15 corrections (13) 8057:6;8058:12; 8059:17;8133:22; 8135:3,6,21,22; 8137:15,21;8138:16, 20;8141:18 correctly (2) 8134:15,16 corresponding (1) 8123:14 corrupted (1) 8114:18 cost (6) 8067:11;8082:5; 8097:3;8114:1; 8122:11;8126:24 Costa (1)
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<p>8065:6 costly (2) 8142:8,8 Council (3) 8056:9;8069:15; 8129:4 Counsel (5) 8053:15,18; 8054:12;8056:10; 8138:14 counterintuitive (1) 8077:4 counties (17) 8064:8,10,18,24; 8065:1,6,8,9; 8068:11;8070:14,23; 8072:9,17,19; 8073:1,2;8110:12 country (4) 8075:14;8084:25; 8100:13;8141:6 county (6) 8064:22;8070:13; 8110:14,14;8126:4,7 couple (4) 8061:10;8068:8; 8110:20;8115:20 course (5) 8056:19;8099:11; 8100:20;8105:19; 8138:8 court (5) 8056:25;8118:8; 8141:6,16,16 courtesy (10) 8057:11;8058:6,9, 10,15,18;8060:1; 8140:21,23,23 covers (1) 8081:10 cows (1) 8078:7 CPHA (2) 8122:15,23 cream (3) 8084:5,8;8110:11 create (3) 8089:13;8116:1; 8136:24 creating (1) 8136:15 credible (1) 8091:10 Credit (10) 8062:22;8063:10, 14;8067:1;8069:4, 17,19,25;8072:15; 8087:22 credits (17) 8063:16,18; 8064:2,3;8065:22; 8067:11;8072:1,20; 8073:17,18;8109:12;</p>	<p>8110:1,8;8111:6,10, 12,15 crops (1) 8112:25 cross-examination (12) 8067:20;8068:3; 8069:11;8071:8; 8072:6;8092:3; 8117:1;8119:1; 8128:23;8129:1; 8130:17;8132:14 Cruz (1) 8065:7 cultured (1) 8084:5 current (8) 8065:19,21; 8068:23;8095:16; 8111:17;8128:7; 8129:11;8131:1 curse (1) 8097:19 customers (12) 8077:12,24; 8078:4;8080:22; 8081:3,8;8083:25; 8084:2,4,8,11; 8100:6</p>	<p>D</p> <p>daily (2) 8075:12;8083:24 Dairies (5) 8054:13,25; 8109:17;8113:1; 8115:12 Dairigold (1) 8075:25 Dairy (52) 8053:19,21; 8054:1,4,6,9,13,19; 8055:7,12,17,19,24, 25;8057:3;8064:4, 10;8065:1,9; 8072:18;8074:16,21; 8085:17;8087:14; 8093:14,25;8094:9, 12;8095:13,15; 8096:3,18;8097:5; 8098:21;8099:8,25; 8100:21;8101:6,20; 8106:2;8109:17; 8111:20;8112:21,22, 23;8113:18,21; 8114:8,22;8116:2; 8131:24;8138:18 Dairy's (1) 8122:10 Dakota (1) 8101:13 Dalhart (1) 8091:1</p>	<p>Dallas (1) 8053:23 Dana (1) 8054:8 data (14) 8067:14;8069:2; 8080:13;8087:8; 8093:18,21,21; 8106:11,17;8111:23, 23,24;8112:11; 8131:5 database (1) 8058:7 date (7) 8060:18;8135:8; 8136:20,21;8137:13, 24;8139:22 dates (11) 8135:17,19; 8136:3;8137:1,10; 8138:2,5,8,8,10; 8140:6 David (1) 8115:15 Davis (2) 8055:4,11 Day (29) 8053:4;8056:19; 8060:21;8062:13; 8071:18,19;8075:13; 8076:20;8083:1; 8084:13;8086:24; 8092:9,20;8093:1; 8098:23,24,25,25; 8099:1,1,5,8;8101:9; 8106:15;8113:14; 8136:18;8138:18; 8142:4,5 days (19) 8054:6;8055:6; 8077:13;8078:2,6,6, 7;8084:18,19,19; 8098:19;8111:25; 8112:17;8118:12; 8134:21;8135:11,12, 25;8139:7 day-to-day (3) 8071:4;8075:8; 8100:5 DC (1) 8055:5 D-e (1) 8055:19 deadline (3) 8060:18;8061:6; 8137:20 deadlines (2) 8061:1;8140:4 dealing (1) 8071:3 debate (1) 8121:5 debriefing (1)</p>	<p>8061:23 debt (2) 8113:24,25 decide (2) 8135:5;8137:2 decided (2) 8110:21;8115:12 decline (1) 8068:25 dedication (1) 8118:11 deems (1) 8122:20 deficit (1) 8070:5 definition (3) 8084:4;8086:3; 8087:9 DeGroot (1) 8123:4 DeJong (3) 8055:19,19; 8132:15 delayed (1) 8136:5 delete (2) 8064:11;8068:10 deliberately (1) 8136:7 delighted (1) 8057:24 delinking (2) 8134:23,24 delivered (2) 8064:4;8113:15 deliveries (4) 8064:7,17,23; 8065:5 delivering (1) 8061:11 delivery (5) 8061:3;8065:24; 8070:13;8072:14; 8073:3 demand (12) 8078:3;8084:2,6, 11,15,19,22,24; 8086:18;8087:5; 8088:5;8095:16 demand-driven (2) 8087:15,18 demands (1) 8069:6 demonstrated (1) 8117:2 denied (1) 8060:20 Dennis (5) 8054:20;8100:10; 8121:20,24;8122:10 Department (8) 8053:13;8054:9; 8062:1;8110:23,24;</p>	<p>8124:17;8125:4; 8139:8 Departmental (1) 8059:14 depending (3) 8126:4,7,23 depooling (5) 8089:3,11; 8097:11,13;8134:24 Deputy (2) 8054:6,8 derived (1) 8106:17 describe (1) 8085:17 described (3) 8064:5;8065:24; 8084:11 designations (1) 8110:11 designers (1) 8114:19 desire (1) 8089:13 despite (1) 8117:24 destroy (1) 8091:12 detail (1) 8054:1 details (1) 8114:10 deteriorate (1) 8090:19 Determine (4) 8066:1;8118:17; 8123:20;8140:9 determined (1) 8066:3 determines (1) 8123:15 determining (4) 8067:22;8091:22; 8128:17;8129:22 Develop (3) 8116:18,21,23 devote (1) 8086:19 DFA (32) 8075:3,6;8076:2; 8080:6;8082:18,18; 8084:17;8092:8,22; 8094:15,16,19,21,23, 24,24,25;8095:2,3,3, 5,10,11;8096:10,16, 17;8097:8,12; 8099:12,12,20; 8100:9 DFA's (8) 8075:8;8080:10, 12;8081:16;8086:1; 8099:24,24,25 Diego (7)</p>
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8064:9,11,19,25; 8065:3;8068:11; 8110:13 difference (23) 8089:23;8102:24; 8103:15,16;8106:1, 7;8107:2,8,10,10,14, 21,21,24;8108:1,4,7, 13;8111:13;8123:6, 15;8127:9,24 differences (3) 8104:12,12; 8117:24 different (21) 8065:14;8076:22; 8100:4;8103:13,17, 18,21,22;8111:11, 22;8112:17,18; 8113:8,9;8117:18, 19,19,20,20;8123:9; 8134:24 differential (5) 8071:24,25; 8106:21;8126:7,8 differentials (1) 8127:16 differently (1) 8123:7 difficult (4) 8099:2,6;8111:4; 8131:13 difficulties (1) 8115:7 diggers (1) 8114:19 digression (1) 8094:14 diligently (1) 8056:25 diminished (1) 8122:22 DIRECT (7) 8063:5;8074:6; 8093:7,10;8099:19; 8105:3;8122:4 directed (1) 8083:17 direction (2) 8095:25;8134:18 directive (3) 8096:3,5,9 directly (5) 8064:4;8076:1; 8094:10;8099:12; 8114:15 Director (2) 8115:16;8122:10 disadvantage (1) 8070:16 disagree (2) 8094:8;8136:9 disallows (1) 8116:18	Discount (1) 8106:4 discounted (1) 8095:23 discuss (2) 8067:5;8070:25 discussed (13) 8067:15;8069:3, 22;8071:24;8090:8, 21;8096:21,24,25; 8115:17;8123:4; 8126:19;8132:9 discussing (1) 8077:10 discussion (5) 8068:13,20; 8083:20;8099:9; 8105:23 discussions (3) 8068:22;8077:4; 8115:20 distribute (1) 8140:16 distributed (2) 8062:20;8102:12 distributing (1) 8085:11 ditches (2) 8114:19,19 diversified (1) 8076:17 diversify (1) 8112:21 diversion (1) 8061:5 diverted (2) 8116:10,24 divided (3) 8075:9;8123:19; 8128:1 Division (1) 8053:16 document (10) 8057:18;8059:2; 8060:16;8062:20; 8085:7;8102:16; 8103:13;8104:25; 8121:14;8139:2 doggy (1) 8133:6 dollars (5) 8069:5,25;8070:2; 8108:9,10 done (15) 8063:25;8081:12, 13;8098:9;8103:4,5, 5;8111:8;8112:23; 8114:3;8118:12; 8130:3;8134:10; 8136:3;8138:24 door (1) 8076:22 dots (1)	8135:9 double (1) 8110:4 Down (11) 8057:10;8067:17; 8077:12,23;8082:24; 8100:7;8103:24; 8107:24;8120:20; 8126:11;8136:13 dozen (1) 8084:24 DR (29) 8055:16;8068:4,7; 8102:11,20;8103:5; 8105:5,16,19,23; 8109:23;8111:19; 8113:13,17;8114:25; 8115:3,8;8117:1; 8118:6,14,16,22; 8119:3;8120:9,15, 19,21,23;8140:4 draft (1) 8071:22 drawn (1) 8106:10 drink (1) 8097:21 dropped (1) 8137:17 dry (3) 8084:23;8087:4; 8104:2 drying (8) 8086:2,7,8,11,12, 13,14,15 due (3) 8134:20,21; 8139:17 dumped (2) 8100:24;8101:2 duration (1) 8081:14 during (10) 8065:20;8074:17; 8075:3;8078:1,22; 8099:3,5;8102:17, 22;8132:2 duties (1) 8116:16	Eastern (5) 8060:17,22; 8062:12,13;8139:18 eat (1) 8073:5 Economic (1) 8055:20 Economist (2) 8053:25;8055:17 effect (1) 8132:25 efficiently (1) 8088:24 effort (2) 8070:3;8133:25 Eight (1) 8062:21 eighth (1) 8063:8 either (4) 8074:10;8119:6; 8121:1;8137:20 electronic (7) 8059:16;8140:22; 8141:7,16,17,18,19 electronically (1) 8141:5 element (1) 8118:1 elements (1) 8088:5 eligibility (1) 8109:12 eligible (2) 8072:18,19 eliminate (1) 8116:23 Elkind (1) 8114:14 ELLIOTT (13) 8054:2,2;8062:24; 8063:1;8064:1; 8066:18;8102:13; 8104:24;8105:1; 8121:15,16;8132:16, 18 E-L-L-I-O-T-T (1) 8054:3 else (9) 8068:10;8090:14; 8130:6;8138:12,19; 8140:13;8141:1,25; 8142:3 Elvin (2) 8054:18;8062:21 E-L-V-I-N (1) 8054:18 e-mail (19) 8057:7,11,12,25; 8058:6,8,15,18,25; 8059:3,12,18; 8060:12;8139:2,4,5; 8140:18,20,24	e-mailing (1) 8059:14 emphasis (1) 8070:11 emphasize (1) 8114:5 employees (1) 8053:12 encompass (4) 8075:21;8078:11, 13;8080:9 encompassed (1) 8075:20 encountered (1) 8115:7 end (7) 8056:6;8061:20; 8105:11;8116:21; 8119:19;8120:2; 8134:13 ended (1) 8057:20 ending (1) 8065:21 ends (3) 8062:14;8087:4; 8131:24 energy (1) 8142:9 engage (1) 8117:22 England (1) 8085:25 ENGLISH (46) 8055:2,3;8068:14; 8071:7,9,10; 8091:16;8092:4,5,7; 8097:25;8098:1,10; 8100:16,18,19; 8103:11,12,12,23, 24;8104:4,6,11,15, 21;8118:25;8119:2; 8120:25;8121:3; 8131:15,17;8132:20, 21,21;8133:5; 8134:5,5,17;8136:9, 19,22;8137:18; 8141:1,2,2 E-N-G-L-I-S-H (1) 8055:4 enjoyed (1) 8055:14 enormous (1) 8142:10 enough (3) 8073:7;8135:14, 25 Enron (1) 8114:14 enter (2) 8058:12;8060:11 entered (5) 8060:10;8106:4,
			E	
		earlier (7) 8069:23;8073:14; 8082:15;8090:8; 8096:22;8129:5; 8139:7 early (2) 8069:2;8084:9 earnestly (1) 8138:10 East (2) 8076:1;8080:8		

<p>16,17;8132:18 entering (1) 8058:18 entire (3) 8082:3;8108:13, 14 entirety (1) 8076:19 entities (4) 8076:22;8090:1,1; 8094:23 entity (3) 8116:5,8,25 entry (3) 8058:12,13; 8140:19 environment (1) 8081:23 equal (2) 8124:7,8 equalization (1) 8116:15 equates (2) 8125:8,10 equivalent (4) 8075:17;8111:15; 8124:2,4 Erba (22) 8054:24,24; 8057:22;8102:11,20; 8103:5;8105:5,16, 19,19,23;8109:23; 8111:19;8118:6,14, 16,22;8119:3; 8120:9,15,19,21 E-R-B-A (2) 8054:24;8105:19 Erba's (1) 8120:23 Eric (2) 8054:24;8105:19 E-R-I-C (2) 8054:24;8105:19 escort (1) 8061:13 especially (1) 8090:2 essential (1) 8139:17 essentially (1) 8069:24 established (1) 8060:18 establishes (1) 8122:24 establishment (1) 8116:4 esteemed (1) 8107:4 estimate (3) 8075:12;8082:25; 8109:13 Eve (2)</p>	<p>8098:25,25 even (8) 8083:12;8093:21; 8094:24;8113:7; 8114:16,23;8119:22; 8139:25 event (1) 8122:19 everyday (3) 8082:20;8084:1; 8088:4 everyone (7) 8055:9,14;8056:6; 8059:23;8085:13; 8133:23;8140:21 everyone's (1) 8140:21 evidence (25) 8053:8;8061:19; 8062:17;8067:23,24; 8068:2;8091:23,25; 8092:2;8118:15,18, 19,21;8128:18,19, 21;8131:16,19,22; 8133:11,12,14,16,17, 19 Ex (1) 8061:7 exactly (2) 8059:24;8065:15 EXAMINATION (8) 8063:5;8073:11; 8074:5,6;8098:17; 8105:3;8118:23; 8122:4 example (8) 8058:20;8059:13; 8077:9;8099:2; 8100:21;8112:8; 8136:23;8138:23 except (1) 8065:2 exception (1) 8075:22 excess (1) 8082:19 Exchange (1) 8098:12 excluded (1) 8111:5 excuse (1) 8102:19 execute (1) 8115:8 executing (1) 8114:20 exempt (49) 8108:17,23; 8109:3,9,11,11,14; 8119:10,13;8122:12, 14,16,18,25;8123:2, 3,5,9,16,18,19,20,23, 24;8124:1,3,6,7,18,</p>	<p>21,22,23;8125:5,6,7, 9,11,13;8126:19; 8127:11,17;8128:2, 8,10,13;8129:23; 8130:3,7,11 exemption (4) 8109:7;8129:6,7,9 exercise (1) 8115:6 exhibit (60) 8062:23;8063:2,3, 10;8066:7;8067:23, 24;8068:1;8070:10; 8085:2,7,9,12,18,21; 8091:20,22,24,24; 8092:1;8095:7; 8102:12,13,18; 8103:20;8104:25; 8105:12,24;8106:5, 15;8113:17; 8114:24;8115:3,9; 8117:2;8118:15,18, 19,20;8121:14,15, 17,19;8122:7; 8124:25;8125:2,16; 8126:2;8127:1,7; 8128:18,19,20; 8132:9;8133:11,12, 13,16,16,18 exhibits (7) 8057:1;8102:23; 8106:11,17;8110:23; 8138:17;8142:6 exist (7) 8069:17;8087:20; 8110:9;8111:7,16, 17,18 existed (1) 8129:15 existing (2) 8103:1;8115:24 expand (2) 8079:25;8109:7 expansion (1) 8079:15 expansions (1) 8091:5 expect (4) 8097:22;8099:7; 8135:1;8138:10 expected (1) 8137:13 expense (1) 8073:17 experience (4) 8069:2;8083:10; 8087:17;8088:15 experiences (2) 8117:21,23 explain (4) 8106:6;8109:25; 8110:17;8111:12 explanation (2)</p>	<p>8107:18;8130:8 explored (1) 8072:17 express (2) 8109:20;8118:8 expressed (1) 8109:1 extension (3) 8136:16;8137:3,4 extent (3) 8076:8;8084:5; 8109:8 extra (1) 8099:9 extracting (1) 8114:1 extraordinary (2) 8134:6;8138:3 extremely (2) 8091:2;8136:6</p>	<p>Farmers (12) 8054:13,19; 8072:18;8074:16,21; 8085:17;8096:3,18; 8097:5;8099:25; 8109:17;8125:12 farms (8) 8063:16;8064:4, 10;8065:1,9;8109:5; 8117:19;8126:15 fashion (1) 8117:13 fat (1) 8084:22 features (2) 8109:4;8110:18 February (3) 8137:21;8138:21; 8139:9 Fed (1) 8061:7 Federal (31) 8053:22;8054:1; 8074:13,17;8075:3, 5,19,21;8076:9,10; 8078:18;8079:1,12, 25;8080:10;8082:2, 6,6;8087:14;8088:9; 8097:13;8100:12; 8103:1;8106:1,22; 8107:15;8117:16; 8118:2;8122:17; 8141:6;8142:1 feed (1) 8056:24 felt (3) 8067:12,15; 8069:5 few (6) 8087:19;8091:1; 8094:5;8108:11; 8113:15;8139:7 fewer (1) 8090:4 fight (1) 8134:8 figured (2) 8078:8;8111:3 file (15) 8058:19;8060:10, 11;8131:25;8132:4; 8137:24;8138:15,20, 25;8139:3,4;8140:1, 3,14;8141:5 filed (7) 8138:24;8139:2, 10,23,24;8140:2,24 files (1) 8057:13 filing (10) 8053:10;8058:2,8, 11,18,20;8060:17, 19;8062:13;8141:7</p>
F				
<p>facilitate (2) 8116:3;8140:24 facilitating (1) 8070:4 facilities (1) 8086:17 facility (6) 8086:2,10,11,12, 13,14 fact (5) 8087:21;8097:18; 8099:3;8113:1; 8135:21 factor (4) 8088:1;8104:13; 8129:20;8130:4 factoring (1) 8130:24 factors (2) 8126:12;8128:1 Fair (3) 8073:7;8078:25; 8087:13 fairly (2) 8090:7;8120:5 fall (2) 8069:7;8114:13 Fallon (1) 8086:14 familiar (3) 8075:6;8095:23; 8125:23 far (3) 8060:10;8127:19; 8130:5 Fargo (1) 8115:16 farm (4) 8066:2;8075:11; 8082:20;8088:4</p>				

<p>filings (3) 8058:14;8060:16; 8140:15</p> <p>fill (1) 8103:9</p> <p>filled (1) 8107:3</p> <p>filling (1) 8069:7</p> <p>final (11) 8056:19;8062:19; 8083:19;8088:7,8; 8099:10;8102:10; 8107:1;8108:1,5; 8117:8</p> <p>Finally (1) 8057:20</p> <p>financing (2) 8116:3,13</p> <p>find (1) 8057:19</p> <p>findings (1) 8057:5</p> <p>fine (2) 8060:2;8085:8</p> <p>fine-tuned (1) 8139:15</p> <p>finish (1) 8135:12</p> <p>finished (2) 8061:23;8102:6</p> <p>firm (3) 8054:16;8055:4; 8136:3</p> <p>first (20) 8053:12;8056:16; 8058:11;8067:11; 8068:12;8081:22; 8083:18,18;8091:15; 8092:8;8095:5; 8102:22;8103:3; 8105:11;8106:7,19; 8116:9;8118:24; 8128:23;8140:13</p> <p>fit (3) 8084:4;8087:8; 8088:4</p> <p>fits (1) 8086:3</p> <p>five (7) 8084:18;8097:20, 21;8123:18;8127:10, 22,24</p> <p>fix (1) 8124:20</p> <p>fixed (3) 8130:21;8138:2,5</p> <p>flipping (1) 8089:16</p> <p>floor (1) 8098:5</p> <p>Florida (2) 8076:5,13</p>	<p>flow (1) 8116:2</p> <p>fluid (1) 8101:21</p> <p>folks (1) 8118:8</p> <p>follow (1) 8071:12</p> <p>followed (1) 8066:21</p> <p>following (4) 8064:3,5;8065:22; 8089:17</p> <p>follows (2) 8063:22,24</p> <p>Food (6) 8053:16;8110:23, 24;8115:25; 8124:17;8125:4</p> <p>Foods (1) 8056:1</p> <p>footprint (1) 8081:24</p> <p>foresee (1) 8112:12</p> <p>forgotten (2) 8068:13;8096:23</p> <p>form (2) 8058:18;8069:25</p> <p>formality (1) 8133:1</p> <p>formulas (1) 8103:1</p> <p>Fort (1) 8086:11</p> <p>fortunate (2) 8117:16,16</p> <p>forward (4) 8133:21;8140:19, 23;8141:3</p> <p>Foster (2) 8122:10;8126:15</p> <p>found (4) 8114:8,9,11; 8118:2</p> <p>four (7) 8060:2,5,14; 8109:4;8127:19,20; 8140:14</p> <p>framework (1) 8116:2</p> <p>FRANCIS (11) 8053:19,19; 8061:24;8062:3; 8072:5,7,8;8130:16, 18,19;8134:4</p> <p>Francis' (1) 8097:18</p> <p>Francisco (3) 8054:17;8065:7; 8110:16</p> <p>Fresno (1) 8053:4</p>	<p>Friday (5) 8077:12,12; 8135:4;8137:16,18</p> <p>friendships (1) 8134:7</p> <p>front (1) 8070:9</p> <p>full (3) 8086:23;8099:3,4</p> <p>fullest (1) 8109:8</p> <p>fun (1) 8139:6</p> <p>function (1) 8053:9</p> <p>Fund (2) 8116:10,15</p> <p>funded (3) 8069:19,24; 8070:2</p> <p>funds (1) 8116:2</p> <p>further (16) 8063:20;8073:25; 8074:4;8080:24; 8091:14;8102:4; 8105:9,13;8117:23; 8118:5,23;8121:1; 8131:15,18;8132:11; 8136:5</p> <p>future (4) 8068:23;8095:17, 19;8126:23</p>	<p>8062:23;8097:11; 8135:21;8139:3</p> <p>giving (2) 8056:11;8136:23</p> <p>Glanbia (1) 8079:15</p> <p>Glasgow (1) 8076:17</p> <p>goal (1) 8096:6</p> <p>goes (4) 8083:18,18,19; 8084:18</p> <p>Gonsalves (4) 8115:23;8119:13, 16;8129:8</p> <p>Good (41) 8053:14,17,19; 8054:5,8,11,15,18, 24;8055:2,10,16,25; 8067:18;8068:5,6,7; 8069:13,14;8071:6, 10,11;8076:7; 8082:5;8083:23; 8089:19;8092:6,7; 8100:22,24;8103:8; 8105:5,6;8110:7; 8119:3,4,7;8129:3, 22;8140:6;8141:9</p> <p>goodness (1) 8121:8</p> <p>goods (2) 8090:17,19</p> <p>Goshen (1) 8086:8</p> <p>governance (1) 8075:11</p> <p>governs (1) 8141:11</p> <p>granted (1) 8108:24</p> <p>graphs (1) 8132:14</p> <p>great (2) 8066:7;8099:17</p> <p>greater (5) 8065:12,18; 8066:4,8,20</p> <p>greatest (2) 8076:21;8077:7</p> <p>greatly (1) 8090:19</p> <p>Greeley (1) 8091:3</p> <p>Greenfield (1) 8090:25</p> <p>group (5) 8067:6,15;8091:1; 8105:20;8107:4</p> <p>Growth (1) 8113:22</p> <p>GSA (1) 8099:17</p>	<p>guess (3) 8068:22;8071:13; 8125:22</p> <p>guy (1) 8118:9</p> <p>Guys (1) 8114:13</p>
H				
<p>half (3) 8079:16;8092:23; 8126:24</p> <p>HANCOCK (13) 8055:22,22; 8121:4,25;8122:2,2, 5;8125:14;8127:4; 8128:22;8131:10,18, 20</p> <p>hand (3) 8057:7;8085:12; 8127:19</p> <p>handed (2) 8057:8;8061:15</p> <p>handler (4) 8067:10;8089:15, 16;8109:19</p> <p>Handlers (11) 8055:23;8069:20; 8088:20,23;8089:24; 8090:4,6;8108:21; 8109:2;8122:3,12</p> <p>handlers' (1) 8069:25</p> <p>handout (1) 8057:25</p> <p>handy (1) 8082:24</p> <p>hanging (1) 8132:6</p> <p>Hanson (1) 8054:17</p> <p>H-A-N-S-O-N (1) 8054:17</p> <p>happen (7) 8095:20;8096:1; 8098:7,7,8,8;8113:8</p> <p>happened (3) 8071:13;8101:19; 8119:13</p> <p>happening (3) 8093:8;8112:1; 8113:10</p> <p>happens (3) 8059:14;8136:11; 8138:2</p> <p>happy (3) 8062:1;8068:17; 8095:22</p> <p>hard (5) 8058:4,4;8137:10; 8141:13;8142:10</p> <p>hard-surface (1)</p>				

8066:1 Hatamiya (1) 8122:23 hauls (1) 8070:4 headed (1) 8106:13 heading (2) 8054:15;8106:7 heads (1) 8084:9 health (1) 8142:9 hear (2) 8057:21;8117:21 heard (9) 8070:23;8095:4; 8101:13;8112:16; 8117:11;8129:5,5; 8138:12,19 hearing (46) 8053:5,8;8056:12, 20;8058:1,3,4,5,7, 15;8059:3,7,9,18; 8060:1,3,7,13,13; 8061:3,10,13,14; 8068:19;8077:5; 8083:21;8097:17; 8105:9;8129:5; 8132:3;8133:20; 8134:10;8138:15,21; 8139:1,3,11,18,25; 8140:14,15,18,18, 19;8141:7,12 heck (1) 8134:8 held (1) 8095:17 Hello (1) 8054:2 help (2) 8061:25;8132:21 helpful (5) 8057:25;8058:9, 23;8140:25;8141:21 helping (1) 8131:12 Henry (1) 8053:24 H-E-N-R-Y (1) 8053:24 hiding (1) 8118:9 high (3) 8077:1,7;8081:21 higher (2) 8083:12;8126:9 highlighted (2) 8127:14,21 highlighting (1) 8127:20 highway (1) 8066:1	Hill (10) 8053:14,14; 8059:21,22,22; 8062:5,6,6,12,15 Hilmar (4) 8055:20;8091:1; 8097:6,9 himself (1) 8056:14 hired (1) 8113:19 historic (1) 8142:11 historical (1) 8130:24 historically (1) 8130:22 histories (1) 8117:20 holder (1) 8116:7 holders (1) 8122:12 holiday (5) 8056:6;8077:11; 8095:25;8100:25; 8101:4 Hollon (46) 8054:18,18; 8057:22;8062:18,21; 8063:7;8064:2,16, 21;8065:16;8066:6, 16,22,25;8067:18, 19,21;8068:6; 8069:10,13;8070:8, 16,19,21;8071:2,7, 10;8072:5;8074:3,8; 8081:5,7;8082:18, 25;8083:2;8085:16; 8091:14,16,21; 8092:6;8098:11,12, 15;8102:5,6,9 H-O-L-L-O-N (1) 8054:19 Hollon's (1) 8074:1 home (1) 8054:15 Honor (24) 8055:2;8062:19; 8066:10,24;8085:7; 8091:17;8098:1,5; 8102:10,15;8104:7; 8105:2,14;8118:14, 22;8120:22;8121:3; 8126:25;8128:22; 8131:10,20,21; 8132:18;8133:5 honored (1) 8056:11 hope (1) 8135:20 hopefully (3)	8062:9;8135:14, 24 hotel (1) 8056:17 hour (1) 8060:19 Hughson (1) 8086:14 hundred (1) 8094:19 hundredth (1) 8111:2 hundredweight (20) 8080:22;8081:1,2; 8082:15;8102:24; 8103:15,16;8106:8; 8107:19,25;8108:3; 8109:15;8123:12,20; 8126:4,6,18;8127:8, 23;8128:1	14;8111:2;8113:5; 8126:2;8137:8 impacts (1) 8113:9 implementation (1) 8109:21 important (5) 8060:15;8136:2,3, 4,6 imposed (1) 8132:1 impossible (1) 8114:17 impressive (1) 8118:13 improved (1) 8062:2 inability (1) 8140:7 Inc (8) 8054:13,13,14,25; 8109:17,18,18; 8115:12 incidents (1) 8078:10 include (4) 8110:15,18,21; 8116:4 included (4) 8082:14;8113:16; 8126:7;8130:4 includes (2) 8070:25;8080:6 Including (3) 8079:4;8082:14; 8112:18 incorporating (1) 8102:25 incorrect (2) 8093:3,6 increase (5) 8079:17;8090:20; 8095:22;8126:10,13 increased (1) 8091:11 incredibly (3) 8114:2,3,16 Indiana (2) 8077:16;8086:8 Indiana/Illinois (1) 8080:9 indicate (3) 8058:13;8061:24; 8080:13 indicated (4) 8080:20;8088:11; 8089:1;8106:23 indicates (1) 8086:24 indication (1) 8090:17 industry (7) 8090:22;8111:20;	8112:15,21,24; 8114:8,22 infeasible (1) 8117:5 inference (1) 8132:1 information (28) 8057:17,19; 8059:11;8074:12,14, 16,20;8075:2; 8076:8;8080:15; 8082:4;8091:4; 8093:2,14,18; 8094:8,10,23; 8099:19,19,21,23; 8100:6,8,10;8107:4; 8112:3;8138:22 initial (1) 8056:3 inserted (3) 8063:23;8066:14; 8102:22 inserting (1) 8124:23 inside (2) 8063:16;8082:17 instance (2) 8094:4;8101:4 instances (1) 8090:23 instantly (1) 8091:9 instead (3) 8059:12;8068:14, 15 Institute (6) 8055:7,12,17; 8106:2;8113:19; 8131:25 Institutional (1) 8115:16 instrument (2) 8113:24,25 integrated (1) 8109:5 intelligence (1) 8100:5 intent (1) 8073:1 intention (2) 8073:14,15 interconnection (1) 8119:12 interesting (1) 8089:14 internal (1) 8129:25 Internet (1) 8097:19 interrupt (1) 8076:25 interrupted (1) 8085:16
I				
		ice (2) 8084:5,8 idea (7) 8082:5;8114:6,6,7, 23,23;8129:22 ideas (4) 8114:16;8115:19; 8141:1;8142:2 identical (1) 8060:7 identification (4) 8063:4;8085:10; 8102:18;8121:18 identified (3) 8062:21;8102:17; 8132:9 identify (3) 8056:14;8121:25; 8127:2 ii (11) 8064:14,14,17,23; 8065:12,18;8071:2; 8078:3;8084:4; 8104:12;8107:19 iii (18) 8065:5;8071:3; 8080:17,21,22; 8081:2,4,8,9,21; 8083:22;8084:11; 8089:16;8103:18; 8104:6,10,11; 8107:24 iii's (1) 8070:20 ii's (1) 8070:18 immediately (1) 8071:5 impact (7) 8089:22;8109:8,		

<p>into (41) 8067:23,24; 8068:2;8073:15; 8075:9;8077:17; 8083:13;8084:9,15, 18;8088:5;8091:6, 23,24;8092:2; 8104:13;8109:10; 8112:3,21,25; 8118:15,18,19,21; 8122:9;8125:17; 8126:11;8128:18,19, 21;8129:20;8130:3, 11,25;8132:13; 8133:11,12,14,16,17, 19</p> <p>introductions (1) 8056:12</p> <p>inventory (3) 8087:20,24; 8095:17</p> <p>invested (1) 8086:17</p> <p>investment (6) 8079:11,20,22,23; 8126:20;8129:24</p> <p>invite (2) 8073:10;8131:9</p> <p>involved (4) 8075:11;8099:15; 8109:11;8141:25</p> <p>Iowa (3) 8081:7;8082:13; 8101:13</p> <p>irradiation (1) 8061:5</p> <p>irrevocably (1) 8116:23</p> <p>issuance (1) 8116:12</p> <p>issue (8) 8060:23;8109:25; 8117:6,9;8119:10; 8131:13;8136:15; 8138:20</p> <p>issued (3) 8129:6,7,13</p> <p>issues (2) 8094:15;8105:8</p> <p>it' (1) 8062:11</p> <p>IV (7) 8084:21,22,23; 8089:15;8104:12; 8108:2,4</p> <hr/> <p style="text-align: center;">J</p> <hr/> <p>James (1) 8055:19</p> <p>January (11) 8135:1,3,10,11,20; 8137:13,16,18,20;</p>	<p>8138:16;8140:5</p> <p>Jill (2) 8053:6;8122:14</p> <p>JillClifton@DMusdagov (2) 8059:17,21</p> <p>job (1) 8099:25</p> <p>John (1) 8054:15</p> <p>J-O-H-N (1) 8054:16</p> <p>Johnson (1) 8115:15</p> <p>joint (2) 8134:15,16</p> <p>jointly (2) 8079:14;8118:4</p> <p>J-O-N-G (1) 8055:19</p> <p>JUDGE (95) 8053:2,7;8056:13; 8057:24;8059:21; 8060:4,18;8062:11, 13,24;8063:2,25; 8064:12;8065:13; 8066:11,18,23; 8067:21;8069:9; 8070:8,17,20,22; 8071:6;8072:4; 8073:9,25;8081:4,6; 8082:23;8083:1; 8085:8,11;8091:15, 18,21;8097:20,24; 8098:10,14,16; 8100:16;8102:5,12; 8103:8,22;8104:1,5, 9,14,18,24;8105:16, 20;8118:10,16,24; 8120:9,12,14,20,25; 8121:8,13,19,22,25; 8122:14;8124:9,12, 14,20,23;8125:1; 8127:2;8128:16,23; 8130:15;8131:8,11, 15,18,21;8132:16, 20;8133:7,10,15,20; 8136:17,20;8137:17; 8138:6,12;8141:9</p> <p>Judges (1) 8059:8</p> <p>Judicial (1) 8060:23</p> <p>July (1) 8108:15</p> <p>jump (1) 8089:21</p> <p>June (3) 8083:8;8101:6,6</p> <p>Junior's (1) 8140:5</p> <hr/> <p style="text-align: center;">K</p> <hr/>	<p>Kansas (2) 8081:7,8</p> <p>Kansas/Colorado (1) 8080:8</p> <p>Kawamura (1) 8115:1</p> <p>Keep (2) 8107:22,23</p> <p>Kentucky (2) 8076:17,18</p> <p>key (1) 8057:23</p> <p>kind (4) 8100:5;8113:24; 8115:4;8139:6</p> <p>King (1) 8140:5</p> <p>knocking (1) 8076:22</p> <p>knowing (1) 8129:23</p> <p>knowledge (9) 8076:15;8081:16; 8087:17;8093:4,5,8, 10;8100:11;8101:16</p> <p>known (4) 8061:4;8095:25; 8099:18;8111:5</p> <p>knows (1) 8059:24</p> <hr/> <p style="text-align: center;">L</p> <hr/> <p>labeled (3) 8107:18,24; 8108:5</p> <p>lack (2) 8109:6,7</p> <p>Ladies (1) 8055:2</p> <p>L-A-H-O-S (1) 8054:16</p> <p>LAI (2) 8055:25,25</p> <p>Land (10) 8054:14,20,23; 8074:12,14;8099:22; 8109:18;8112:19,24, 25</p> <p>language (11) 8063:21;8066:20; 8067:1;8071:1; 8073:15,21;8088:19; 8089:4;8104:21; 8109:21;8138:23</p> <p>large (11) 8079:7;8081:11, 22,22;8084:10; 8086:11,12;8090:5, 20;8091:2,2</p> <p>largest (1) 8076:12</p> <p>last (35)</p>	<p>8055:6,21;8056:4, 11,16;8057:22; 8060:19,25;8062:6, 11;8066:6,19; 8090:15,22;8097:6; 8100:13;8101:8; 8102:1;8108:11; 8111:25;8112:5,17; 8117:11;8118:12; 8123:4,18;8124:11; 8127:6,13,18,18,22, 24;8131:2;8138:18</p> <p>lastly (1) 8118:10</p> <p>late (1) 8060:20</p> <p>later (17) 8053:10;8060:17; 8071:19;8091:1; 8101:5;8103:5; 8129:13;8135:1; 8137:13,16,23; 8138:16,20;8139:5, 11,18,23</p> <p>Laurel (5) 8053:21;8056:4, 16;8060:9;8140:17</p> <p>Lauren (2) 8053:17;8056:4</p> <p>Law (4) 8053:7;8054:16; 8055:4;8059:8</p> <p>lawyers (2) 8134:1,1</p> <p>lay (1) 8095:19</p> <p>leading (1) 8140:9</p> <p>lean (1) 8114:20</p> <p>least (13) 8076:21;8089:14; 8090:23;8091:6; 8096:25;8106:5; 8114:8;8121:6; 8129:10;8137:5; 8138:18;8140:11,17</p> <p>leave (4) 8077:14;8120:19; 8132:6;8137:19</p> <p>leaves (1) 8093:1</p> <p>leaving (2) 8114:21;8136:10</p> <p>led (1) 8113:20</p> <p>left (5) 8056:17;8064:12; 8102:19;8103:9; 8119:19</p> <p>legal (1) 8132:5</p> <p>legally (1)</p>	<p>8117:5</p> <p>legislation (6) 8115:23;8116:18, 19,19,21,23</p> <p>legislative (2) 8109:6,7</p> <p>Leprino (1) 8091:3</p> <p>Leprino's (1) 8084:16</p> <p>less (9) 8074:13;8075:1; 8076:9,10;8077:7; 8090:4;8106:22; 8107:14;8109:14</p> <p>lessen (1) 8060:12</p> <p>letters (3) 8056:5;8059:5,6</p> <p>letting (1) 8056:22</p> <p>level (1) 8090:17</p> <p>levels (1) 8091:8</p> <p>light (1) 8109:16</p> <p>likely (1) 8077:12</p> <p>limit (6) 8057:12,16; 8063:18;8067:8,8,9</p> <p>limitation (2) 8089:8,13</p> <p>limitations (1) 8109:5</p> <p>limited (2) 8077:21;8122:13</p> <p>limits (3) 8067:14;8089:12; 8142:1</p> <p>Linwood (1) 8085:24</p> <p>list (1) 8072:10</p> <p>listening (3) 8059:23,25; 8134:18</p> <p>literally (1) 8100:24</p> <p>little (9) 8057:6;8062:4; 8064:14;8070:18,20; 8113:2;8121:7; 8132:22;8133:6</p> <p>live (1) 8056:24</p> <p>load (1) 8075:17</p> <p>loads (17) 8075:13,15,16; 8076:20;8082:20; 8083:1;8084:13;</p>
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8086:24,25;8087:1; 8088:4;8092:9; 8093:1,9;8094:5,6; 8102:1 located (11) 8063:16;8064:8, 10,18,24;8065:1,6,9; 8070:14;8072:18; 8075:22 location (1) 8094:7 locations (5) 8085:6,17; 8101:12;8109:10; 8117:19 lofty (1) 8114:20 LOL (1) 8100:10 Lon (1) 8122:23 long (5) 8062:4;8068:19; 8096:7;8112:16; 8139:23 longer (3) 8070:4;8087:22; 8137:7 long-standing (1) 8083:25 long-term (1) 8096:4 look (17) 8070:12;8082:1,3; 8088:20;8089:18; 8090:22;8104:18; 8110:22;8112:1,2,7, 9;8113:17;8114:24; 8115:13,18;8126:22 looked (5) 8067:6;8072:20; 8126:15;8131:2; 8141:10 looking (15) 8064:14,14; 8068:10,23;8069:5, 5;8076:22;8081:20; 8085:22;8092:11; 8093:24;8101:5; 8103:9;8112:21; 8141:20 looks (1) 8092:12 loose (2) 8105:11;8131:23 Los (5) 8064:8,18,24; 8073:4;8110:13 lost (2) 8095:1;8111:24 lot (6) 8087:2;8090:4,4; 8111:22;8112:14,16	Louisiana (1) 8073:3 love (3) 8058:5;8059:16; 8105:21 lovely (2) 8058:10;8060:11 low (3) 8078:10;8083:5,6 lower (5) 8107:10,21,25; 8108:1;8112:4 Luis (1) 8082:13 Lund (25) 8057:22;8121:10, 20,20,21,24,24; 8122:6,10;8124:9, 11,13,15,22,25; 8125:2,3,22;8127:6; 8128:16,24;8130:15; 8131:8,12,14 L-U-N-D (1) 8121:24 Luther (1) 8140:4	8077:8;8079:12; 8081:12;8086:10; 8087:7,11,14 many (5) 8062:2;8077:12; 8087:2;8088:22; 8101:11 map (7) 8085:4,5,11; 8086:5;8114:7; 8115:14,14 March (14) 8083:8;8134:20; 8135:7,7,15,16; 8136:14,23,25; 8137:23,25;8139:6, 11,18 marginal (1) 8101:23 Marin (1) 8065:7 mark (1) 8104:25 marked (7) 8063:4;8085:7,10, 12;8102:18;8103:7; 8121:18 Market (48) 8053:22;8065:25; 8077:5;8078:5; 8080:25;8083:19,22, 23;8084:2;8086:20; 8087:6,7,8,23,24; 8088:5,14,24; 8089:6,8;8090:10; 8091:4,8;8092:22; 8093:13,14,25; 8094:9,12,18; 8095:13,15;8097:1; 8098:21;8099:8; 8100:21;8101:7,21, 22,23,24;8102:1; 8106:22;8110:10; 8128:6,7,7;8131:1 marketed (5) 8075:23,25; 8076:1;8095:10; 8108:4 Marketing (24) 8053:15,25; 8054:3;8063:17; 8065:2,10;8070:25; 8073:16;8075:7,11, 23;8078:14; 8080:19;8082:19; 8087:15;8088:3; 8090:9;8096:21; 8098:22;8099:12,15, 20;8103:2;8122:18 marketplace (17) 8078:15,17; 8081:18,20;8087:14, 18;8088:18;8093:4;	8100:1,2,3,5,11,12; 8101:17,18,19 markets (12) 8070:5;8075:6,19, 21;8080:11,12; 8081:8;8093:10; 8094:17;8095:3; 8098:4;8099:11 marking (2) 8102:13;8103:6 Martin (1) 8140:4 Marvin (5) 8054:11;8056:3; 8062:18;8120:22; 8134:5 M-A-R-V-I-N (1) 8054:11 Mateo (1) 8065:8 material (1) 8116:18 matter (2) 8059:4;8060:5 matters (4) 8056:15;8062:16; 8117:9;8134:9 max (2) 8095:22,24 maximize (1) 8089:17 maximum (1) 8063:19 MAY (44) 8053:21,21; 8056:16,16,21; 8060:9,20,21; 8065:19,20;8068:9, 9;8070:14,15; 8073:16;8075:3; 8083:8;8085:14; 8089:15,17;8093:24; 8094:4;8097:16; 8098:2,5,19,20; 8102:15;8113:7,8,8; 8120:12,20;8121:25; 8134:21,22;8136:12; 8138:1,24;8139:15, 24,24;8140:16,17 maybe (8) 8068:9;8072:16; 8073:13;8074:9; 8113:25;8121:3,6; 8135:18 McKinsey (7) 8113:19,23; 8114:5,9,15,18; 8115:10 McLean (1) 8114:14 mean (8) 8060:6;8077:24; 8092:22;8104:1;	8114:2;8124:6; 8135:13;8137:22 means (4) 8065:13;8095:18; 8106:20;8107:12 measure (1) 8075:18 measured (1) 8123:6 mechanical (1) 8115:6 mechanism (1) 8136:25 mechanisms (1) 8116:13 meet (2) 8072:11;8134:4 meeting (1) 8061:6 megabyte (1) 8057:16 megabytes (1) 8057:13 Megan (1) 8056:4 member (1) 8086:1 members (2) 8055:7;8079:14 memorable (1) 8055:20 Memorial (5) 8098:23,24; 8099:5,7;8101:9 memory (1) 8101:15 mention (2) 8077:19;8139:14 mentioned (7) 8069:16;8082:18; 8084:16;8106:4; 8113:18;8114:25; 8141:13 messy (1) 8114:21 met (3) 8065:19,20; 8115:15 method (3) 8102:25;8122:20; 8123:4 methodology (1) 8123:22 Mexico (10) 8077:16;8078:12; 8079:7;8086:10,23; 8090:25;8096:16,17, 22;8097:2 Michigan (3) 8085:1;8086:6,7 middle (1) 8056:3 Middlebury (1)
	M			
	ma'am (1) 8081:5 mail (2) 8061:3,5 main (1) 8075:9 major (1) 8079:6 majority (3) 8129:7;8135:20, 21 makers (2) 8095:21;8096:1 makes (4) 8104:22;8114:17; 8132:24;8140:16 make-work (1) 8141:20 making (4) 8053:8;8080:17; 8082:5;8137:6 Management (1) 8059:14 Managing (1) 8115:16 maneuvers (1) 8090:7 manually-completed (1) 8141:20 manufactured (2) 8090:17,19 manufacturers (1) 8086:16 manufacturing (7)			

<p>8085:23 Mideast (5) 8076:6,24; 8080:10;8083:14; 8101:3 Midwest (11) 8053:25;8076:5; 8077:17;8082:11; 8083:14;8091:5; 8094:5;8098:4; 8099:9;8100:23; 8101:2 might (11) 8083:10,12; 8091:17;8093:13; 8110:13,15;8115:18; 8134:8;8136:15; 8137:9;8140:10 mileage (4) 8066:1,3;8067:8, 14 miles (11) 8063:19,20; 8067:9,11,15; 8072:13,14,22,24, 24;8073:4 milk (120) 8053:4,22,25; 8056:9,11;8063:16, 20;8064:4;8067:16; 8068:24;8069:15; 8075:6,7,11,13,17, 23;8076:9,9,20; 8077:13,17,25; 8078:1;8079:7,17; 8082:2,5,20;8083:1, 17,18,18,19;8084:1, 10,13,23,23; 8085:24;8086:2,9, 12,13,14,15,25; 8087:4,10,15; 8088:4,14;8089:2, 11;8090:20; 8091:11;8092:9,12, 16;8094:1,1,5,6,11, 16,18,19,22,24; 8095:2,3,3,9,10,10, 10,18,23;8096:4,11, 12,13,14;8097:2,5,8; 8098:22;8099:5,9, 15;8100:23,23; 8101:2,11,12,14,21; 8102:2;8103:1; 8106:22;8107:9,25; 8108:3,6,6;8110:10, 20;8112:3;8115:23; 8116:9,16,19; 8119:16,18,24; 8120:2;8122:17; 8126:18;8129:3,8 million (10) 8079:20;8089:10; 8107:11,14,21;</p>	<p>8108:1,4,7,8;8111:1 MILTNER (2) 8056:10,10 M-I-L-T-N-E-R (1) 8056:10 mind (1) 8122:9 mindful (2) 8140:22;8141:24 mine (1) 8141:4 minimum (4) 8079:2;8084:20; 8096:17;8109:2 Minnesota (4) 8077:17;8080:25; 8082:12;8086:9 minor (1) 8131:23 minute (2) 8060:25;8077:1 minutes (2) 8097:20,21 misplace (1) 8057:18 missed (2) 8064:22;8068:9 missing (1) 8115:14 mistake (1) 8112:14 modeled (2) 8088:11,12 modification (1) 8069:24 moment (1) 8097:16 Monday (4) 8074:10;8134:21, 22;8138:1 money (2) 8071:15;8126:24 monitor (1) 8111:4 month (15) 8065:11,17,19,21; 8089:7,7,11,15,16, 17;8109:15; 8110:25;8123:14,17; 8131:4 monthly (4) 8093:21;8108:9; 8110:23;8123:11 months (5) 8089:18;8108:12; 8112:8;8115:17; 8131:2 months' (2) 8108:14;8115:20 month's (1) 8131:5 more (20) 8053:8;8056:5;</p>	<p>8059:20;8081:4; 8084:7;8087:2; 8088:3,24;8089:25; 8090:11;8094:6,7; 8111:3;8112:8; 8113:2;8115:3; 8125:1;8129:10; 8135:25;8141:2 Morgan (1) 8086:11 MORNING (32) 8053:1,3,14,17,19; 8054:5,8,11,15,18, 24;8055:2,10,16,25; 8068:5,6,7;8069:13, 14;8071:10,11; 8092:6,7;8105:5,6; 8119:3,4,7;8121:6; 8129:3;8134:13 most (9) 8081:12;8084:1; 8091:2;8095:21; 8099:1,6;8129:15; 8131:1,4 motion (3) 8131:25;8132:2; 8138:9 mounds (1) 8111:23 move (10) 8067:18;8091:19; 8097:2;8118:15; 8126:25;8132:13; 8133:6;8135:19; 8136:7;8137:11 moved (1) 8138:11 moves (2) 8084:1;8137:1 moving (6) 8075:11;8099:9; 8101:4;8135:17; 8138:7,8 much (14) 8069:8;8077:14; 8080:9;8083:12,24, 24;8084:7;8090:10; 8097:5;8102:7; 8110:22;8120:18; 8130:14;8131:12 multiplication (1) 8103:2 multiplied (3) 8107:9,19;8108:3 multiply (1) 8128:6 must (7) 8060:3;8068:16; 8139:12,15,20,24; 8140:2 Myra (1) 8136:11</p>	<p style="text-align: center;">N</p> <p>name (10) 8053:6;8054:2; 8055:3;8056:4,5; 8099:14;8105:18; 8115:15;8121:23; 8122:10 Napa (1) 8065:7 narrow (1) 8082:16 near (1) 8094:6 necessarily (4) 8087:5;8091:12; 8093:7;8141:15 necessary (8) 8063:21;8067:16; 8070:15;8099:24; 8116:1;8133:23; 8138:5;8140:15 necessity (1) 8060:1 need (13) 8058:24;8061:9; 8062:14;8071:14; 8073:20;8077:5,14; 8083:21;8085:13; 8115:22;8121:7; 8125:2;8141:22 needed (2) 8086:20;8132:18 needs (2) 8077:10;8140:13 negative (9) 8082:14;8107:9, 19;8108:2,4,7,13; 8110:4;8132:1 negatives (1) 8110:5 neglected (2) 8057:7;8091:19 negotiate (2) 8093:11;8096:2 negotiated (1) 8084:13 net (2) 8107:21;8109:14 network (2) 8086:6;8094:18 Nevada (1) 8086:14 New (21) 8077:16;8078:12; 8079:7;8085:24,25; 8086:10,23;8090:25; 8096:16,17,21; 8097:2;8098:25; 8099:1;8106:3; 8115:23,24;8116:4, 8,19,24</p>	<p>News (10) 8093:14,25; 8094:9,13;8095:13, 15;8098:21;8099:8; 8100:21;8101:7 News' (1) 8101:21 newsletters (1) 8079:19 next (21) 8061:24;8062:17, 23;8079:15;8080:3, 5,5;8085:7;8089:7, 16;8095:21; 8098:10;8107:20,24; 8115:13;8120:9; 8121:14;8124:8,15; 8130:15;8134:3 Nicole (2) 8055:22;8122:2 night (1) 8056:16 nights (1) 8054:7 nine (1) 8117:11 non-DFA (2) 8094:21,22 none (10) 8062:17;8067:24; 8073:25;8091:24; 8118:19;8128:19; 8131:9;8133:11,16; 8142:3 nonfat (3) 8084:23;8087:4; 8124:19 non-objection (1) 8119:11 non-payment (1) 8116:10 non-quota (2) 8126:18;8127:17 non-use (2) 8110:2,3 noon (2) 8142:5,13 nor (1) 8070:9 normally (1) 8060:8 north (1) 8080:7 Northeast (9) 8076:3,4;8080:12, 19;8083:14; 8085:22;8091:5; 8100:23;8101:3 Northern (11) 8110:15;8123:8, 12,23;8124:1,6; 8125:8;8127:22; 8128:3,9,10</p>
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<p>Northwest (1) 8075:24 note (9) 8057:16;8068:20; 8077:20;8090:22; 8093:16;8103:13; 8131:24;8136:10; 8139:6 noted (1) 8067:7 Notice (3) 8139:3,4,12 noting (3) 8066:12;8068:24; 8077:11 NOVEMBER (4) 8053:1,2;8083:4; 8141:8 Number (49) 8054:12,19; 8055:3,8;8061:9,14; 8062:23;8069:6; 8076:11;8081:11,22; 8082:17,23;8090:3, 4,6;8093:6;8097:7; 8102:18,24;8103:2, 3;8105:12;8106:20, 22;8107:13;8108:1, 2,8;8109:20;8110:2, 18,25;8111:6,10,11, 15;8113:4;8116:7; 8118:3;8121:14; 8124:9,11;8127:14; 8130:21;8134:11; 8137:15;8138:14; 8141:15 numbers (18) 8066:14;8079:21; 8083:15;8084:13; 8103:17,20,23; 8106:6,9,13,14,19, 23;8107:1;8125:16; 8126:10;8127:14,20 numeral (1) 8103:14 Numerals (1) 8108:2</p>	<p>8103:19;8128:18; 8133:10,15;8140:10 objections (1) 8118:18 obligation (2) 8070:1;8140:9 obtain (1) 8058:25 Obviously (8) 8059:23;8081:20; 8083:11;8084:9; 8096:6,7;8136:10; 8137:5 occurred (1) 8132:8 OCIO (1) 8059:10 October (4) 8112:4,9,9; 8123:17 off (8) 8061:22;8070:11; 8078:7;8084:8; 8089:6,9;8098:1; 8134:4 offended (1) 8133:7 offer (5) 8105:8,10; 8122:19;8123:2; 8130:8 offered (1) 8132:10 Office (10) 8053:15,18; 8055:5;8059:8,11; 8061:3,12,13,14; 8139:19 Officer (3) 8055:1;8059:12; 8060:23 official (4) 8058:2,24; 8059:15;8139:12 often (2) 8114:16;8142:1 Ohio (2) 8077:16;8101:13 Oklahoma (2) 8081:8;8082:13 O'Lakes (7) 8054:14,21,23; 8074:12,14;8099:22; 8109:18 once (5) 8056:6;8057:8; 8098:12;8116:21,24 one (62) 8056:15,18; 8057:14;8058:24,25; 8059:7,20;8060:6,8, 8;8061:10,11,21; 8062:6,19;8064:21;</p>	<p>8067:22;8069:16; 8072:14;8073:13; 8075:9;8078:12; 8085:13;8087:23; 8088:1,7,8;8089:6, 14,21;8090:16,25; 8091:7,23;8093:13; 8096:25;8097:16; 8099:6,10;8101:6; 8103:13;8104:1; 8106:12,17;8107:5; 8108:13;8110:4; 8113:9;8118:1,1,17; 8119:7;8123:2; 8125:1,19;8128:17; 8129:10;8134:13; 8140:16,17,23; 8141:14 one-half (1) 8109:15 one-one (1) 8111:1 one-page (1) 8058:12 ones (2) 8106:9;8107:5 online (2) 8057:2;8092:11 only (10) 8058:20;8060:9; 8072:24;8076:15; 8078:14;8104:11; 8119:7;8122:19,20; 8137:8 open (1) 8102:19 opening (8) 8132:6;8139:10, 13,16,17,21;8140:1, 2 operate (5) 8084:12,24; 8088:18,22;8093:4 operating (1) 8078:1 operation (6) 8074:17;8075:20; 8076:18;8086:7,8,9 operational (2) 8075:9;8080:11 operations (2) 8074:22;8088:3 opinion (1) 8109:20 opportunities (1) 8129:15 opportunity (7) 8060:20;8072:21; 8117:22;8129:18; 8130:10;8135:18; 8142:7 oppose (1) 8109:18</p>	<p>opposed (1) 8077:8 opposition (2) 8121:1;8132:2 Option (3) 8106:8,21; 8107:13 options (3) 8069:1;8103:16; 8113:21 O-R (1) 8056:2 Orange (3) 8064:8,24; 8110:14 orchards (1) 8112:25 Order (76) 8053:23;8054:1,1; 8067:9;8074:13,17; 8075:3,19,21,22,24, 24;8076:3,4,4,5,5,6, 6,9,10,13,13,14,14, 24;8077:15;8078:9, 11,18,24;8079:2,4,8, 12,24,24,25;8080:3, 11,12,23,23; 8081:20;8082:2,6,6, 15;8087:20;8088:9, 12,14,21,25; 8089:17,20,23,24, 25;8090:3,10,12,18; 8091:11;8099:16; 8100:12;8106:1,23; 8107:15;8110:9; 8111:18;8117:16; 8118:2;8122:18; 8134:3;8140:2 orderly (1) 8090:9 Orders (17) 8067:10;8075:5; 8076:1,6,7,11; 8077:1,2;8080:10; 8082:4;8084:2,7,12; 8087:15;8088:22; 8097:13;8103:2 Order's (1) 8078:21 ordinary (1) 8061:5 original (6) 8060:6,8;8120:6; 8134:19;8137:25; 8140:16 originally (1) 8062:6 originating (3) 8064:10;8065:1,9 others (9) 8053:11;8060:8; 8093:12;8095:3; 8100:22;8135:5;</p>	<p>8137:19;8140:10,16 out (22) 8053:9;8057:7,8, 8;8061:15;8064:12; 8070:10;8077:6; 8078:8;8086:22; 8089:21;8092:19; 8097:2;8100:20; 8112:16;8113:24; 8114:7,9;8115:6,20; 8117:3;8122:19 outlets (1) 8077:25 outlined (1) 8089:4 out-of-state (3) 8119:18,24; 8120:2 outside (5) 8063:17;8070:25; 8072:17,19;8073:16 outstanding (1) 8116:20 over (15) 8079:15;8080:22; 8081:9;8084:20; 8090:22;8103:9; 8111:1,24;8115:17, 20;8118:9,12; 8123:16;8126:18; 8127:11 overall (1) 8088:3 overnight (1) 8134:12 overview (1) 8075:5 overwhelming (2) 8078:4;8079:1 owe (1) 8058:3 own (6) 8069:2;8078:14; 8099:3,4;8117:17; 8125:12 owned (1) 8079:14 owners (1) 8079:24 owns (1) 8076:18</p> <hr/> <p style="text-align: center;">P</p> <hr/> <p>Pacific (2) 8060:22;8075:24 page (11) 8061:15;8062:23; 8095:15,15,15; 8098:3;8113:17; 8114:24;8125:16,19; 8127:18 pages (5)</p>
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8062:21;8127:3,6, 13,19 paid (2) 8114:1;8125:12 Pamela (1) 8054:2 paper (1) 8057:6 paragraph (1) 8065:24 parcel (1) 8061:3 parens (1) 8106:19 parentheses (1) 8106:23 parse (1) 8095:4 part (15) 8059:13;8084:15; 8086:5;8094:18; 8100:3,22,24; 8103:11;8106:5,15; 8129:6;8131:1; 8140:1,11;8142:12 participants (1) 8142:9 participate (1) 8142:7 participating (1) 8053:12 particular (1) 8069:18 particularly (1) 8069:17 parties (3) 8060:2;8117:2; 8138:4 parts (2) 8112:22;8113:22 pay (1) 8096:17 payback (1) 8126:24 paying (1) 8089:15 payment (4) 8063:19;8072:1, 13;8116:14 payments (5) 8073:15;8116:6, 11,21,24 pays (1) 8067:12 PDF (3) 8058:6,7,18 peak (1) 8087:10 peeve (1) 8141:4 pencil (1) 8057:9 pencils (1)	8057:10 Pennsylvania (1) 8085:23 people (9) 8060:10,19; 8070:23;8071:3; 8094:18;8095:18; 8100:4;8135:23; 8139:16 per (22) 8080:21;8081:1,1; 8082:15;8083:1; 8084:13;8086:24; 8092:20;8106:7; 8107:25;8108:2; 8109:15,15;8123:20; 8124:5,7,8,13; 8126:4;8128:9,13; 8130:20 perceived (1) 8090:20 percent (28) 8065:12,18; 8069:4;8076:12; 8078:12,15,20,21, 21;8080:14,16; 8083:7,7,9,13; 8089:2,5,8,9,9,10,11; 8092:23;8094:19; 8099:15;8112:4,10; 8126:23 percentage (3) 8078:20;8101:22, 23 perfect (2) 8119:9;8142:6 perfectly (3) 8059:22;8071:1,2 perhaps (7) 8074:25;8077:4; 8086:22;8090:20; 8112:22,24;8117:5 period (5) 8065:21;8098:20; 8112:5;8115:17,21 periods (2) 8095:25;8099:2 permanent (1) 8112:25 permitted (2) 8139:21;8140:3 person (3) 8056:11;8060:9; 8061:12 personally (1) 8062:1 perspective (3) 8136:1,4,7 pet (1) 8141:4 Pete (1) 8054:22 Peter (1)	8114:14 phone (2) 8061:9,14 phrase (1) 8134:24 pieces (1) 8111:23 place (6) 8064:15;8084:3,6, 12;8086:21;8087:6 places (2) 8058:7;8067:6 plan (3) 8115:6,17;8117:3 plans (1) 8079:10 plant (20) 8066:2;8069:25; 8075:12;8076:16,17, 17;8079:13,24; 8082:20;8086:22; 8087:1;8088:4; 8089:6;8091:2,2,3,5, 6;8119:19;8120:2 plants (41) 8064:5,7,17,23; 8065:5,11,17; 8069:20;8070:14; 8076:15;8077:23; 8078:5;8079:4,7,16; 8081:12,17,22,25; 8082:6;8084:5,5,6, 18,24,25;8085:18, 23,24;8087:19,24; 8090:24;8094:21,23; 8095:2,6,9;8099:3,4; 8101:7;8110:12 plants' (1) 8076:19 plant-to-plant (2) 8110:10,19 play (1) 8070:4 pleadings (1) 8141:6 pleasant (1) 8056:6 please (10) 8053:13;8058:25; 8059:20;8061:2,7; 8073:10;8085:12; 8107:6;8121:9; 8124:12 pledge (1) 8116:6 plus (3) 8080:16;8100:11; 8106:10 pm (11) 8060:17,22; 8062:7,8,9,10,11,13, 14,15;8139:18 podium (1)	8056:14 point (10) 8068:17;8073:14; 8083:5,6;8086:22; 8087:3;8090:15; 8116:7;8136:23; 8141:9 points (2) 8068:14;8096:25 Policy (1) 8055:19 Ponderosa (1) 8055:23 pool (15) 8064:4;8065:11, 17;8070:1;8073:18; 8089:10;8108:9,10, 11,11,14;8109:14; 8110:20;8111:2; 8114:2 pooled (1) 8076:9 pooling (12) 8088:9,23;8089:3; 8090:7;8097:11; 8115:23;8116:2,16, 19;8119:14,17; 8129:8 Portales (2) 8086:10,22 portion (2) 8066:19;8097:3 position (5) 8097:11;8117:9; 8120:4;8122:15; 8134:15 positive (1) 8106:12 possibility (1) 8137:5 possible (5) 8076:20;8109:8; 8136:2,2;8138:23 post (2) 8057:1,17 post-hearing (1) 8061:18 postmortem (1) 8134:4 potential (2) 8129:25;8137:9 potentially (2) 8072:18,19 pound (15) 8075:17;8092:19; 8124:1,3,5,6,7,7,8, 13;8128:9,13; 8130:9,11,20 pound-for-pound (2) 8129:21;8130:4 pounds (17) 8089:10;8092:13, 16;8106:14,16;	8107:9,20,25; 8108:3,6;8124:2,4, 18,24;8125:5,7,9 powders (3) 8084:24;8085:24; 8087:4 power (1) 8078:5 practice (1) 8096:6 pre-agreed (1) 8084:19 preceding (1) 8065:21 precisely (2) 8101:5;8103:22 predominance (1) 8078:4 preface (1) 8075:4 prefer (1) 8141:17 preliminary (2) 8056:15;8062:16 premium (1) 8123:19 premiums (2) 8082:13,14 prepared (6) 8057:24;8063:7; 8074:4,20;8098:5; 8122:6 preponderance (1) 8069:4 presence (1) 8089:21 present (2) 8132:2,5 presented (7) 8074:11;8075:4; 8100:9,10;8102:11; 8122:23;8132:12 preservation (1) 8122:17 preserve (1) 8122:16 President (1) 8054:25 pressed (1) 8114:9 pretty (2) 8080:9;8087:4 prevailing (2) 8081:18,19 prevents (1) 8141:7 previous (1) 8106:5 previously (2) 8102:16;8131:24 price (24) 8071:17;8080:14; 8082:4;8083:22,22;
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8089:15,22;8090:17; 8094:12;8096:15; 8099:11;8101:24; 8102:23;8103:15,15; 8104:2;8106:7; 8107:8;8109:9; 8123:6,13,14; 8125:22,23 priced (1) 8084:14 prices (37) 8074:13;8075:1; 8076:9,10;8077:7,7; 8079:2,25;8080:18, 20;8081:14,16,16, 18,19;8084:14,18, 20;8089:19;8090:18, 18;8091:7,13; 8094:2;8096:18; 8097:9,9;8100:1; 8103:1;8106:2,2,23; 8107:15;8109:3; 8123:7,12;8127:9 pricing (2) 8089:14;8093:8 primarily (3) 8080:11,12,23 principal (1) 8055:5 principle (1) 8120:3 principles (1) 8067:13 printed (6) 8060:2,5,14; 8065:14,15;8140:15 prior (4) 8062:16;8069:3; 8099:8;8137:24 priority (1) 8116:9 probably (7) 8056:17;8058:11; 8064:12;8069:6; 8083:11;8086:25; 8141:17 problem (2) 8061:4;8141:10 problems (1) 8131:23 procedural (2) 8134:9;8142:3 proceed (6) 8063:7;8074:24, 25;8085:14; 8105:13;8122:1 proceeding (8) 8053:10;8055:9; 8062:16;8097:12; 8102:8;8134:7; 8141:11,16 proceedings (4) 8056:6;8117:9;	8122:25;8142:14 processed (1) 8087:2 processing (1) 8079:18 processors (2) 8078:1;8116:15 produce (3) 8058:5;8082:3; 8087:24 produced (4) 8108:6;8115:2,3; 8125:7 Producer (15) 8055:23;8069:24; 8070:2;8071:15; 8075:22;8108:21; 8109:9,19;8114:8; 8116:10;8117:8,12; 8122:3,12;8126:5 producer-handler (3) 8129:6,7,21 producer-handlers (1) 8129:11 Producers (17) 8055:25;8056:9, 11;8069:15;8070:4; 8073:16;8075:24; 8089:16;8108:25; 8112:18,20;8116:9, 15;8117:15,17,25; 8129:3 producers' (1) 8116:24 product (3) 8084:5;8087:4; 8095:19 production (10) 8068:23,24,24; 8079:25;8083:5; 8087:16;8092:12,16; 8095:16;8112:3 products (1) 8085:25 Program (8) 8053:20,21; 8054:4;8069:22; 8115:8;8116:2,19; 8117:13 Programs (5) 8053:16;8054:1,6, 9;8067:7 projecting (1) 8089:19 Proponents (6) 8054:12;8055:8; 8058:22;8120:24; 8137:14;8139:20 Proposal (44) 8054:12,19; 8055:8,13;8063:15; 8066:13;8073:21; 8088:10,19;8089:4;	8090:6;8102:24; 8106:2,20,20,22; 8107:13;8108:21,22; 8109:19,19,21; 8110:2,17,17; 8111:6,10,11,15; 8112:2;8113:4,9,11; 8118:3,3;8120:24; 8121:2,2;8134:14; 8137:14,15;8139:14; 8140:2,12 proposals (2) 8113:8;8138:14 propose (3) 8138:13,14,19 proposed (17) 8057:5;8058:11; 8059:16;8066:25; 8067:4,5;8088:9; 8090:3;8109:21; 8111:14;8123:4; 8135:3;8136:5; 8137:15;8138:15; 8141:18,24 provide (9) 8057:4;8058:8; 8074:5,15,20; 8103:17;8119:18; 8132:24;8140:17 provided (2) 8093:18;8117:11 provider (1) 8107:4 providing (1) 8058:17 provision (1) 8088:25 provisions (5) 8088:15;8097:13; 8109:6;8115:25; 8141:21 publically (1) 8115:18 publication (2) 8113:20;8142:1 published (2) 8066:13,13 pull (1) 8134:17 pulled (1) 8100:20 purchase (3) 8078:4;8122:22; 8129:22 purchased (6) 8108:25;8125:11; 8129:9,13;8130:5,9 purchaser (1) 8129:25 purchases (4) 8095:2,5,6;8131:3 purchasing (3) 8082:6;8130:6,6	pure (1) 8114:17 purpose (3) 8064:13;8075:8; 8122:13 purposes (6) 8066:12;8080:17, 17;8088:23;8122:3; 8123:3 put (12) 8057:6,7;8065:14; 8088:10;8089:7; 8099:23;8102:7; 8132:23;8134:22; 8135:24,25;8137:5 puts (1) 8121:4 putting (1) 8132:25	raised (2) 8105:9;8122:14 raising (1) 8137:8 range (8) 8080:13,17,22; 8081:2,2;8082:16; 8084:24;8089:10 ranged (1) 8080:21 ranges (2) 8094:12;8126:3 rarely (1) 8095:12 rates (1) 8065:23 rather (4) 8103:6;8132:19, 25;8135:17 ratio (6) 8123:20,22,24; 8127:25;8128:2; 8129:12 reach (1) 8061:2 read (18) 8057:8;8059:4,10, 17,20;8060:16; 8071:20,22;8074:9; 8114:11,14;8124:16, 16;8125:1,17,18; 8126:14;8132:4 Reading (2) 8085:23;8122:9 reads (1) 8066:20 ready (5) 8057:2,10;8121:9, 11;8135:1 real (1) 8098:19 realize (2) 8070:24;8141:3 really (14) 8055:13;8070:24; 8104:23;8110:22; 8111:4,23;8114:6, 10;8115:6;8117:16; 8119:7;8134:10; 8135:23;8136:11 reason (2) 8058:6;8071:25 reasonable (2) 8079:21;8083:11 reasons (2) 8110:21;8141:14 Rebuttal (6) 8062:22;8074:11; 8102:10;8117:10; 8120:23;8133:3 recalibrated (1) 8091:9 recall (1)
Q				
quantities (1) 8101:20				
quasi-governmental (3) 8116:5,8,25				
quick (1) 8098:19				
quickly (1) 8136:7				
quite (1) 8077:12				
quota (112) 8089:22;8108:17, 23,24;8109:1,3,10, 11,11,12,13,14; 8113:13,24;8114:25; 8115:2,7,11;8116:6, 10,21,24;8117:4,4,6, 13;8119:10,12,13; 8122:12,15,16,17,18, 21,22,24;8123:1,1,2, 3,5,5,7,9,14,16,16, 18,19,19,20,21,23, 23,24,25,25;8124:1, 2,3,4,5,6,7,19,22; 8125:6,6,7,9,11,13, 22,23;8126:2,3,6,8, 11,16,17,21;8127:8, 11,12,17,17,17,23, 24;8128:2,2,2,7,8,10, 13;8129:20,21,23; 8130:3,3,5,6,6,9,10, 11,20;8131:2,2				
quote (2) 8114:11,15				
quoted (1) 8066:19				
R				
raise (2) 8085:12;8094:14				

8133:8 receive (6) 8058:14;8060:12; 8063:17;8072:20; 8073:16;8095:9 received (9) 8060:17;8061:11; 8068:2;8092:2; 8115:9;8118:21; 8128:21;8133:14,19 receiving (3) 8060:13;8066:2; 8110:12 recent (4) 8091:2;8112:8; 8129:15;8131:4 recently (2) 8079:11;8126:22 recognize (5) 8100:20;8105:14; 8108:23;8117:4; 8123:2 recognized (1) 8060:3 recognizing (2) 8109:14;8119:12 recollection (1) 8101:17 record (23) 8053:2;8061:23; 8062:8;8097:22,24; 8098:1;8099:14; 8100:9;8103:20; 8104:16;8105:25; 8110:6;8111:8; 8121:13;8122:9; 8125:17;8132:7,13; 8133:21;8134:4; 8137:5,16;8142:13 RE-CROSS-EXAMINATION (1) 8100:17 redirect (9) 8073:10,10,11,13; 8098:16,17;8120:10; 8131:9,9 reduced (1) 8067:17 reducing (1) 8063:18 reduction (1) 8126:5 reference (1) 8125:2 referenced (3) 8098:20,21; 8132:11 referencing (1) 8085:21 referred (5) 8071:15,24; 8082:12,14;8099:2 referring (4) 8071:13;8073:1;	8098:3;8104:21 reflect (1) 8125:12 reflected (3) 8097:3;8125:15; 8128:3 reflective (2) 8081:23;8125:16 regard (4) 8063:15;8076:24; 8084:21;8141:10 regarding (4) 8073:15;8108:20; 8109:2;8122:14 region (1) 8123:13 regional (4) 8080:4;8109:13; 8126:3,11 regions (1) 8123:10 Register (1) 8142:1 regular (14) 8096:11,15; 8108:24,25;8109:12; 8122:24;8123:1,5, 4 regularly (2) 8095:3,11 regulation (3) 8060:5;8115:24; 8141:11 regulations (2) 8088:12;8141:24 Regulatory (2) 8053:16;8071:4 relate (2) 8083:4;8087:21 related (2) 8100:25;8131:25 relating (1) 8131:25 relationship (1) 8093:12 relationships (1) 8084:17 relative (1) 8128:7 released (1) 8115:18 relief (1) 8140:8 rely (1) 8061:6 remain (3) 8105:17;8121:20; 8133:23 remaining (1) 8073:5 remains (1) 8122:15	remember (5) 8072:2;8079:21; 8103:22;8106:11; 8131:6 Remove (1) 8110:4 removed (1) 8097:14 repaid (1) 8116:22 repeat (1) 8124:9 repeatedly (1) 8114:9 replies (1) 8140:25 reply (8) 8120:6;8134:20; 8137:8,25;8139:22, 23,25;8140:3 repooling (3) 8089:3,12;8090:7 report (5) 8094:4;8098:2; 8101:5,21;8113:23 reported (1) 8094:1 reporter (2) 8056:25;8118:9 reporting (1) 8116:14 reports (4) 8098:21;8101:12; 8113:21;8115:9 represent (4) 8090:5;8101:21; 8130:25;8134:8 representation (1) 8132:25 representative (3) 8081:17,19; 8100:12 representing (6) 8055:12,22; 8117:18,19;8122:2; 8138:14 represents (8) 8099:12;8105:25; 8108:13;8110:10,19; 8112:11;8115:5; 8131:1 request (3) 8132:1;8140:8,9 requested (2) 8062:3;8139:12 requests (1) 8061:24 required (4) 8060:4;8101:2; 8133:24;8141:12 requirement (1) 8065:19 re-read (2)	8065:15,16 resources (1) 8112:19 respect (14) 8065:24;8067:3; 8074:12,14,16,21, 22;8076:8;8080:16; 8088:8;8093:18; 8103:21;8125:23; 8132:12 respond (1) 8139:16 response (3) 8105:8;8119:17; 8132:5 responsibilities (1) 8075:10 responsible (2) 8082:19;8094:25 rest (2) 8075:25;8120:24 result (1) 8090:7 resulted (1) 8107:14 resulting (1) 8091:11 results (2) 8107:10,20 return (5) 8062:19;8126:16, 20,23;8129:24 returning (1) 8131:12 revenue (1) 8114:1 revenues (1) 8108:11 Review (3) 8114:25;8115:2, 11 reviewed (1) 8067:14 reviewing (1) 8088:19 Richmond (1) 8056:3 right (35) 8057:23;8061:9, 17,21;8062:15; 8066:18;8070:7; 8071:6,6;8078:3,23; 8079:20;8092:14,17, 21,24,25;8093:7; 8098:23;8101:10; 8103:8;8104:7,18; 8106:6;8107:12; 8108:12;8120:6,8; 8124:20,20;8127:19; 8131:11;8138:13; 8139:10;8142:2 rights (1) 8116:24	Rise (1) 8114:13 risks (1) 8112:19 Riverside (6) 8064:9,11,18,25; 8065:3;8110:14 Rives (1) 8055:22 road (4) 8114:7;8115:14, 14;8136:13 Rob (4) 8056:9;8069:14, 15;8129:3 role (2) 8070:4;8126:15 Roman (2) 8103:14;8108:2 room (7) 8057:23;8061:16; 8114:13;8133:23; 8136:10;8137:19; 8141:4 rooted (1) 8108:23 row (4) 8107:18,24; 8108:1,5 RQA's (1) 8125:24 rule (3) 8053:8;8137:6; 8141:7 ruled (1) 8060:24 run (2) 8105:20;8129:19 runs (2) 8084:18;8110:25 Ryan (1) 8056:10
S				
Sacramento (1) 8065:8 Safety (1) 8053:16 sale (2) 8087:5,22 sales (36) 8074:12,14; 8075:1,2;8076:8,9; 8078:10,12,16,24, 25;8079:4;8080:14, 16,18,21,25; 8081:17;8084:3,11, 15,21,22,24; 8087:19;8094:15,21, 22,23,24;8095:17, 19;8100:6,7,9,11 same (22)				

8057:19;8060:7, 21;8063:18; 8065:13;8067:13; 8070:19,21;8077:20, 21;8084:4;8093:17; 8095:14,15;8107:18; 8108:15,23;8110:18; 8111:2;8112:5; 8115:4;8120:2 San (17) 8054:17;8064:9,9, 11,11,19,19,25,25; 8065:3,4,7,8; 8068:11;8110:13,14, 16 Santa (3) 8065:7,7;8110:15 Saturday (1) 8077:13 save (1) 8113:10 savvy (1) 8059:24 saw (1) 8079:19 saying (2) 8081:4;8136:19 Sayonara (1) 8055:17 Scandalous (1) 8114:13 scattered (1) 8084:25 scenario (1) 8077:20 SCHAD (11) 8054:20,20; 8057:20;8071:16; 8074:9,11;8093:17; 8099:22;8100:10; 8133:7,9 S-C-H-A-D (1) 8054:20 Schad's (1) 8133:3 SCHAEFER (2) 8053:24,24 S-C-H-A-E-F-E-R (1) 8053:24 schedule (3) 8086:24;8140:4,7 scheduled (1) 8087:1 schedules (1) 8095:22 scheduling (1) 8138:3 SCHIEK (10) 8055:16,16; 8068:4,5,7;8113:13, 17;8114:25;8115:3; 8117:1 Schiek's (1)	8115:8 season (3) 8056:6;8077:11; 8099:5 seasonal (5) 8076:15;8083:7,9; 8084:14,17 second (4) 8062:23;8083:18; 8103:3;8106:13 Secretary (3) 8115:1;8122:20; 8141:23 Section (4) 8064:2;8065:25; 8070:9;8088:20 sections (1) 8080:25 Securities (1) 8115:17 security (2) 8061:12;8116:10 seems (1) 8142:6 Select (1) 8056:11 selected (1) 8107:3 sell (6) 8081:12;8090:11; 8096:4;8100:6; 8112:24;8122:18 selling (3) 8094:1,1,6 sells (1) 8094:7 send (7) 8057:11,13; 8058:4,21;8073:3; 8139:2;8140:22 Senior (1) 8054:25 sensitive (1) 8059:4 sent (4) 8058:20,22,23; 8140:17 sentence (3) 8095:21;8124:15; 8125:19 separate (1) 8113:21 September (3) 8108:12,14; 8123:17 serve (1) 8088:24 service (1) 8061:7 SESSION (1) 8053:1 set (3) 8119:7;8123:7;	8140:7 seven (3) 8075:9;8076:22; 8084:19 several (4) 8071:13;8079:6; 8127:13,14 shall (5) 8064:3;8065:22, 25;8066:3,20 share (4) 8073:17;8092:22; 8114:12;8115:19 sheer (1) 8090:2 shipment (2) 8072:21;8110:19 shipments (1) 8110:10 shipped (1) 8101:14 shipping (1) 8066:2 short (1) 8061:23 shortcut (1) 8132:21 shortest (1) 8066:1 show (4) 8058:19,21; 8086:4;8132:16 shows (2) 8085:6;8123:11 side (5) 8068:15;8090:11, 12;8114:9;8119:6 significance (1) 8098:22 significant (3) 8070:3,3;8089:23 similar (6) 8074:15;8089:24; 8099:23;8101:8; 8115:2;8129:19 simple (3) 8107:7;8114:2,3 simply (4) 8056:21;8086:19; 8087:8;8089:12 sincere (1) 8118:8 single (3) 8088:21;8130:9, 11 sitting (1) 8087:2 situation (2) 8077:21;8089:20 situations (1) 8101:1 six (2) 8084:19;8086:25	size (1) 8057:12 sizes (1) 8117:19 skim (3) 8085:25;8110:10, 11 slice (1) 8090:5 slightly (1) 8123:9 small (9) 8059:5;8076:16; 8084:21,23;8086:13, 15;8087:11;8101:22, 23 smaller (1) 8083:14 Smartest (1) 8114:12 SNF (5) 8124:22;8125:5,6, 7,9 Solano (1) 8065:8 sold (5) 8083:17;8094:5, 11;8097:5,8 solids (1) 8124:19 somebody (2) 8056:17;8073:3 someone (1) 8061:12 sometime (2) 8129:14;8137:6 sometimes (1) 8077:6 somewhat (3) 8090:2;8093:12; 8125:25 somewhere (1) 8077:14 Sonoma (1) 8065:8 sorry (4) 8064:13,14; 8095:1;8104:1 sort (8) 8074:24;8081:14; 8089:21;8094:22; 8122:23;8134:14,17; 8135:8 sorts (1) 8115:5 sound (6) 8079:20;8092:13, 17,24;8114:16; 8118:9 sounds (5) 8079:21;8092:21, 25;8103:8;8114:2 South (1)	8101:13 Southeast (9) 8069:18;8076:14; 8077:1,15,22,25; 8078:1,11;8083:12 Southeastern (3) 8067:10;8076:5, 11 Southern (12) 8068:24;8081:7; 8110:13;8123:8,13, 25;8124:3,8; 8125:10;8127:25; 8128:5,13 Southwest (11) 8075:23;8076:6; 8078:18,21,24; 8079:12,13;8083:13; 8090:25;8099:13,17 space (2) 8076:23;8084:3 sparing (1) 8138:22 speak (1) 8137:20 Specialist (1) 8054:3 specific (1) 8110:11 specifically (1) 8112:20 specify (1) 8081:14 spell (2) 8105:17;8121:22 spelled (1) 8054:22 spelling (1) 8056:9 spoke (1) 8134:13 spot (5) 8096:10,12,13,14; 8097:10 spring (2) 8084:9;8137:7 Springfield (1) 8076:18 St (2) 8082:13;8086:1 staffs (1) 8080:19 stamp (1) 8060:8 stand (6) 8057:21;8062:19; 8098:7;8103:4; 8132:24;8133:1 standpoint (2) 8071:4,5 stands (3) 8059:8,11; 8111:21
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<p>started (5) 8077:10;8114:10, 23;8115:13;8140:14</p> <p>state (13) 8105:17;8108:25; 8110:9;8111:18,20; 8117:20;8121:22; 8125:24;8129:11; 8130:2,7;8134:14,16</p> <p>stated (2) 8131:24;8138:7</p> <p>Statement (7) 8062:22;8063:8; 8074:4,15;8094:9; 8108:20;8122:6</p> <p>States (5) 8053:6,13; 8087:15;8092:13; 8139:8</p> <p>statistics (1) 8081:20</p> <p>stats (1) 8080:13</p> <p>status (1) 8111:25</p> <p>statutes (1) 8108:24</p> <p>stay (3) 8062:4;8112:20; 8134:2</p> <p>step (2) 8115:13;8120:20</p> <p>still (7) 8059:1;8085:12; 8098:7;8111:9; 8120:4,16;8133:21</p> <p>Stoel (1) 8055:22</p> <p>stop (2) 8076:25;8107:12</p> <p>stories (1) 8117:18</p> <p>Strategy (2) 8055:1;8113:22</p> <p>stressed (1) 8100:23</p> <p>stretch (1) 8097:21</p> <p>strictly (3) 8067:8;8070:11; 8112:22</p> <p>strike (5) 8065:2,3,10; 8066:14,21</p> <p>strong (3) 8117:12,17; 8118:2</p> <p>structural (1) 8116:1</p> <p>structure (2) 8090:10;8112:15</p> <p>study (1) 8113:18</p>	<p>subject (4) 8108:17;8109:5, 22;8138:9</p> <p>subjects (1) 8074:21</p> <p>submission (3) 8061:11;8062:14; 8133:22</p> <p>submissions (2) 8061:19;8141:16</p> <p>submit (2) 8135:2;8137:15</p> <p>submitted (3) 8060:21;8112:2; 8118:3</p> <p>submitting (2) 8057:5;8133:25</p> <p>subsidy (1) 8110:20</p> <p>substance (1) 8135:22</p> <p>substantial (1) 8079:11</p> <p>substantially (1) 8079:1</p> <p>subtitled (1) 8106:3</p> <p>subtract (1) 8123:14</p> <p>successful (1) 8116:3</p> <p>Sue (1) 8106:10</p> <p>sufficiency (1) 8109:20</p> <p>sufficient (4) 8063:21;8067:16; 8068:20,21</p> <p>suggest (2) 8103:6;8113:25</p> <p>suggested (2) 8088:10;8114:6</p> <p>suggestion (1) 8102:15</p> <p>suggests (1) 8113:23</p> <p>summarize (1) 8137:12</p> <p>summary (2) 8125:18;8127:8</p> <p>summer (1) 8084:9</p> <p>Sunday (2) 8077:13;8134:22</p> <p>sunk (1) 8091:8</p> <p>supplied (1) 8079:7</p> <p>supplies (4) 8063:21;8067:16; 8068:21;8069:5</p> <p>supply (5) 8063:20;8089:5,6;</p>	<p>8090:20;8091:12</p> <p>support (7) 8063:18;8117:12, 15;8118:2;8120:17; 8121:2;8134:2</p> <p>supporting (1) 8063:22</p> <p>suppose (1) 8087:21</p> <p>supposed (3) 8059:24,25; 8135:22</p> <p>sure (11) 8062:8;8064:13; 8072:9;8096:23; 8103:20;8104:7; 8105:24;8107:7; 8108:11;8111:9,14</p> <p>surplus (5) 8094:1,5;8101:11, 12,14</p> <p>survey (1) 8069:2</p> <p>suspect (1) 8099:7</p> <p>swing (2) 8083:7,9</p> <p>sworn (3) 8105:15,17; 8121:20</p> <p>system (17) 8067:12;8069:19; 8074:17;8082:2,7, 19;8083:23; 8089:24;8094:13; 8110:1;8111:5,12, 17;8116:15;8122:17, 21;8125:24</p> <p>systems (1) 8069:17</p>	<p>8082:20;8088:3; 8092:8,19;8093:1,9</p> <p>tankers (1) 8092:20</p> <p>task (1) 8113:20</p> <p>Taylor (6) 8056:2;8084:16; 8102:17;8103:10,17, 23</p> <p>Taylor's (3) 8102:23;8104:19; 8106:10</p> <p>team (3) 8098:6;8133:25; 8140:12</p> <p>teams (1) 8135:2</p> <p>Ted (1) 8123:4</p> <p>ten (1) 8090:23</p> <p>tend (1) 8114:18</p> <p>term (4) 8110:1;8111:9,10, 11</p> <p>terming (1) 8111:14</p> <p>terms (12) 8082:1;8083:17; 8084:15;8087:16; 8098:22;8099:20; 8100:9,10;8110:20; 8111:2;8113:6; 8130:2</p> <p>testified (4) 8071:21;8077:20; 8103:23;8119:23</p> <p>testify (4) 8056:20;8070:24; 8118:1;8125:21</p> <p>testifying (3) 8092:11;8103:10; 8121:10</p> <p>Testimony (40) 8062:21,22; 8063:10,14;8069:3; 8071:16,19,20,23; 8074:1,4,9,11; 8085:21;8088:11; 8090:8;8096:22; 8099:11;8100:8; 8102:17,22,23; 8104:19;8105:7,9; 8106:10;8109:22; 8113:12,15;8120:23; 8121:1,19;8122:3, 24,25;8123:11; 8127:11;8129:5; 8132:12;8133:3</p> <p>Texas (7) 8053:23;8077:15;</p>	<p>8078:11;8096:16,17, 21;8097:2</p> <p>Texas/Oklahoma (1) 8080:7</p> <p>thanks (3) 8098:15;8118:8; 8119:5</p> <p>Thanksgiving (1) 8098:24</p> <p>theories (1) 8114:20</p> <p>thereafter (10) 8053:9;8063:3; 8068:1;8085:9; 8092:1;8118:20; 8121:17;8128:20; 8133:13,18</p> <p>thinking (4) 8062:24;8112:19; 8134:19;8135:8</p> <p>thought (1) 8134:21</p> <p>thoughts (3) 8088:8,17;8141:1</p> <p>three (22) 8061:4;8062:20; 8070:20;8076:15; 8077:13;8078:5,6; 8079:14,14,16; 8080:5,13;8089:1, 18;8090:23;8097:6; 8109:16;8112:1,11; 8118:4;8135:5; 8137:19</p> <p>throughout (3) 8100:12;8102:7; 8134:10</p> <p>throughput (1) 8079:17</p> <p>Thursday (2) 8134:20;8137:25</p> <p>tie (1) 8105:11</p> <p>tightly (1) 8082:17</p> <p>timeframe (1) 8061:18</p> <p>timely (1) 8060:24</p> <p>times (8) 8083:7;8084:14; 8087:10;8093:25; 8095:9;8096:19; 8099:6;8128:6</p> <p>timing (1) 8094:7</p> <p>tiny (1) 8131:23</p> <p>tireless (1) 8118:10</p> <p>title (2) 8062:22;8106:1</p> <p>today (11)</p>
		T		
		<p>table (6) 8088:10;8108:5; 8115:2,5;8117:3; 8124:25</p> <p>tables (1) 8133:22</p> <p>talk (4) 8061:17,20; 8075:1;8127:6</p> <p>talked (7) 8071:16;8092:8; 8094:15;8095:6; 8111:22,24;8115:22</p> <p>talking (7) 8053:8;8075:15; 8078:17;8094:16; 8097:17;8101:6; 8104:22</p> <p>tanker (8) 8075:16,17;</p>		

8057:21;8086:24; 8087:14;8110:9; 8111:5,16,25; 8122:11;8125:21; 8139:14;8140:14 together (2) 8057:6;8134:9 took (3) 8123:18;8126:22; 8127:25 top (1) 8098:23 topic (7) 8067:20,25; 8072:5;8074:2; 8088:8;8102:6; 8138:13 total (10) 8078:22;8092:12; 8106:3;8108:5,6,9, 11;8124:18;8125:5,6 totally (3) 8070:15;8075:10; 8124:10 totals (1) 8106:16 toward (1) 8114:20 towards (2) 8083:5,6 traditional (2) 8129:20;8130:10 transactions (3) 8077:6;8086:20; 8099:12 transcript (22) 8057:5;8058:11; 8059:16;8133:22; 8134:25;8135:3,6, 10,14,16;8136:14, 25;8137:21,22; 8138:3,15,20,25; 8139:1,5;8141:13,14 transcripts (7) 8057:1;8135:1; 8136:17,22;8137:14; 8138:17;8141:18 transport (1) 8072:25 Transportation (32) 8062:22;8063:10, 14,16,17;8064:2,3,5, 7,17,23;8065:5,22; 8067:1,7;8068:8; 8069:4,17,18; 8072:1;8073:4,17, 18;8109:12;8110:1, 8;8111:1,6,9,11,14, 15 transporting (1) 8075:13 travelled (1) 8072:22	treated (1) 8060:6 treatment (5) 8119:18,19,23; 8120:1;8122:16 trees (1) 8112:25 Tremaine (2) 8055:5,12 tremendous (6) 8058:15;8079:15, 22;8081:21; 8086:19;8099:5 tremendously (1) 8090:24 trend (4) 8112:12;8113:2,5, 7 tried (1) 8134:17 true (8) 8060:19;8062:11; 8069:18;8073:19; 8077:9;8100:21; 8129:13;8130:9 truly (1) 8142:11 Trust (1) 8116:10 trustee (1) 8116:6 try (3) 8095:4;8115:7; 8134:9 trying (3) 8056:23;8104:15, 16 turn (1) 8112:24 turned (1) 8100:7 turnout (1) 8117:17 tweaked (1) 8139:15 twice (1) 8098:13 two (30) 8067:6;8070:18; 8071:22;8076:1; 8078:6;8079:6,15; 8089:18,20;8098:19; 8101:5;8103:17,18, 20,22;8113:20; 8115:22;8123:10,15; 8124:23;8127:3,6,9, 13,18;8131:23,23; 8135:5;8137:18; 8141:14 two-word (1) 8124:15 type (2) 8067:7;8107:18	typically (1) 8099:1 U U-L-I-N (1) 8055:11 ultimately (1) 8113:19 unchanged (1) 8117:13 uncontroverted (1) 8122:25 under (18) 8072:11,11; 8078:15;8088:11,12; 8089:3,8;8094:8; 8096:4,4,11,13,15; 8097:9;8103:1; 8106:7,20;8110:9 underclass (1) 8080:14 understands (1) 8122:23 understood (2) 8070:15;8119:11 undertake (1) 8113:20 undertaken (1) 8142:2 undertaking (2) 8142:8,11 Unfortunately (3) 8112:6,13; 8113:14 unidentified (1) 8129:10 uniformity (1) 8109:2 Uniontown (1) 8076:16 unique (1) 8109:3 unit (8) 8059:13,13; 8075:18;8088:20,23; 8089:5,6,24 United (6) 8053:6,12; 8087:15;8092:13; 8117:15;8139:8 universe (1) 8141:25 unless (1) 8140:1 unruly (1) 8090:7 untimely (1) 8098:9 up (10) 8056:8,22; 8069:23;8071:12,17, 24;8072:13;8087:4;	8105:11,11 updated (1) 8141:22 upon (6) 8061:6;8101:15; 8103:18;8119:13; 8120:2;8135:19 Upper (11) 8053:25;8076:5; 8077:17;8082:11; 8083:14;8091:4; 8098:3,3;8099:9; 8100:22;8101:2 UPS (1) 8061:8 USDA (11) 8053:18,19,21; 8054:1,3;8056:16; 8059:15;8072:8; 8118:8;8130:19; 8137:6 use (5) 8058:2;8061:5,7; 8082:2;8123:13 used (7) 8083:6;8110:22; 8111:10,10,12; 8130:20;8132:14 useful (3) 8070:12,17,18 uses (1) 8088:4 using (10) 8092:19;8102:25; 8103:16;8106:8,21; 8107:13;8113:24; 8123:22;8124:5; 8134:24 Utah (1) 8086:12 utilization (6) 8065:11,17,19,20; 8077:2;8081:21	8130:21;8131:2 values (4) 8123:12,23,24; 8130:24 valuing (2) 8123:3;8128:10 VANDENHEUVEL (8) 8056:8,9;8069:12, 15;8071:12; 8128:25;8129:2,3 varied (1) 8130:22 variety (1) 8085:24 various (4) 8099:11;8109:16; 8117:1;8126:11 vary (1) 8082:16 vast (1) 8135:21 Ventura (3) 8064:9,19,25 Vermont (1) 8086:3 version (3) 8059:16;8104:22; 8140:22 versus (2) 8088:5;8103:1 vertically (1) 8109:4 Vetne (1) 8056:1 via (2) 8056:23;8117:4 Vice (1) 8054:25 Victor (2) 8054:16;8055:25 VIERRA (2) 8053:22,22 view (5) 8090:6;8091:12; 8101:7;8111:20; 8119:12 VLAHOS (14) 8054:15,15; 8056:1;8102:11,15; 8104:20;8105:2,4, 22;8118:22;8120:10, 11,13,14 Vlahos' (1) 8104:16 voice (2) 8124:10;8137:17 voiced (1) 8118:1 volume (3) 8075:2;8077:18; 8078:22 volumes (6) 8081:14;8082:4;
			V	
			vacation (1) 8055:11 valleys (1) 8114:21 valuable (1) 8057:18 valuation (6) 8122:14,19; 8123:4,9;8124:5; 8130:20 value (24) 8082:2;8102:25; 8108:9,14;8122:20, 24;8123:1,2,5,16,18, 19,20,21;8124:2; 8125:8,10;8126:13; 8127:11;8128:6,7,7;	

8083:23;8084:10,13; 8096:2 VULIN (4) 8055:10,10; 8056:1;8059:20	well-thought (1) 8117:3 weren't (2) 8074:10;8093:16 west (5) 8080:8;8096:16, 17,21;8097:2 what's (4) 8093:8;8099:16; 8102:1;8112:1 Whereupon (3) 8097:23;8121:12; 8142:14 whey (3) 8079:18;8102:25; 8104:2 whole (1) 8070:9 whose (1) 8053:7 wide (2) 8081:2,11 widely (1) 8094:7 William (2) 8055:16;8068:5 Williams (1) 8077:19 willing (2) 8058:14;8060:12 Winthrop (1) 8086:9 Wisconsin (4) 8077:17;8080:25; 8082:12;8101:13 wise (1) 8061:20 wish (4) 8056:5;8067:21; 8091:21;8128:16 wishes (1) 8138:19 within (7) 8061:16;8065:2, 10;8067:15; 8068:21;8072:11; 8117:20 without (2) 8105:20;8137:3 witness (8) 8102:10,20,21; 8103:5;8121:4; 8127:2;8132:23; 8133:1 witnessed (1) 8117:12 witnesses (2) 8056:21;8112:18 wonderful (3) 8062:3;8097:18; 8142:10 wondering (1) 8068:22	word (8) 8057:14;8059:7; 8064:12,22;8065:14; 8070:13,13;8137:17 worded (1) 8141:11 words (7) 8055:21;8063:23; 8065:2,3,10;8071:3; 8124:23 work (10) 8054:20;8055:14; 8071:19;8102:7; 8115:11,12,19; 8125:24;8134:2,9 worked (1) 8142:10 working (3) 8056:25;8099:25; 8134:23 works (1) 8094:13 world (2) 8091:8;8101:7 worse (2) 8112:7;8113:7 worth (2) 8108:14;8111:4 WPC (6) 8102:25;8103:16; 8104:2;8106:8,21; 8107:13 Wright (2) 8055:5,12 write (2) 8057:11;8135:23 written (4) 8059:2;8060:16; 8082:24;8122:6 wrong (2) 8064:15;8136:14 wrote (1) 8103:24 wwwamsusdagov/live (1) 8056:24	24;8139:8 Year's (2) 8098:25;8099:1 year-to-date (2) 8112:2,4 yesterday (7) 8057:20;8074:9; 8093:16;8099:22; 8115:3;8117:2; 8136:6 yield (1) 8098:5 yogurt (1) 8084:4 York (1) 8085:24	8132:9,16; 8133:11,12,13 104 (5) 8132:9,17; 8133:16,16,18 1051.55 (1) 8064:2 11,300 (1) 8092:20 11:00 (1) 8121:8 11:05 (1) 8121:9 11:20 (2) 8121:10,11 11:21 (1) 8121:13 12 (6) 8101:6;8126:22; 8131:2,4;8142:5,13 120 (1) 8083:7 125 (1) 8089:11 126 (1) 8053:23 12-month (1) 8065:21 12-year (1) 8126:24 13.5 (1) 8108:3 130 (1) 8089:11 131 (1) 8075:22 145 (2) 8113:17;8114:24 15 (3) 8089:9;8138:16; 8139:8 150 (3) 8086:24;8087:1,2 15th (5) 8135:3,20; 8136:14;8137:16,18 16 (2) 8139:24,24 161 (1) 8106:12 162 (6) 8102:19;8103:9, 10,14;8106:5,15 162A (10) 8103:7,19; 8104:17,25;8105:12, 24;8118:15,18,19,20 16th (3) 8134:21,22; 8138:1 17,669.59 (1) 8125:9 175 (13)
W			Z	
wait (2) 8060:25;8061:22 waiting (1) 8087:2 wants (1) 8141:16 wash (1) 8119:19 Washington (1) 8055:5 wasted (1) 8056:8 water (1) 8112:19 way (18) 8057:13;8062:1; 8066:18;8072:16; 8078:13;8079:10; 8095:4;8098:9; 8103:13,13;8104:16; 8114:17;8120:17; 8123:2;8124:16; 8134:23;8141:11; 8142:10 ways (1) 8134:11 website (4) 8057:3,17,19; 8138:18 WEDNESDAY (2) 8053:1,3 week (12) 8075:12;8082:25; 8083:4;8094:6; 8098:2,24;8101:7,8, 8,10;8123:4;8137:8 weekend (3) 8098:24,24; 8099:8 weekly (1) 8093:21 weeks (10) 8061:4;8071:13; 8084:8;8086:25; 8101:5;8117:11; 8135:5,5;8137:19,19 weight (1) 8082:9 weighted (4) 8082:9,12,13,16 welcome (5) 8056:20;8133:24; 8134:2;8139:23,25 Wells (1) 8115:16	zealously (1) 8134:8 zero (2) 8087:9;8093:6 Zone (6) 8064:7,17,23; 8065:5;8068:8,21 Zones (3) 8064:6;8072:10, 14	1	1 (37) 8054:12,19; 8064:4,7;8065:24; 8068:8;8070:10; 8076:3;8080:12,23; 8082:15;8110:2,18; 8111:6,10,11,15; 8112:2;8113:9,22; 8116:7;8118:3; 8120:24;8121:2; 8123:6,7,11,12,13; 8126:8;8127:8,18, 23,24;8137:14; 8138:14;8139:6 1.4 (1) 8080:13 1.9 (1) 8080:14 1.96 (2) 8124:2;8128:3 1:1.96 (1) 8123:24 1:2.12 (1) 8123:25 10 (1) 8110:25 10:27 (2) 8097:22,24 10:28 (1) 8097:25 103 (5)	
		Y		
		year (14) 8074:12;8081:10; 8082:3;8094:5; 8098:2,21;8099:8; 8100:13,22,24; 8101:1;8108:13; 8112:5,15 yearly (1) 8127:16 year-round (1) 8083:5 years (9) 8079:16;8090:23; 8091:1;8097:6; 8123:18;8127:10,22,		

8063:19,20; 8066:4,15,21; 8067:15,17;8068:20; 8072:11,13,15,22; 8073:4 176 (2) 8072:14,15 18 (3) 8053:1,2;8140:5 18.8 (1) 8107:25 190 (1) 8103:6 191 (3) 8115:3,9;8117:2 192 (9) 8062:24;8063:2,3, 10;8067:19,23,23, 24;8068:1 193 (11) 8085:8,9,12,18,21; 8086:4;8091:20,22, 24,24;8092:1 194 (12) 8102:13;8121:15, 17,19;8122:7; 8125:16;8127:1,7; 8128:18,19,20; 8142:5 1960's (1) 8129:8 1990's (1) 8129:14 1994 (2) 8129:17,18 1st (11) 8135:1,7,7,10,11, 15,16;8136:23,25; 8137:13,23 2	8057:13,16; 8083:7,9;8086:24; 8089:5,9 2007 (3) 8114:3;8115:1,12 2010 (2) 8123:17;8127:10 2014 (18) 8074:13,14,17; 8075:3;8076:7,12; 8078:10,22;8080:13, 20;8081:10;8082:3, 7;8092:12;8093:18; 8106:3;8108:6; 8112:9 2015 (12) 8053:1,2;8093:19, 25;8111:21;8112:9, 14;8123:17; 8124:25;8125:6; 8138:18;8141:8 2016 (8) 8138:16,21; 8139:6,9,11,18,24,24 202 (1) 8061:15 206,046,000,000 (2) 8092:13,16 225 (3) 8066:14,21; 8067:17 23 (1) 8092:23 23.6 (1) 8092:23 25 (2) 8098:2;8126:4 26,000 (1) 8082:19 2660 (1) 8088:3 26th (1) 8139:9 29 (3) 8093:24;8094:4; 8098:2 29th (1) 8137:20 3 3 (9) 8065:5;8095:15; 8098:3;8109:20,21; 8111:1;8114:24; 8116:12;8125:16 3.5 (1) 8107:20 30 (11) 8054:1;8067:9; 8080:10,23;8083:12; 8088:12,14;8089:20, 25;8090:12;8135:24	31 (2) 8139:11,18 31st (2) 8134:20;8137:25 32 (2) 8080:10,23 33 (1) 8080:11 34 (2) 8104:4,5 35 (2) 8083:12;8104:3 4 4 (2) 8116:14;8125:19 4:00 (3) 8060:17;8062:7,9 4:30 (8) 8060:21;8062:8, 10,11,13,14,15; 8139:18 40 (9) 8053:4;8054:6,7; 8055:3,6;8076:20; 8111:25;8112:17; 8118:12 40,244.51 (1) 8125:7 400 (1) 8067:9 40th (1) 8142:5 41 (1) 8108:6 45 (1) 8134:21 5	6 (1) 8116:18 61 (1) 8124:25 62 (1) 8102:19 6th (1) 8137:21 7 7 (2) 8078:20;8116:21 7.69 (1) 8112:10 7/10th (1) 8078:12 7:30 (1) 8060:22 720-4443 (1) 8061:15 75 (4) 8069:4;8089:2,8,9 7E (1) 8088:20 8 8 (3) 8101:6;8116:23; 8126:24 8,500 (2) 8093:1,8 80 (4) 8078:15,20,21; 8099:15 85 (1) 8067:11 9 9:01 (1) 8053:3 98 (1) 8080:16 6
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