

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

IN RE:) [AO]
) DOCKET NO. 15-0071
)
 MILK IN CALIFORNIA)
)

VOLUME VI

TRANSCRIPT OF PROCEEDINGS

SEPTEMBER 29, 2015

MYRA A. PISH, CSR No. 11613
397069



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UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

IN RE:) [AO]
) DOCKET NO. 15-0071
)
MILK IN CALIFORNIA)
)

BEFORE U.S. ADMINISTRATIVE LAW JUDGE
JILL S. CLIFTON

MONDAY, SEPTEMBER 29, 2015

9:02 A.M.

CLOVIS VETERANS MEMORIAL DISTRICT
808 4TH STREET
CLOVIS, CALIFORNIA 93613

TRANSCRIPT OF PROCEEDINGS

VOLUME 6

REPORTED BY:

MYRA A. PISH CSR
CERTIFICATE NO. 11613

1 APPEARANCES:

2 U.S. DEPARTMENT OF OFFICE OF THE GENERAL COUNSEL
 3 AGRICULTURE: BY: BRIAN HILL, ESQ.
 4 LAUREN BECKER, ESQ.

5 U.S. DEPARTMENT OF WILLIAM, DAIRY
 6 AGRICULTURE: PRODUCT MARKETING SPECIALIST
 7 LAUREL MAY, MARKETING SPECIALIST
 8 MEREDITH FRISIUS, MARKETING SPECIALIST
 9 CLIFFORD CARMAN, DAIRY PROGRAMS
 10 JASON NIERMAN, DAIRY PROGRAMS
 11 HENRY SCHAEFER, DAIRY PROGRAMS.

12 CALIFORNIA DAIRIES, LAW OFFICES OF MARVIN BESHORE
 13 INC., DAIRY FARMERS BY: MARVIN BESHORE, ESQ.
 14 OF AMERICA, INC., HANSON BRIDGETT, SAN FRANCISCO
 15 LAND O'LAKES, INC.: BY: JOHN VLAHOS, ESQ.
 16 MEGAN OLIVER THOMPSON, ESQ.
 17 DENNIS SCHAD

18 DAIRY INSTITUTE OF DAVIS WRIGHT TREMAINE
 19 CALIFORNIA: BY: CHIP ENGLISH, ESQ.
 20 ASHLEY VULIN, ESQ.
 21 WILLIAM SCHIEK

22 LEPRINO FOODS: SUE TAYLOR, VICE-PRESIDENT
 23 DAIRY ECONOMICS AND POLICY

24 DEAN FOODS COMPANY: ROB BLAUFUSS

25 HILMAR CHEESE JOHN VETNE, ESQ.
 COMPANY: JAMES DEJONG

CALIFORNIA PRODUCER STOEL RIVES
 HANDLERS ASSOCIATION: BY: NICOLE HANCOCK, ESQ

WESTERN UNITED ANNIE ACMOODY, ECONOMIST
 DAIRYMEN:

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

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I N D E X - V O L U M E 6

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I N D E X - V O L U M E 6

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1 TUESDAY, SEPTEMBER 29, 2015 - - MORNING SESSION

2 JUDGE CLIFTON: THIS RECORD IS BEING MADE ON SEPTEMBER 29,
3 2015, IT IS A TUESDAY, IT IS 9:02 IN THE MORNING. WE ARE IN
4 CLOVIS, CALIFORNIA.

5 THIS IS DAY SIX OF THE MILK HEARING. MY NAME IS
6 JILL CLIFTON, I'M THE ADMINISTRATIVE LAW JUDGE WHO IS ASSIGNED
7 TO TAKE IN THE EVIDENCE IN THIS HEARING. I DO NOT DECIDE THE
8 CASE, I HAVE NO INPUT INTO THE DECISION, ALL I DO IS DECIDE
9 WHAT EVIDENCE IS ADMITTED. AND THERE ARE TWO KINDS; TESTIMONY
10 AND EXHIBITS. AND THEN I CERTIFY WHAT THE EVIDENCE IS THAT WAS
11 RECEIVED AT THE HEARING. SO I INDICATE WHAT TRANSCRIPT PAGES
12 THERE ARE AND WHAT CORRECTIONS HAVE BEEN MADE TO THOSE
13 TRANSCRIPT PAGES. I INDICATE WHAT EXHIBITS WERE ADMITTED INTO
14 EVIDENCE. I ALSO INDICATE WHETHER ANY EXHIBITS WERE REJECTED.
15 THEY REMAIN PART OF THE RECORD, JUST AS THOSE THAT ARE
16 ADMITTED. THUS FAR, WE HAVE NO REJECTED EXHIBITS.

17 I WOULD LIKE TO DEAL WITH SOME PRELIMINARY MATTERS, BUT
18 FIRST, I WOULD LIKE TO TAKE THOSE APPEARANCES OF THOSE
19 PARTICIPATING, BEGINNING WITH MEMBERS IN THE UNITED STATES
20 DEPARTMENT OF AGRICULTURE. I AM SUCH AN EMPLOYEE, AND I WOULD
21 LIKE THE OTHERS NOW TO LINE UP AT THE PODIUM, AND ONE BY ONE,
22 INTRODUCE YOURSELF, INCLUDING THE SPELLING OF YOUR NAME.

23 MR. RICHMOND: GOOD MORNING, YOUR HONOR. I'M
24 WILLIAM RICHMOND, R-I-C-H-M-O-N-D, WITH USDA AMS DAIRY
25 PROGRAMS.

1 MS. MAY: GOOD MORNING, LAUREL MAY, L-A-U-R-E-L, M-A-Y,
2 USDA AMS DAIRY PROGRAM.

3 MR. CARMAN: GOOD MORNING, CLIFFORD CARMAN, C-A-R-M-A-N,
4 DAIRY PROGRAMS, ASSISTANT TO THE DEPUTY ADMINISTRATOR.

5 MR. NIERMAN: GOOD MORNING, I'M JASON NIERMAN, J-A-S-O-N,
6 N-I-E-R-M-A-N. I'M THE ASSISTANT MARKET ADMINISTRATOR FROM
7 FEDERAL ORDER 5, AND I'M HERE ON DETAIL WITH AMS DAIRY
8 PROGRAMS.

9 MR. SCHAEFER: HENRY SCHAEFER, H-E-N-R-Y, S-C-H-A-E-F-E-R,
10 AGRICULTURAL ECONOMIST WITH THE UPPER MIDWEST MILK MARKETING
11 ORDER, FEDERAL ORDER 30, AND I'M HERE ON DETAIL FOR AMS DAIRY
12 PROGRAMS.

13 MS. BECKER: LAUREN BECKER, L-A-U-R-E-N, B-E-C-K-E-R, USDA
14 OFFICE OF GENERAL COUNSEL.

15 MR. HILL: I'M BRIAN HILL, B-R-I-A-N, H-I-L-L, ALSO
16 APPEARING WITH THE OFFICE OF GENERAL COUNSEL.

17 JUDGE CLIFTON: I WOULD LIKE NOW TO TAKE THE APPEARANCES OF
18 OTHER PARTICIPANTS, BEGINNING WITH THOSE WHO ARE ON A TEAM
19 CONNECTED WITH A PROPOSAL.

20 MR. BESHORE: MARVIN BESHORE, M-A-R-V-I-N, B-E-S-H-O-R-E,
21 COUNSEL FOR THE PROPONENTS OF PROPOSAL NUMBER 1, CALIFORNIA
22 DAIRIES, INC., LAND O'LAKES, INC., AND DAIRY FARMERS OF
23 AMERICA, INC.

24 MR. VLAHOS: JOHN VLAHOS, J-O-H-N, V-L-A-H-O-S. I'M
25 CO-COUNSEL FOR THE PROPONENTS OF PROPOSAL NUMBER 1.

1 MS. OLIVER-THOMPSON: GOOD MORNING, I'M MEGAN OLIVER
2 THOMPSON. MEGAN IS M-E-G-A-N. I'M ALSO AN ATTORNEY,
3 CO-COUNSEL WITH THE PROPONENTS FOR PROPOSAL NUMBER 1.

4 MR. SCHAD: GOOD MORNING, DENNIS SCHAD. D-E-N-N-I-S,
5 S-C-H-A-D. I WORK FOR LAND O'LAKES.

6 MR. WEGNER: THOMAS WEGNER, T-H-O-M-A-S; WEGNER,
7 W-E-G-N-E-R, DAIRY ECONOMIST FOR LAND O'LAKES.

8 MR. ERBA: GOOD MORNING. ERIC ERBA, CALIFORNIA DAIRIES.
9 E-R-I-C, E-R-B-A.

10 MR. ENGLISH: GOOD MORNING, YOUR HONOR, ON BEHALF OF THE
11 DAIRY INSTITUTE OF CALIFORNIA, PROPOSAL 2. CHIP ENGLISH, LAW
12 FIRM OF DAVIS, WRIGHT, TREMAINE.

13 MS. VULIN: ASHLEY VULIN, A-S-H-L-E-Y; LAST NAME IS V -- AS
14 IN VICTOR -- U-L-I-N, ALSO CO-COUNSEL FOR THE DAIRY INSTITUTE
15 OF CALIFORNIA.

16 MR. SCHIEK: GOOD MORNING, WILLIAM SCHIEK, S-C-H-I-E-K,
17 WITH THE DAIRY INSTITUTE OF CALIFORNIA.

18 MS. TAYLOR: GOOD MORNING, SUE TAYLOR, S-U-E, T-A-Y-L-O-R,
19 WITH LEPRINO FOODS, L-E-P-R-I-N-O.

20 MR. BLAUFUSS: GOOD MORNING, ROB BLAUFUSS, B-L-A-U-F-U-S-S,
21 AND I'M WITH DEAN FOODS COMPANY.

22 MR. DEJONG: JAMES DEJONG, J-A-M-E-S, D-E-J-O-N-G, I'M A
23 DAIRY POLICY AGRICULTURAL ECONOMIST WITH HILMAR CHEESE COMPANY,
24 WHICH IS A DAIRY FARMER-OWNED CHEESE, WHEY, AND MILK POWDER
25 MANUFACTURER.

1 MR. VETNE: MY NAME IS JOHN VETNE. I'M A REPRESENTATIVE
2 FOR HILMAR CHEESE, A FARMER-OWNED CHEESE MAKING COMPANY. THANK
3 YOU.

4 MS. HANCOCK: NICOLE HANCOCK, N-I-C-O-L-E, H-A-N-C-O-C-K,
5 I'M WITH STOEL RIVES, AND I REPRESENT THE CALIFORNIA PRODUCER
6 HANDLERS ASSOCIATION AND PONDEROSA DAIRIES.

7 JUDGE CLIFTON: WOULD YOU SPELL THE NAME OF YOUR FIRM?

8 MS. HANCOCK: I'M HAVING THE HARDEST TIME WITH NOT SPELLING
9 IT. S-T-O-E-L; RIVES IS R-I-V-E-S.

10 JUDGE CLIFTON: I WOULD LIKE NOW TO TAKE APPEARANCES OF
11 THOSE WHO HAVE BEEN PARTICIPATING OR EXPECT TO BE PARTICIPATING
12 ON A REGULAR BASIS BUT ARE NOT ASSOCIATED WITH THE PARTICULAR
13 PROPOSAL OR AT LEAST NOT PART OF THE TEAM THAT PRESENTED IT.

14 MS. ACMOODY: GOOD MORNING, ANNIE ACMOODY, A-C, M-O-O-D-Y.
15 I'M THE ECONOMIST WITH WESTERN UNITED DAIRYMEN.

16 MS. REED: GOOD MORNING, KRISTINE REED, K-R-I-S-T-I-N-E,
17 R-E-E-D, COUNSEL FOR SELECT MILK PRODUCERS.

18 MR. MERTENS: GEORGE MERTENS, G-E-O-R-G-E, M-E-R-T-E-N-S
19 AND I'M GOING TO BE TESTIFYING FOR DFA.

20 MR. TOLLENAAR: SIETSE TOLLENAAR, S-I-E-T-S-E
21 T-O-L-L-E-N-A-A-R, A DAIRY FARMER FROM WHEATLAND, CALIFORNIA.

22 JUDGE CLIFTON: I'M SORRY, YOU -- I DON'T HAVE YOUR NAME IN
23 MY HEAD YET AND I COULDN'T WRITE FAST ENOUGH. WOULD YOU AGAIN
24 SPELL YOUR FIRST AND LAST NAME?

25 MR. TOLLENAAR: S-I-E-T-S-E, AND T-O-L-L-E-N-A-A-R.

1 JUDGE CLIFTON: THANK YOU.

2 MR. OLSEN: PETER OLSEN, P-E-T-E-R, O-L-S-E-N, AND I'M A
3 DAIRYMAN, MEMBER OF DAIRY FARMERS AMERICA.

4 MR. VANDENHEUVEL: ROB VANDENHEUVEL,
5 V-A-N-D-E-N-H-E-U-V-E-L AND I'M GENERAL MANAGER OF MILK
6 PRODUCERS COUNSEL. I WILL BE TESTIFYING ON BEHALF OF MILK
7 PRODUCERS COUNSEL.

8 JUDGE CLIFTON: NOW, LET ME CAPTURE THE RIGHT WAY TO WRITE
9 VANDENHEUVEL. SO IS IT ALL ONE WORD?

10 MR. VANDENHEUVEL: YES.

11 JUDGE CLIFTON: AND THERE ARE NO SPACES?

12 MR. VANDENHEUVEL: CORRECT.

13 JUDGE CLIFTON: OKAY. AND THERE'S ONLY ONE CAPITAL LETTER,
14 AND THAT'S THE V AS IN VICTOR IN THE BEGINNING?

15 MR. VANDENHEUVEL: CORRECT.

16 JUDGE CLIFTON: THANK YOU. I LOOK FORWARD TO THE TESTIMONY
17 OF THE PEOPLE THAT WE HAVE HERE TODAY. IF YOU INTEND TO
18 TESTIFY AND YOU HAVE NOT YET COME FORWARD, PLEASE COME FORWARD
19 NOW AND GIVE US A PREVIEW OF THE SPELLING OF YOUR NAME. ALL
20 RIGHT. AND WE MAY HAVE OTHERS THAT ARRIVE LATER TIMES DURING
21 THE DAY. WE WELCOME THE TESTIMONY OF ALL PEOPLE WHO WOULD LIKE
22 TO BE HEARD HERE.

23 WE WOULD LIKE TO TAKE YOU ON THE DAY YOU WOULD LIKE TO
24 TESTIFY, SO SOME PEOPLE LIKE TO COME AND LISTEN FOR A DAY OR
25 TWO BEFORE THEY BEGIN, SO IT'S ENTIRELY UP TO YOU AS TO WHEN

1 YOU WOULD LIKE TO BE WORKED IN.

2 LET'S CONTINUE WITH PRELIMINARY MATTERS.

3 FIRST OF ALL, I WOULD LIKE TO IDENTIFY THE DOCKET
4 NUMBER BY WHICH THIS CASE IS KNOWN IN THE HEARING CLERK'S
5 OFFICE IN THE UNITED STATES DEPARTMENT OF AGRICULTURE. IN
6 BRACKETS, THE CAPITAL LETTERS [AO] -- THAT STANDS FOR
7 AGREEMENTS AND ORDERS, IT'S THE TYPE OF CASE. THE DOCKET
8 NUMBER ITSELF IS DOCKET NUMBER 15-0071.

9 THE CAPTION IS IN RE: MILK IN CALIFORNIA.

10 I WOULD ALSO LIKE TO READ A FORMAL STATEMENT ABOUT THIS
11 HEARING:

12 THIS PUBLIC HEARING IS BEING HELD TO CONSIDER AND TAKE
13 EVIDENCE ON THE PROPOSED ESTABLISHMENT OF A FEDERAL MILK
14 MARKETING ORDER TO REGULATE THE HANDLING OF MILK IN CALIFORNIA.
15 THE PROPOSED MARKETING AREA WOULD INCORPORATE THE ENTIRE STATE
16 OF CALIFORNIA. USDA RECEIVED FOUR PROPOSALS FROM INTERESTED
17 PARTIES, SOME THAT INCLUDE CERTAIN MILK PRICING AND POOLING
18 PROVISIONS NOT FOUND IN CURRENT FEDERAL MILK ORDERS. THE
19 PROPOSALS INCORPORATE THE SAME DAIRY PRODUCT CLASSIFICATION
20 SYSTEM USED THROUGHOUT THE FEDERAL MILK MARKETING ORDER SYSTEM.
21 ADDITIONAL FEATURES WOULD RECOGNIZE CALIFORNIA QUOTA PREMIUM
22 AND FLUID MILK FORTIFICATION VALUES.

23 THIS HEARING WILL CONSIDER THE FOUR PROPOSALS AS
24 CONTAINED IN THE FEDERAL REGISTER HEARING NOTICE PUBLISHED ON
25 AUGUST 6TH, 2015. AND IN ADDITION, ALTHOUGH IT MAY NOT HAVE

1 APPEARED IN THE FEDERAL REGISTER HEARING NOTICE, WE ARE
2 CONSIDERING AN ALTERNATE DESCRIPTION OF CALCULATIONS REGARDING
3 WHEY -- W-H-E-Y -- AND THAT IS BECAUSE OF ACTIONS THAT WERE
4 TAKEN HERE AT THIS HEARING.

5 ALL RIGHT. NOW, I WOULD LIKE OTHERS TO PRESENT TO ME
6 PRELIMINARY MATTERS AND WELCOMING AND OTHER REMARKS, BEGINNING
7 WITH THOSE WHO ARE EMPLOYEES OF USDA.

8 MS. MAY: LAUREL MAY.

9 SO AS ALWAYS, WELCOME. WE'RE GLAD THAT YOU ARE HERE AT
10 THIS HEARING TODAY WITH US. IF YOU WOULD LIKE TO SPEAK TODAY,
11 PLEASE LET MEREDITH KNOW, AND MEREDITH WILL WRITE YOUR NAME
12 DOWN SO THAT -- AND LET THE JUDGE KNOW THAT YOU WOULD LIKE TO
13 SPEAK.

14 IN ADDITION TO COPIES OF YOUR WRITTEN STATEMENT, IF YOU
15 HAVE A BUSINESS CARD THAT YOU COULD PRESENT TO THE COURT
16 REPORTER, THAT WOULD BE HELPFUL. THE AUDIENCE MAY QUESTION ANY
17 WITNESS. IF YOU WOULD LIKE TO DO SO, PLEASE APPROACH THE
18 MICROPHONE, AND THE JUDGE WILL ACKNOWLEDGE YOU.

19 WE ARE BROADCASTING THIS HEARING LIVE AUDIO FEED. WE
20 ARE NOT RECORDING IT, BUT IF PEOPLE THAT YOU KNOW WOULD LIKE TO
21 TUNE INTO IT, THEY CAN LISTEN AT [TINYURL.COM/CA MILK HEARING](http://TINYURL.COM/CA_MILK_HEARING).

22 THE COURT REPORTER IS REPORTING OFFICIAL TRANSCRIPTS OF
23 THIS HEARING, AND THEY WILL BE AVAILABLE APPROXIMATELY TWO
24 WEEKS AFTER THE END OF EACH HEARING WEEK.

25 EXHIBITS THAT ARE ADMITTED INTO THE RECORD, ARE

1 NUMBERED IN ORDER OF THEIR PRESENTATION. COPIES OF THOSE ARE
2 AVAILABLE. WE HAVE SOME SPARE COPIES OVER HERE ON THE TABLE,
3 THEY WILL ALSO BE POSTED AFTER TWO WEEKS.

4 WE HAVE REFRESHMENTS IN THE BACK OF THE ROOM THAT YOU
5 ARE WELCOME TO ENJOY. AND AS FAR AS THE ORDER OF THE DAY GOES,
6 YESTERDAY WE HAD ENDED WITH MR. HOLLON ON THE STAND. I THINK
7 WE'RE GOING TO GIVE HIM A BREATHER THIS MORNING, AND MR.
8 BESHORE HAS INDICATED THAT HE'S GOING TO ASK MS. ACMOODY TO
9 COME FIRST, AND THEN WE HAVE SOME PRODUCERS TO HEAR, AND SOME
10 OTHER TRADE PEOPLE. AND JUST FOR YOUR INFORMATION, WE WILL BE,
11 WE PLAN TO ENTER AS AN EXHIBIT, THE COMPARISON CHART THAT
12 COMPARES CDFA AND FEDERAL MILK MARKETING ORDER PRODUCT
13 CLASSIFICATIONS, WHICH WAS ADDED LAST WEEK.

14 JUDGE CLIFTON: MS. MAY, WOULD THE PRESENTATION OF THE
15 COMPARISON OF THE MILK CLASSIFICATIONS BE A GOOD THING TO BEGIN
16 WITH? NO? YOU WOULD RATHER HEAR THE PEOPLE WHO HAVE COME HERE
17 TO TESTIFY FIRST? OKAY. AND I'M -- I -- THERE'S NO AUDIBLE
18 RESPONSE, I'M GETTING SHAKING YES OF HEADS, AND THAT'S WHAT I'M
19 GOING ON. THANK YOU. NOT ONLY BY MS. MAY, BUT ALSO BY
20 MR. RICHMOND, SO WE HAVE UNANIMITY OVER THERE.

21 ALL RIGHT. OTHER PRELIMINARY MATTERS.

22 MR. ENGLISH: CHIP ENGLISH, AND I THINK I DIDN'T SPELL IT
23 EARLIER TODAY, BUT IT'S C-H-I-P, E-N-G-L-I-S-H, FOR THE DAIRY
24 INSTITUTE OF CALIFORNIA.

25 I JUST WANT TO SORT OF PUT ON THE RECORD SOME

1 DISCUSSIONS I HAVE HAD WITH COUNSEL FOR THE COOPERATIVES AND
2 THE DEPARTMENT. WE CONTINUED TO TALK ABOUT THE INFORMATION AND
3 DATA REQUESTED FROM THE CALIFORNIA DEPARTMENT OF FOOD AND
4 AGRICULTURE. AND THERE HAVE BEEN ONGOING DISCUSSIONS ABOUT
5 WHETHER OR NOT THERE WILL BE A WITNESS AND HOW THAT MATERIAL
6 WILL BE PRESENTED. AND WHILE IT IS, YOU KNOW, OUR STRONG
7 PREFERENCE TO HAVE IT PUT IN AS AN EXHIBIT AS SOON AS POSSIBLE,
8 IF ONLY BECAUSE IT WILL ALLOW CROSS-EXAMINATION TO BE MORE
9 SMOOTH IN TERMS OF ASKING QUESTIONS AS OPPOSED TO
10 OFFICIALLY-NOTICED DOCUMENTS, I UNDERSTAND THE DEPARTMENT IS
11 STILL WORKING WITH, OR TRYING TO WORK WITH CDFA, AND THEREFORE,
12 THEY ARE NOT YET READY TO PUT THIS IN.

13 WHILE IT IS MY PREFERENCE TO HAVE IT IN, THE DEPARTMENT
14 IS FREE TO SPEAK FOR ITSELF, BUT IT WOULD JUST BE BETTER THE
15 SOONER WE HAVE THAT IN, EVEN AS WE HAVE THE USDA'S EVIDENCE
16 LAST WEEK.

17 JUDGE CLIFTON: YOU DON'T HAVE TO RESPOND NOW. YOU ARE
18 WELCOME TO, BUT YOU DON'T HAVE TO.

19 MR. RICHMOND: WILLIAM RICHMOND, USDA. THANK YOU, YOUR
20 HONOR.

21 I APPRECIATE MR. ENGLISH'S CONCERNS. WE ARE NOT READY
22 TO ENTER INTO THE RECORD ANY OF THE DATA PREPARED BY CFA AT
23 THIS TIME. WE WILL UPDATE EVERYONE IF THIS CHANGES THROUGHOUT
24 THE WEEK, OR PERHAPS NEXT WEEK.

25 JUDGE CLIFTON: DO YOU THINK WE'LL STILL BE HERE?

1 MR. RICHMOND: YES.

2 JUDGE CLIFTON: DO WE HAVE OTHER PRELIMINARY MATTERS BEFORE
3 WE HAVE TESTIMONY FROM THE WITNESS STAND? ANYONE WHO WANTS TO
4 RECORD WHAT'S GOING ON IN HERE IS WELCOME TO DO SO, AS LONG AS
5 YOU DON'T DO IT IN A WAY THAT IS OBTRUSIVE. FOR EXAMPLE, IF
6 YOU HAVE A RECORDING DEVICE OF SOME KIND THAT YOU CAN USE WHERE
7 YOU ARE SITTING, THAT WOULD BE IDEAL. THAT'S NOT OFFICIAL, BUT
8 IT MAY BE USEFUL FOR YOUR OWN PREPARATION FOR QUESTIONS THAT
9 YOU WANT TO ASK, OR AS A REMINDER OF SOME AREA THAT YOU WANT TO
10 COVER.

11 COPY MACHINE THAT IS IN THE BACK IS AVAILABLE, IF YOU
12 NEED ADDITIONAL COPIES FOR YOUR PRESENTATION. SOME WITNESSES
13 LIKE TO HAVE THEIR NOTES THAT THEY BRING TO THE WITNESS STAND,
14 WHICH IS TO YOUR LEFT, MY RIGHT. THEY LIKE TO HAVE THOSE ONLY
15 TO PROMPT THEM TO REMEMBER WHAT THEY WANTED TO COVER, AND THEY
16 DO NOT WANT IT TO BE ADMITTED AS AN EXHIBIT. OTHERS HAVE
17 PREPARED STATEMENTS THAT THEY ARE BASICALLY READING INTO THE
18 RECORD, PERHAPS WITH SOME MODIFICATION, BUT THEY WANT IT ALSO
19 AS AN EXHIBIT. SO EACH WITNESS MAY PROCEED AS HE WISHES WITH
20 REGARD TO WHETHER HE WANTS TO ACCOMPANY ORAL TESTIMONY WITH A
21 WRITTEN EXHIBIT.

22 ALL RIGHT. ARE THERE OTHER PRELIMINARY MATTERS? A
23 PRELIMINARY MATTER MIGHT BE A REQUEST, SUCH AS MR. ENGLISH
24 MADE, IT MIGHT BE A QUESTION, IT MIGHT BE A STATEMENT. DOES
25 ANYBODY HAVE ANYTHING ELSE BEFORE WE PROCEED WITH ADDITIONAL

1 TESTIMONY? ALL RIGHT. THERE'S NOTHING.

2 MR. BESHORE, WILL YOU BE -- WILL YOU BE CALLING THE
3 NEXT WITNESS?

4 MR. BESHORE: MR. VLAHOS WILL PRESENT THE NEXT WITNESS.

5 MR. VLAHOS: JOHN VLAHOS, CO-COUNSEL FOR THE PROPONENTS OF
6 PROPOSAL NUMBER 1. WE WILL CALL AS OUR WITNESS, ANNIE ACMOODY.

7 JUDGE CLIFTON: ONE THING I FORGOT TO SAY, COULD THERE BE
8 THREE COPIES FOR MS. FRISIUS EACH TIME WE HAVE A STATEMENT?
9 TWO OF THOSE WILL BE OFFICIAL RECORD COPIES, AND THE ADDITIONAL
10 ONE IS ALSO HELPFUL FOR KEEPING TRACK. ALL RIGHT.

11 MS. FRISIUS, I BELIEVE I'M MARKING THIS EXHIBIT AS
12 EXHIBIT 21, IS THAT WHAT YOU ARE DOING?

13 MR. VLAHOS: I HAVE EXHIBIT 25, I THOUGHT, YOUR HONOR, BUT
14 I MAY BE WRONG.

15 JUDGE CLIFTON: OH, WAIT, WAIT, WAIT. YES, THANK YOU. I
16 PUT SOME ON TOP.

17 MS. FRISIUS: MR. VLAHOS IS CORRECT, IT IS 25.

18 JUDGE CLIFTON: THANK YOU, MR. VLAHOS, AND THANK YOU
19 MS. FRISIUS, THIS WILL BE EXHIBIT 25.

20 (THEREAFTER, EXHIBIT 25 WAS MARKED
21 FOR IDENTIFICATION.)

22 JUDGE CLIFTON: SO WE'LL TAKE JUST A MINUTE UNTIL THEY HAVE
23 BEEN DISTRIBUTED. IF YOU DON'T HAVE A COPY YET, WOULD YOU
24 RAISE YOUR RIGHT HAND? ARE THERE ANY OTHERS? WE HAVE ONE MORE
25 THAT'S NEEDED -- TWO MORE THAT ARE NEEDED, IF YOU HAVE THEM --

1 THREE MORE.

2 DO YOU WANT TO MAKE COPIES AT THE BREAK AND GIVE TO
3 THESE GENTLEMEN, THAT WOULD BE GREAT. THANK YOU.

4 MS. ACMOODY, I WILL SWEAR YOU IN IN A SEATED POSITION.
5 IF YOU WILL RAISE YOUR RIGHT HAND, PLEASE.

6 DO YOU SOLEMNLY SWEAR OR AFFIRM, UNDER PENALTY OF
7 PERJURY, THAT THE EVIDENCE YOU WILL PRESENT WILL BE THE TRUTH?

8 MS. ACMOODY: I DO.

9 JUDGE CLIFTON: PLEASE STATE AND SPELL YOUR NAME.

10 MS. ACMOODY: MY NAME IS ANNIE ACMOODY, A-N-N-I-E, A-C,
11 CAPITAL M-O-O-D-Y.

12 JUDGE CLIFTON: MR. VLAHOS, YOU MAY PROCEED.

13 MR. VLAHOS: THANK YOU, YOUR HONOR.

14 DIRECT EXAMINATION

15 BY MR. VLAHOS:

16 Q. GOOD MORNING, MS. ACMOODY.

17 A. GOOD MORNING.

18 Q. AGAIN, WOULD YOU STATE YOUR NAME FOR THE RECORD?

19 A. ANNIE ACMOODY.

20 Q. AND WHAT IS YOUR EMPLOYMENT, MS. ACMOODY?

21 A. I WORK FOR WESTERN UNITED DAIRYMEN.

22 Q. AND WHAT IS YOUR POSITION THERE?

23 A. MY OFFICIAL TITLE IS DIRECTOR OF ECONOMIC ANALYSIS.

24 Q. AND HAVE YOU PREPARED SOME WRITTEN TESTIMONY FOR THESE
25 PROCEEDINGS?

1 A. I HAVE.

2 Q. AND THAT IS EXHIBIT 25?

3 A. THAT'S CORRECT.

4 Q. IF I MAY, I WOULD LIKE TO GO THROUGH SOME PRELIMINARY
5 THINGS. COULD YOU STATE BRIEFLY YOUR EDUCATIONAL BACKGROUND,
6 STARTING WITH YOUR COLLEGE OR UNIVERSITY?

7 A. I HAVE A BACHELOR'S IN AGRICULTURAL ECONOMIC AND
8 MANAGEMENT FROM LAVAL UNIVERSITY IN QUEBEC CITY, CANADA -- THAT
9 ALSO WILL EXPLAIN POTENTIAL WORD SCREW UP THAT I MAY DO IN THE
10 FUTURE, THE FRENCH BACKGROUND THERE. I ALSO HAVE A MASTER'S OF
11 AGRICULTURAL ECONOMICS FROM PURDUE UNIVERSITY, THEN I GRADUATED
12 IN 2007.

13 Q. OKAY. AND ALSO COULD YOU TRACE FOR US YOUR EMPLOYMENT
14 CAREER?

15 A. I WORK FOR THE CALIFORNIA DEPARTMENT OF FOOD AND
16 AGRICULTURE'S DAIRY MARKETING BRANCH WHEN I GRADUATED FROM MY
17 MASTER'S, SO I WAS THERE FROM 2007 TO 2010 AS AN AGRICULTURAL
18 ECONOMIST. AND I STARTED WORKING WITH WESTERN UNITED DAIRYMEN
19 IN 2010, AND I HAVE BEEN EMPLOYED WITH THEM SINCE.

20 Q. I'M GOING TO USE THE INITIALS CDFA TO STAND FOR THE
21 CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE. WOULD YOU TELL
22 US BRIEFLY WHAT YOUR DUTIES AND RESPONSIBILITIES WERE WHEN YOU
23 EMPLOYED BY CDFA?

24 A. I COMPILED ECONOMIC DATA ON A REGULAR BASIS, ASSISTED
25 IN RELEASING THE CLASS PRICES ON A MONTHLY BASIS, ALSO SERVED

1 ON PANELS DURING PRICING HEARINGS TO PROVIDE RECOMMENDATIONS TO
2 THE SECRETARY OF AGRICULTURE.

3 Q. AND WHAT IS YOUR EXACT TITLE WITH WESTERN UNITED
4 DAIRYMEN?

5 A. DIRECTOR OF ECONOMIC ANALYSIS.

6 Q. WHAT ARE YOUR RESPONSIBILITIES AND DUTIES IN THAT
7 POSITION?

8 A. A LOT OF FUN STUFF. I PRESENT MONTHLY ANALYSIS OF
9 CURRENT MARKET CONDITIONS TO OUR BOARD OF DIRECTORS. I PROVIDE
10 ECONOMIC ANALYSIS OF POTENTIAL EFFECTS OF DIFFERENT POLICIES OR
11 PRICING ISSUES THAT MIGHT ARISE, DEPENDING ON WHAT IS THE TOPIC
12 OF THE DAY. SERVE ON -- TESTIFY AT PRICING HEARINGS IN FRONT
13 OF CDFA, WE HAVE DONE THAT A LOT IN RECENT YEARS. I ALSO WRITE
14 A WEEKLY MARKET COMMENTARY FOR OUR NEWSLETTER AND PROVIDE
15 OUTREACH TO OUR MEMBERSHIP ON DIFFERENT TOPICS OF INTEREST.

16 Q. YOU MENTIONED HAVING TESTIFIED BEFORE CDFA ON A VARIETY
17 OF MATTERS, HAVE THEY INCLUDED ISSUES CONCERNING THE MATTER IN
18 WHICH WHEY IS VALUED IN THE PRICING FORMULAS?

19 A. YES.

20 Q. CAN YOU ESTIMATE APPROXIMATELY HOW MANY TOTAL HEARINGS
21 THAT YOU HAVE TESTIFIED IN?

22 A. I PREPARED TESTIMONY FOR SIX HEARINGS THAT CONTAINED,
23 TO SOME EXTENT, A WHEY ISSUE COMPONENT. TO SOME EXTENT, THOSE
24 ARE TEMPORARY PRICING CHANGES, SOME OF THEM WERE FULL-ON
25 CHANGES.

1 Q. NOW, YOU ARE HERE TESTIFYING ON BEHALF OF WESTERN
2 UNITED DAIRYMEN, AND I KNOW YOUR WRITTEN TESTIMONY WILL COVER
3 WHAT WESTERN UNITED DAIRYMEN IS, BUT COULD YOU JUST BRIEFLY
4 TELL US ABOUT WESTERN UNITED?

5 A. IT IS AN ASSOCIATION OF DAIRY FARMERS, SO WE REPRESENT
6 THE DAIRY FARM FAMILIES IN THE STATE ON A MULTITUDE OF ISSUES
7 THAT INCLUDE PRICING ISSUES, ENVIRONMENTAL REGULATIONS, POLICY
8 ISSUES, LEGISLATIVE, SACRAMENTO AND WASHINGTON DC.

9 Q. OKAY. HAS WESTERN UNITED TAKEN A POSITION THROUGH ITS
10 BOARD OF DIRECTORS, IN SUPPORT OF THE PROPOSAL MADE BY THE
11 THREE COOPERATIVES HERE IN THESE PROCEEDINGS?

12 A. YES, THEY HAVE. A UNANIMOUS POSITION, I MIGHT ADD.

13 Q. OKAY. AND HOW MANY DIRECTORS ARE THERE?

14 A. 20.

15 Q. AND WHERE DO THEY COME FROM, WHAT PARTS OF THE STATE?

16 A. ALL OVER THE STATE. WE HAVE FROM ALL THE WAY FROM
17 SOUTHERN CALIFORNIA TO THE NORTHERN PART OF THE STATE.

18 Q. OKAY. YOU HAVE INDICATED TO US THAT YOU HAVE PREPARED
19 WRITTEN TESTIMONY. IT WOULD BE APPROPRIATE AT THIS TIME TO
20 READ YOUR TESTIMONY INTO THE RECORD.

21 A. OKAY. THANK YOU.

22 AND I WILL TRY TO GO SLOW, SINCE IT SEEMS TO BE THE
23 THEME THAT I HAVE SEEN.

24 Q. EXCUSE ME, BEFORE I -- BEFORE I ASK YOU TO DO THAT, ONE
25 MORE QUESTION ABOUT YOUR DIRECTORS. YOU INDICATED THEY COME

1 FROM ALL PARTS OF THE STATE. HOW ARE THEY APPOINTED?

2 A. IT'S AN ELECTION PROCESS WITH MEMBERSHIP VOTES, SO
3 DIRECTORS ARE ELECTED FOR A PERIOD OF THREE YEARS.

4 Q. IS IT BY DISTRICT?

5 A. YES.

6 Q. AND SO --

7 A. WE HAVE TWELVE DISTRICTS.

8 Q. AND THE FARMERS IN THE TWELVE DISTRICTS VOTE FOR THE
9 REPRESENTATIVES AND THAT'S THE BOARD OF DIRECTORS?

10 A. CORRECT.

11 Q. OKAY. AND NOW YOU MAY READ THE STATEMENT OF YOUR
12 WRITTEN TESTIMONY.

13 A. CORRECT.

14 MY NAME IS ANNIE ACMOODY. I AM THE DIRECTOR OF
15 ECONOMIC ANALYSIS FOR WESTERN UNITED DAIRYMEN -- AND THE
16 ABBREVIATION FOR THAT IS WUD, AND I'LL REFER TO IT AS WUD FOR
17 SHORTENING OF THE LENGTH OF THE NAME.

18 SO WE ARE AN ASSOCIATION OF DAIRY FARMERS REPRESENTING
19 CALIFORNIA DAIRY FAMILIES. WE HAVE MEMBERS LOCATED THROUGHOUT
20 THE ENTIRE STATE --

21 JUDGE CLIFTON: EXCUSE ME, IS THIS YOUR SLOW SPEED?

22 MS. ACMOODY: IT IS, I DID WARN YOU. IT'S NOT SLOW ENOUGH,
23 IS IT?

24 I WAS BUT TRAINED BY PRODUCERS, THEY LIKE TO GET THINGS
25 DONE QUICK, SO I TRY TO -- OKAY. SO I WILL SLOW DOWN.

1 MR. VLAHOS: HALF SPEED. HALF SPEED.

2 MS. ACMOODY: OKAY. HALF SPEED.

3 WE HAVE MEMBERS LOCATED THROUGHOUT THE ENTIRE STATE, FROM
4 SAN DIEGO COUNTY, ALL THE WAY THROUGH DEL NORTE COUNTY.

5 IS THAT BETTER?

6 JUDGE CLIFTON: PERFECT.

7 MS. ACMOODY: WE ALSO REPRESENT MEMBERS OF ALL SIZES,
8 (RANGING FROM 17 COWS TO 10,000 COWS), ORGANIC AND
9 CONVENTIONAL.

10 WESTERN UNITED DAIRYMEN WAS ESTABLISHED IN 1985 AS A
11 RESULT OF THE MERGER BETWEEN TWO ORGANIZATIONS WITH ROOTS IN
12 THE 30'S; UNITED DAIRYMEN AND WESTERN DAIRYMEN. THROUGH THE
13 '60'S THE CALIFORNIA DAIRY INDUSTRY PRICING SYSTEM WAS
14 CHANGING. WESTERN WAS A KEY PLAYER IN THE DEVELOPMENT OF THE
15 POOLING PROGRAM.

16 TODAY, WUD'S MEMBERSHIP BENEFITS COVER MANY AREAS.
17 THEY INCLUDE RESOURCES IN LABOR LAW, SAFETY, ANIMAL WELFARE,
18 ENVIRONMENTAL REGULATIONS, LEGISLATIVE ISSUES, COMMUNICATIONS,
19 MEDIA RELATIONS, AND PRICING ISSUES. WE ALSO PROVIDE
20 EDUCATIONAL RESOURCES, THROUGH SEMINARS, WORKSHOPS, WRITTEN
21 MATERIALS, SOCIAL MEDIA, AND OUR WEBSITE. SPECIFICALLY, WE
22 HAVE FOUR FIELD REPRESENTATIVES THROUGHOUT THE STATE READY TO
23 ASSIST MEMBERS WHEN NEEDED. WE ARE REPRESENTED IN SACRAMENTO
24 AND WASHINGTON DC TO ENSURE LAWS AND POLICY POTENTIALLY
25 IMPACTING OUR MEMBERSHIP ARE MONITORED AND ACTED UPON PROMPTLY

1 AND EFFICIENTLY. ON THE ENVIRONMENT FRONT, WUD ADVOCATES FOR
2 ITS MEMBERS WITH LOCAL, REGIONAL, STATE, AND FEDERAL
3 ENVIRONMENTAL AGENCIES, (AIR AND WATER QUALITY, CLIMATE CHANGE
4 ISSUES, ETCETERA), TO ENSURE THAT REGULATIONS THAT ARE
5 DEVELOPED BY THESE AGENCIES TAKE THE CONCERNS OF OUR MEMBERS
6 INTO ACCOUNT. WUD ALSO WORKS WITH ITS MEMBERS TO HELP THEM
7 UNDERSTAND THE REGULATIONS AND MAKE SURE THEY GET FAIR
8 TREATMENT BY THE REGULATORS.

9 WE ARE A GRASS-ROOTS ORGANIZATION AND AN ELECTED BOARD
10 OF 20 DIRECTORS GOVERNS OUR POLICY. THEY MEET ONCE A MONTH TO
11 DISCUSS ISSUES THAT AFFECT OUR MEMBERSHIP. SPECIFICALLY, OUR
12 MISSION STATES: "IN APPRECIATION OF THE TREMENDOUS DEDICATION
13 OF CAPITAL, LABOR AND CARE AND CONCERN THAT OUR MEMBERS HAVE
14 INVESTED IN THEIR DAIRIES, THE BOARD OF DIRECTOR WILL EARNESTLY
15 AND CONSCIENTIOUSLY WORK TO PROMOTE SOUND LEGISLATIVE AND
16 ADMINISTRATIVE POLICIES AND PROGRAMS, FOR THE PROFITABILITY OF
17 THE INDUSTRY, AND THE WELFARE OF THE CONSUMERS, BY STRIVING
18 ALWAYS TO DEVELOP CONCEPTS FOR THE GENERAL WELFARE AND
19 LONGEVITY OF DAIRY PRODUCERS, WHILE MAINTAINING THE STRONG
20 POSITIVE, PUBLIC IMAGE OF THE DAIRY FARMERS." THAT WAS A
21 REALLY LONG SENTENCE, I APOLOGIZE.

22 WE ARE HERE TODAY BECAUSE OUR MEMBERS' FARMS ARE
23 CONFRONTED WITH DISORDERLY MARKETING CONDITIONS WHICH THREATENS
24 THEIR VIABILITY IN THE STATE. SINCE THE GONSALVES MILK POOLING
25 ACT WAS IMPLEMENTED IN 1969, THE CDFA HAS ADMINISTERED A STATE

1 MILK MARKETING ORDER AND HAS TRIED TO STRIVE TO BALANCE
2 INDUSTRY INTERESTS. IN RECENT YEARS HOWEVER, CALIFORNIA --

3 JUDGE CLIFTON: EXCUSE ME, LET ME STOP YOU. WOULD SOMEONE
4 CLOSE THAT BACK DOOR, PLEASE? AND WHILE I HAVE GOT YOU
5 STOPPED, WOULD YOU SPELL CONSCIENTIOUS JUST FOR THE RECORD ON
6 THE PREVIOUS PAGE? CONSCIENTIOUSLY.

7 MS. ACMOODY: YES, C-O-N-S-C-I-E-N-T-I-O-U-S-L-Y.

8 JUDGE CLIFTON: THANK YOU SO MUCH.

9 MS. ACMOODY: I REALLY COULDN'T GET THAT PRONOUNCED
10 CORRECTLY.

11 JUDGE CLIFTON: NO, I LIKED IT WITH ITS FRENCH FLAVOR.

12 MS. ACMOODY: THANK YOU. SO WHERE WAS I? OKAY.

13 IN RECENT YEARS, CALIFORNIA'S MINIMUM PRICES HAVE
14 FAILED TO REFLECT NATIONAL VALUES FOR CLASSIFIED MILK USES.
15 THIS HAS LED TO INCREASINGLY DIFFICULT MARKETING CONDITIONS FOR
16 DAIRY FARMS OPERATING IN CALIFORNIA.

17 THE UNITY WE HAVE SEEN IN THE CALIFORNIA PRODUCERS'
18 COMMUNITY IN THE LAST FEW YEARS, IS TESTIMONY TO THE UNDENIABLE
19 DISRUPTION CAUSED TO CALIFORNIA DAIRY FAMILIES AND THEIR
20 EMPLOYEES BY THE INEQUITY IN CALIFORNIA'S MILK PRICING,
21 COMPARED TO THE PRICE DISCOVERY MECHANISM IN STATES OPERATING
22 UNDER THE FEDERAL SYSTEM.

23 MORE SPECIFICALLY, WITH THE FIXED WHEY FACTOR
24 IMPLEMENTED ON DECEMBER 1, 2007, IT WAS ONLY A MATTER OF TIME
25 BEFORE PRICES WOULD FALL SIGNIFICANTLY OUT OF ALIGNMENT WITH

1 THE FEDERAL ORDER PRICING. THE ISSUE BECAME PARTICULARLY
2 APPARENT IN 2011 AS THE VALUE OF DRY WHEY STARTED TO RISE. THE
3 PRODUCER COMMUNITY, CONCERNED WITH THE INEQUITY, OVERWHELMINGLY
4 SUPPORTED SOME CHANGES. LAND O'LAKES SUBMITTED A PETITION ON
5 MAY 24, 2011, AGREEING THE ISSUE SHOULD BE REVISITED. CDFA
6 CALLED FOR A HEARING ON JUNE 30, 2011. SUPPORT FROM DAIRY
7 PRODUCER ORGANIZATIONS AND COOPERATIVES WAS UNPARALLELED. ALL
8 SOUGHT CHANGES THAT WOULD BRING THE CALIFORNIA 4B PRICE IN
9 CLOSER ALIGNMENT WITH FEDERAL ORDER PRICES. AS A RESULT OF THE
10 HEARING, CDFA DECIDED TO IMPLEMENT CHANGES ELIMINATING THE
11 FIXED WHEY FACTOR AND REPLACING IT WITH A SLIDING SCALE.

12 THE CHANGES RESULTING FROM THE JUNE 30, 2011, HEARING,
13 AND IMPLEMENTED ON SEPTEMBER 1, 2011, WERE AN IMPROVEMENT FOR
14 PRODUCERS. THE WHEY VALUE IS NOW ALLOWED TO FLUCTUATE.
15 HOWEVER, WHILE WUD APPRECIATED THE MODIFICATION, WE BELIEVED IT
16 STILL FELL SHORT OF AN APPROPRIATE METHOD TO DETERMINE THE WHEY
17 VALUE IN THE CLASS 4B FORMULA. HENCE, WUD SUBMITTED A PETITION
18 TO CDFA ON DECEMBER 2ND, 2011, PROPOSING TO MODIFY THE CURRENT
19 SLIDING SCALE IN THE CLASS 4B FORMULA TO ALLOW THE WHEY FACTOR
20 TO MORE CLOSELY REFLECT THE WEIGH VALUE GENERATED BY THE
21 CURRENT CLASS III FORMULA. AT THE TIME, THE DIFFERENCE BETWEEN
22 CALIFORNIA'S WHEY VALUE AND FEDERAL ORDERS, SINCE THE SLIDING
23 SCALE'S IMPLEMENTATION, AVERAGED A STAGGERING \$1.88 PER HUNDRED
24 WEIGHT. CALIFORNIA DAIRY FAMILIES CLEARLY NEEDED A BETTER WAY
25 TO CAPTURE THE WHEY VALUE. UNFORTUNATELY, CDFA DECIDED NOT TO

1 ACT ON THE MATTER AND DENIED THE HEARING REQUEST.

2 THE LAST (NON-TEMPORARY) UPDATE TO THE WHEY SCALE
3 OCCURRED IN 2012, WHEN CDFA SECRETARY KAREN ROSS INCREASED THE
4 UPPER END OF THE SCALE BY 10 CENTS (EFFECTIVE AUGUST 1.)
5 FOLLOWING THIS DECISION, SHE CREATED THE DAIRY FUTURE TASK
6 FORCE IN THE HOPES OF FINDING COMMON GROUND BETWEEN INDUSTRY
7 PARTICIPANTS TO IMPROVE THE CALIFORNIA PRICING SYSTEM. ALMOST
8 THREE YEARS LATER, NO SIGNIFICANT CHANGES OCCURRED, AND
9 PRODUCERS WERE STILL GETTING A CLASS 4B PRICE THAT DOES NOT
10 TRACK FMMO CLASS III.

11 IN 2013, PRODUCERS SUPPORTED LEGISLATION, (AB 31), THAT
12 WOULD HAVE TIED THE WHEY VALUE IN THE CLASS 4B FORMULA TO THE
13 WHEY VALUE IN THE CLASS III FORMULA. THAT LEGISLATION DID NOT
14 PASS, DESPITE STRONG UNITY IN THE PRODUCER COMMUNITY.

15 EVERY PRODUCER GROUP IN THE STATE HAS WORKED HARD ON
16 GETTING THIS ISSUE RESOLVED. THE LAST HEARING, JUNE 3, 2015,
17 WAS CALLED BY SECRETARY ROSS ON HER OWN MOTION, TO PROVIDE
18 TEMPORARY RELIEF TO PRODUCERS. THE CHANGES RESULTING FROM THIS
19 HEARING WILL EXPIRE NEXT SUMMER. WHILE WE APPRECIATED THE
20 SECRETARY'S EFFORTS, THE CHANGES MADE ARE TEMPORARY.
21 CALIFORNIA DAIRY PRODUCERS NEED A PERMANENT SOLUTION TO THE
22 UNFAIR PRICES THEY ARE RECEIVING. THIS IS AT THE ROOT OF WHY
23 WE ARE HERE TODAY.

24 IN PARALLEL TO THE EFFORTS SPENT AT THE STATE, AN
25 INTEREST IN EXPLORING THE POTENTIAL FOR CALIFORNIA FMMO STARTED

1 GROWING IN THE PRODUCER COMMUNITY. MANY INFORMATIONAL MATERIAL
2 WAS SHARED THROUGH NEWSLETTERS AND PRESENTATIONS WERE DONE
3 THROUGHOUT THE STATE. SPECIFICALLY, WUD HOSTED A PANEL IN 2012
4 AND IN 2014, AND A PRESENTATION IN 2015, WHERE USDA AND COOP
5 STAFF EXPLAINED TO MEMBERS THE HEARING PROCESS AND HOW FMMO'S
6 OPERATE. WUD BOARD MEMBERS SPECIFICALLY SPENT TIME TRYING TO
7 UNDERSTAND THE DIFFERENCES BETWEEN FMMO AND THE CALIFORNIA
8 SYSTEM. AT THAT TIME, IT WAS COMMON KNOWLEDGE THAT COOPS
9 STARTED TO WORK ON DEVELOPING A PROPOSAL FOR CALIFORNIA FMMO'S.
10 UNTIL THAT WAS MADE OFFICIAL IN CONTENT WAS MADE PUBLIC, WUD
11 DID NOT TAKE A POSITION.

12 AFTER THE THREE MAJOR COOPS IN THE STATE SUBMITTED A
13 PROPOSAL TO USDA IN FEBRUARY OF 2015, THE WUD BOARD OF
14 DIRECTORS UNANIMOUSLY VOTED TO SUPPORT IT AT THE FEBRUARY 20,
15 2015, BOARD MEETING. THIS PROPOSAL WAS A CULMINATION OF THE
16 LENGTHY PROCESS AT CDFA WHERE THE INDUSTRY DETERMINED THAT THE
17 FMMO WAS NECESSARY TO REMEDY THE AFOREMENTIONED INEQUALITY
18 CAUSED BY THE CALIFORNIA SYSTEM.

19 IN SHORT, THIS PROPOSAL MEANS TO OUR ORGANIZATION, A
20 SOLUTION TO A PROBLEM THAT THE CDFA SECRETARY HAS NOT BEEN ABLE
21 TO FIX. AS MENTIONED PREVIOUSLY, IT IS NO SECRET THAT THE
22 CURRENT PRODUCER DISSATISFACTION STEMS LARGELY FROM THE GROWING
23 GAP THAT EXISTS BETWEEN THE CLASS III AND CLASS 4B PRICE. THE
24 PART OF THE CDFA CODE THAT STATE "THE METHODS OR FORMULAS SHALL
25 BE REASONABLY CALCULATED TO RESULT IN PRICES THAT ARE IN

1 REASONABLE AND SOUND ECONOMIC RELATIONSHIP WITH THE NATIONAL
2 VALUE OF MANUFACTURED MILK PRODUCTS" (SECTION 62062) HAS BEEN
3 MENTIONED COUNTLESS TIMES IN THE LAST FIVE YEARS.

4 FOR THE LAST TWELVE MONTHS OF DATA BEFORE THE LATEST
5 TEMPORARY CHANGE CAME INTO EFFECT, THE CLASS 4B WHEY VALUE
6 AVERAGED \$1.50 PER HUNDRED WEIGHT, LESS THAN THE FMMO CLASS III
7 VALUE. THAT'S FOR THE PERIOD AUGUST 2014 TO JULY 2015.

8 WHEN COMMODITY PRICES WERE HIGHER, THE DIFFERENCE WAS
9 EVEN MORE STRIKING WITH CLASS 4B WHEY VALUE BEING \$2.03 FOR
10 HUNDRED WEIGHT LOWER THAN THE CLASS III IN 2014. CLASS 4B
11 REPRESENTS THE LARGEST CLASS OF MILK IN CALIFORNIA BY
12 UTILIZATION. ACCORDING TO DATA PUBLISHED BY CDFA FOR THIS
13 HEARING(SUMMARY OF POOL USAGE PERCENTAGE TABLE), CLASS 4B
14 REPRESENTED AN AVERAGE 42% OF THE SNF POOL USAGE AND 47% OF THE
15 FAT POOL USAGE IN 2015. LOOKING BACK AT THE LAST TEN YEARS, IT
16 REPRESENTED 41% AND 46% (FOR SNF IN FAT POOL USAGE,
17 RESPECTIVELY." -- AND SNF STANDS FOR SOLIDS NOT FAT.

18 THE CLASS PRICE DIFFERENCE PLACES THE CALIFORNIA DAIRY
19 OPERATIONS IN THE MUCH LESS COMPETITIVE POSITION THAN THEIR
20 COUNTERPARTS WHOSE MILK ARE PRICED BY FMMO REGULATIONS. THIS
21 MEANS THE TWO SYSTEMS YIELD DIFFERENT REGULATED MINIMUM PRICES
22 FOR PRODUCT COMPETING IN LIKE MARKETS. THE RESULTING
23 DIFFERENCES IN PRICES MAY CAUSE MARKET DECISIONS THAT ARE BASED
24 ON REGULATIONS RATHER THAN MARKET FUNDAMENTALS. THIS IS
25 CLEARLY A CONCERN AND A SIGN OF DISORDERLY MARKET CONDITIONS.

1 FOR CALIFORNIA DAIRY FAMILIES TO RECEIVE MILK PRICES ON PARITY
2 WITH THE REST OF THE COUNTRY, THE PROPOSAL SUBMITTED BY THE
3 THREE COOPS (PROPOSAL 1) IS OUR BEST OPTION.

4 ACCORDING TO THE USDA'S PRELIMINARY REGULATORY IMPACT
5 ANALYSIS OF PROPOSALS TO ESTABLISH A CALIFORNIA FEDERAL MILK
6 MARKETING ORDER, THE IMPACT ON CALIFORNIA DAIRY PRODUCERS WOULD
7 BE SIGNIFICANT. INDEED, THE ANALYSIS POINTS TO AVERAGE
8 INCREASED REVENUES OF \$700 MILLION PER YEAR FOR THE FIRST SEVEN
9 YEARS OF IMPLEMENTATION. ON THE FIRST YEAR ALONE, (2017), USDA
10 ESTIMATES INCREASED PRODUCER REVENUES AT \$590 MILLION.
11 PRODUCERS IN CALIFORNIA DESERVE TO BE ON THE LEVEL PLAYING
12 FIELD WITH THEIR COUNTERPARTS IN THE REST OF THE COUNTRY.

13 MR. VLAHOS: DOES THAT CONCLUDE YOUR WRITTEN TESTIMONY?

14 MS. ACMOODY: IT DOES.

15 MR. VLAHOS: WELL, THANK YOU VERY MUCH, MS. ACMOODY, OR
16 PERHAPS I SHOULD SAY "MERCI BEAU COUP".

17 AND MAY I ASK, DOES THE COURT REPORTER HAVE A COPY OF
18 THIS? YES. I WANTED TO MAKE CLEAR THAT WHEN THE WITNESS USED
19 THE WORD WUD, IT WOULD BE INITIALS, ALL CAPS, W-U-D. AND WHEN
20 SHE REFERRED TO "CLASS III" IT WAS THE ROMAN NUMERAL III, AND
21 WHEN SHE REFERRED TO "4B", IT WAS THE ARABIC 4 AND SMALL LETTER
22 B.

23 YOUR HONOR, THAT CONCLUDES OUR TESTIMONY. I WOULD MOVE
24 FOR ADMISSION OF EXHIBIT 25 INTO EVIDENCE.

25 JUDGE CLIFTON: DOES ANYONE WISH TO QUESTION THE WITNESS

1 BEFORE DETERMINING WHETHER YOU HAVE ANY OBJECTIONS TO EXHIBIT
2 25 BEING ADMITTED? THERE IS NO ONE.

3 IS THERE ANY OBJECTION TO IT EXHIBIT 25 BEING ADMITTED?
4 THERE ARE NONE. EXHIBIT 25 IS ADMITTED INTO EVIDENCE.

5 (THEREAFTER, EXHIBIT 25 WAS
6 RECEIVED INTO EVIDENCE.)

7 MR. VLAHOS: THANK YOU, YOUR HONOR.

8 JUDGE CLIFTON: AND I THANK YOU BOTH FOR AN EXCELLENT
9 PRESENTATION. NOW I WOULD INVITE ANYONE WHO HAS QUESTIONS OF
10 MS. ACMOODY TO COME TO THE MICROPHONE WHERE MR. VLAHOS WAS IN
11 ORDER TO ASK THOSE QUESTIONS.

12 MR. ENGLISH: GOOD MORNING, CHIP ENGLISH. AND WHILE I
13 THINK I'M A LITTLE BETTER, YOUR HONOR, I STILL SEEM TO HAVE
14 WHATEVER IT IS, COLD, ALLERGY, COMBINATION OF THE TWO. AND
15 WHEN THE WITNESS, ONE OF US COMES FROM UPPER CANADA AND THE
16 OTHER ONE FROM LOWER CANADA, SO WE'LL SEE IF WE CAN FIGURE THIS
17 OUT, FOR ACCENT PURPOSES.

18 CROSS-EXAMINATION

19 BY MR. ENGLISH:

20 Q. SO FIRST, AND I ONLY WANT TO ASK QUESTIONS ABOUT
21 WHETHER YOU KNOW OF IT. ARE YOU AWARE THAT THERE WAS A STUDY
22 DONE BY MARK STEPHENSON AND CHUCK NICHOLSON REQUESTED BY THE
23 COOPERATIVES WITH RESPECT TO WHAT LED TO THE SUBMISSION FOR A
24 FEDERAL MILK MARKETING ORDER?

25 A. YES, I AM AWARE.

1 Q. AND HAVE YOU SEEN THAT STUDY?

2 A. NO, I HAVE NOT.

3 Q. ALL RIGHT. AND NOW, YOU SAID THAT YOU HAVE TESTIFIED,
4 I THINK, SIX TIMES AT CDFA HEARINGS?

5 A. I PREPARED TESTIMONY. ACTUALLY HAD TO SKIP ONE OR TWO,
6 THEY TEND TO SCHEDULE THOSE HEARINGS AROUND BABIES BEING
7 DELIVERED SO I --

8 Q. ALL RIGHT. THAT'S -- OBVIOUSLY, WE'LL GET TO IT, I
9 JUST WANT TO UNDERSTAND, WHEN YOU MENTIONED PREPARING
10 TESTIMONY?

11 A. YES.

12 Q. WAS THAT IN YOUR CAPACITY AT WESTERN UNITED SOLELY?

13 A. YES.

14 Q. OKAY. DID YOU EVER PREPARE EVIDENCE FOR SUBMISSION AT
15 A CDFA HEARING WHEN YOU WERE AT CDFA?

16 A. I INTRODUCED DATA WHEN I WAS AT CDFA.

17 Q. BUT THAT WASN'T WHAT YOU REFER -- I JUST WANT THE
18 RECORD TO BE CLEAR, THAT WASN'T WHAT YOU WERE REFERRING TO WHEN
19 YOU REFERRED TO THE SIX TIMES YOU PREPARED DATA. YOU PREPARED
20 DATA SIX TIMES FOR HEARINGS IN CALIFORNIA AFTER YOU JOINED
21 WESTERN UNITED, WAS IT 2010?

22 A. YES, THAT IS CORRECT.

23 Q. OKAY. AND I WANT TO BE VERY CLEAR ABOUT THE NEXT
24 COUPLE OF QUESTIONS BECAUSE I UNDERSTAND YOU WERE AT CDFA AT
25 THE TIME, AND I'M NOT ASKING FOR YOUR TESTIMONY AS A

1 REPRESENTATIVE OF WESTERN UNITED. BUT YOU WERE ON THE HEARING
2 PANEL FOR A DECISION MADE WITH RESPECT TO CLASS 1, 2, AND 3
3 PRICING IN 2008?

4 A. I BELIEVE SO, I WOULD HAVE TO GO BACK AND LOOK IF MY
5 NAME WAS ON THE PANEL REPORT, BUT THAT SOUNDS RIGHT.

6 Q. AND THAT HEARING STARTED BY THE REQUEST OF SOME
7 PRODUCER ORGANIZATIONS LOOKING FOR AN INCREASE IN CLASS 1, 2,
8 AND 3 PRICES?

9 A. THAT SOUNDS FAMILIAR.

10 Q. AND DID IT ACTUALLY RESULT IN A DECREASE IN CLASS 1, 2,
11 AND 3 PRICES?

12 A. THAT ALSO SOUNDS FAMILIAR.

13 Q. AND IS IT FAIR TO SAY THAT, WOULD YOU RECOLLECT THAT A
14 REASON GIVEN FOR THAT WAS THAT THERE WAS SURPLUS MILK IN
15 CALIFORNIA?

16 A. THAT ALSO SOUNDS FAMILIAR.

17 Q. THANK YOU. YOU USED THE TERM, AT LEAST A COUPLE TIMES,
18 DISORDERLY MARKETING CONDITIONS.

19 A. YES, I KNOW YOU LIKE THAT TERM.

20 Q. WELL, I'M NOT WILL ONLY ONE. DOES CALIFORNIA ACTUALLY
21 USE THAT TERM IN ITS STATUTE, ORDERLY MARKETING CONDITIONS?

22 A. YEAH, I THINK I, THAT I QUOTED SOMETHING HERE ON 6062,
23 THAT'S REASONABLE. THAT'S THE MAIN WORD THEY USE IS REASONABLE
24 RELATIONSHIP. THAT'S A GOOD QUESTION, I COULDN'T ATTEST TO
25 THAT SPECIFICALLY.

1 Q. OKAY. SO SINCE YOU USED THE WORD AS OPPOSED TO MY
2 USING IT, WHAT IS IT THAT YOU MEAN BY DISORDERLY MARKETING
3 CONDITIONS TODAY FOR THIS TESTIMONY?

4 A. WHAT I MEAN BY THAT IS, THE PRODUCERS IN CALIFORNIA ARE
5 PLACED IN A COMPETITIVE DISADVANTAGE WITH PRODUCERS IN OTHER
6 FMMO'S, AND SO THAT'S DISORDERLY MARKETING CONDITIONS.

7 Q. AND WHAT IS THAT COMPETITIVE DISADVANTAGE,
8 SPECIFICALLY?

9 A. THE FACT THAT THEY ARE FACING LOWER REGULATED MILK
10 PRICES.

11 Q. ARE THERE ANY OTHER DISORDERLY MARKETING CONDITIONS IN
12 YOUR TESTIMONY TODAY?

13 A. THAT IS THE MAIN ONE WE ARE CONCERNED ABOUT.

14 Q. YOU JUST SAID MAIN ONE, SO NOW I'M ASKING IS THERE ANY
15 OTHER THAT YOU ARE CONCERNED ABOUT?

16 A. NOT RIGHT NOW.

17 Q. HAS THERE IN THE RECENT PAST BEEN ANOTHER THAT YOU HAVE
18 BEEN CONCERNED ABOUT?

19 A. THERE MAY HAVE BEEN, BUT NOT FOR THE PURPOSE OF THE
20 ISSUE HERE THAT WE'RE CONCERNED ABOUT.

21 Q. THANK YOU. LIKE MR. HOLLON AND WITNESSES BEFORE, YOU
22 REFERENCED THE FAILURE FOR CALIFORNIA MINIMUM PRICES TO REFLECT
23 NATIONAL VALUES FOR CLASSIFIED MILK USES. WHEN YOU USE THE
24 TERM NATIONAL VALUE, ARE YOU REFERRING TO REGULATED PRICE,
25 MINIMUM REGULATED PRICES?

1 A. YES.

2 Q. AND WHEN WERE THOSE NATIONAL VALUES ESTABLISHED?

3 A. I MEAN, THEY ARE ESTABLISHED ON A MONTHLY BASIS THROUGH
4 THE REGULATED PRICING FORMULAS.

5 Q. WHEN DID USDA ESTABLISH THOSE FORMULAS?

6 A. THOSE CHANGED THROUGH THE HEARING PROCESS. I BELIEVE
7 THE PRICING SYSTEM WAS ESTABLISHED IN THE '30'S, IN THE U.S.,
8 BUT THEY CHANGED OVER TIME.

9 Q. WHEN WAS THE MOST RECENT TIME THAT USDA FULLY
10 ESTABLISHED THOSE VALUES?

11 A. WE HAVE TALKED ABOUT FEDERAL ORDER REFORM, I THINK IN
12 2000 WAS THE MAIN CHANGES THAT HAPPENED RECENTLY.

13 Q. OKAY. NOW, AT THAT TIME, IN 2000, DO YOU KNOW WHAT THE
14 HIGHEST LEVEL OF THE DRY WHEY PRICE HAD EVER REACHED?

15 A. NO, I DON'T.

16 Q. OKAY. YOU REFERENCED IN THE MIDDLE OF -- PAGE 1 IS
17 NUMBERED, PAGE 2, SO THE SECOND PAGE OF YOUR TESTIMONY?

18 A. THAT WAS MY EFFORT TO PUT THE PAGE NUMBER, BUT
19 APPARENTLY IT DIDN'T FOLLOW THROUGH.

20 Q. I'M EQUALLY COMPETENT NOW. SO IN THE MIDDLE OF THE
21 PAGE, THAT IS THE SECOND PAGE OF YOUR TESTIMONY, YOU STATED,
22 "THE ISSUE BECAME PARTICULARLY APPARENT IN 2011 AS THE VALUE OF
23 DRY WHEY STARTED TO RISE." CORRECT?

24 A. YES.

25 Q. DO YOU KNOW WHETHER THE VALUE OF DRY WHEY IN 2011 WAS

1 HIGHER THAN DRY WHEY HAD EVER BEEN BEFORE?

2 A. THAT IS A, I THINK, I DON'T HAVE A DATA SET IN FRONT OF
3 ME, SO I DON'T WANT TO SPEAK TO THAT.

4 Q. BUT FEDERAL MILK MARKETING ORDERS HAVE NOT MODIFIED THE
5 FORMULAS USED FOR DRY WHEY WHEN PRICES FOR DRY WHEY HAVE BEEN
6 AT THE CURRENT LEVELS, CORRECT?

7 A. CORRECT.

8 Q. ON THE THIRD PAGE OF YOUR TESTIMONY YOU INDICATE AT THE
9 LAST HEARING, SECRETARY ROSS MADE A MOTION TO PROVIDE TEMPORARY
10 RELIEF TO PRODUCERS. AND YOU DISCUSSED THE FACT THAT IT WAS
11 TEMPORARY, BUT WHAT WAS THE NATURE OF THAT RELIEF, REGARDLESS
12 OF WHETHER IT WAS TEMPORARY OR NOT? WHAT DID IT PROVIDE AS
13 RELIEF FOR DAIRIES?

14 A. I'M NOT REALLY SURE --

15 Q. WHAT WAS THE NATURE OF THE CHANGE? I UNDERSTAND IT IS
16 TEMPORARY, BUT YOU DON'T PROVIDE FOR THE RECORD WHAT THE CHANGE
17 WAS.

18 A. OH, I SEE, RIGHT. SO THE WAY -- W-A-Y -- THE WHEY --
19 W-H-E-Y -- IS CALCULATED, WAS MODIFIED, AND SO A NEW SLIDING
20 SCALE WAS IMPLEMENTED SO THAT THE DRY WHEY VALUE COULD GENERATE
21 A HIGHER RETURN FOR THE CLASS 4B PRICE.

22 Q. AND WHAT WAS THE LEVEL THAT IT COULD GENERATE FOR THE
23 CLASS 4B PRICE THAT WAS HIGHER?

24 A. SO THE SCALE WAS CHANGED. IT USED TO RANGE BETWEEN 25
25 CENTS AND 75 CENTS, AND IT WAS CHANGED TO RANGE BETWEEN ZERO

1 AND \$2, \$2.005 TO BE MORE SPECIFIC.

2 JUDGE CLIFTON: TELL ME -- TELL ME AGAIN?

3 MS. ACMOODY: SO IT IS NOT \$2 FLAT, IT IS \$2 DOLLARS AND A
4 HALF A CENT, SO THAT'S 2.005.

5 JUDGE CLIFTON: OKAY. HOW PECULIAR. OKAY.

6 MR. ENGLISH: JUST ONE FINAL CLARIFICATION QUESTION.

7 BY MR. ENGLISH:

8 Q. IF SOMEONE WERE TO GO BACK AND LOOK AT THE CDFA HEARING
9 PANEL DECISION, YOUR NAME WAS DIFFERENT, CORRECT?

10 A. IN 2008?

11 Q. YES.

12 A. THAT IS CORRECT.

13 Q. AND YOUR NAME, JUST SO FOR CLARITY FOR THE RECORD, IF
14 SOMEBODY IS LOOKING LATER AND THEY SAY, WE DON'T SEE AND
15 ACMOODY, WHAT WAS YOUR NAME AT THE TIME?

16 A. PELLETTIER, IT'S SPELLED, P-E-L-L-E-T-I-E-R.

17 Q. THANK YOU VERY MUCH FOR YOUR TESTIMONY.

18 I HAVE NO FURTHER QUESTIONS.

19 MR. VETNE: JOHN VETNE FOR HILMAR CHEESE COMPANY.

20 CROSS-EXAMINATION

21 BY MR. VETNE:

22 Q. THANK YOU FOR APPEARING TODAY. MR. ENGLISH ASKED YOU
23 SOME QUESTIONS ABOUT YOUR USE OF WORDS. I WANT TO EXPAND ON
24 THAT.

25 NEXT TO THE LAST PARAGRAPH YOU USED A WORD COMBINATION,

1 "MARKET FUNDAMENTALS." YOU ARE AN ECONOMIST, CORRECT?
2 APPEARING AS AN ECONOMIST?

3 A. CORRECT.

4 Q. OKAY. DOES THE TERM MARKET FUNDAMENTALS HAVE MEANING
5 IN THE DISCIPLINE OF ECONOMICS?

6 A. IT'S KIND OF A BROAD QUESTION, SO IF IT HAS A MEANING?

7 Q. A MEANING IN THE ACADEMIC STUDY CALLED ECONOMICS, DOES
8 IT HAVE A MEANING?

9 A. I SUPPOSE IT DOES.

10 Q. WELL, IF IT DOES, WHAT IS YOUR UNDERSTANDING OF THAT
11 TERM AS USED IN THE DISCIPLINE OF ECONOMICS?

12 A. I WOULD HAVE TO GO BACK TO MY ECON 101 BOOK AND LOOK AT
13 THE OFFICIAL DEFINITION, BUT YOU JUST WANT A BROAD --

14 Q. PARDON?

15 A. YOU JUST WANT A BROAD EXPLANATION OF WHAT?

16 Q. WELL, THEN LET ME ASK YOU, RATHER THAN GOING BACK TO
17 ECON 101, HOW YOU MEAN THIS TERM IN YOUR TESTIMONY?

18 A. OKAY. THAT'S A -- I SHOULD BE ABLE TO ANSWER THAT ONE.
19 SO THE SENTENCE YOU ARE REFERRING TO HERE IS THE ONE, "THE
20 RESULTING DIFFERENCES OF PRICES MAY CAUSE MARKET DECISIONS THAT
21 ARE BASED ON REGULATIONS RATHER THAN MARKET FUNDAMENTALS." AND
22 WHAT I MEAN BY THAT IS THAT IF PRODUCERS IN CALIFORNIA WERE
23 FACED WITH THE SAME MARKET FUNDAMENTALS AS THE REST OF THE
24 COUNTRY, WHICH MEANS THEY WERE FACED WITH THE SAME REGULATED
25 MINIMUM PRICES, THEN THEY, THE MARKET DECISIONS THEY WOULD BE

1 ABLE TO MAKE ON THEIR OPERATIONS WOULD BE DIFFERENT.

2 AND SO IT -- IT'S REALLY A LITTLE BIT DIFFERENT THAN
3 YOUR BASIC MARKET FUNDAMENTALS IN ECONOMICS IN THAT WE ARE
4 OPERATING IN THE REGULATED ENVIRONMENT, SO IT IS NOT
5 NECESSARILY YOUR -- THERE ARE OTHER THINGS THAT IMPACT YOUR
6 FREE-MARKET ECONOMICS THAT YOU WOULD EXPECT.

7 Q. LET ME SEE IF I UNDERSTAND CORRECTLY. WHEN YOU USED
8 THE TERM MARKET FUNDAMENTALS IN THIS PARAGRAPH IN THIS
9 SENTENCE, YOU ARE REFERRING TO A SET OF PUBLISHED REGULATED
10 MINIMUM PRICES, CORRECT?

11 A. YES, THAT'S WHAT THE WORLD WE ARE OPERATING IN.

12 Q. DOES THAT TESTIMONY THEN, INCLUDE SOMETHING BEYOND
13 REGULATED MINIMUM PRICES TO BEHAVIOR OF MARKET PARTICIPANTS IN
14 TRANSACTIONS IN A SYSTEM THAT HAS BOTH REGULATED PRICES AND
15 COMPETITIVE PRICES?

16 A. I DON'T THINK IT INCLUDES ANYTHING BEYOND THAT.

17 Q. DOESN'T IT INCLUDE BEHAVIOR, JUST YOU ARE LOOKING AT
18 PRICES, PERIOD?

19 A. THAT'S WHAT WE'RE CONCERNED ABOUT.

20 Q. OKAY. AND PREVIOUSLY IN THE SAME SENTENCE YOU SAID,
21 "DIFFERENCES IN PRICES MAY CAUSE MARKET DECISIONS." FIRST WORD
22 I WOULD LIKE YOU TO DEFINE IN CONTEXT OF YOUR TESTIMONY IS THE
23 WORD MARKET.

24 A. IN THAT SAME SENTENCE, "THE RESULTING DIFFERENCE OF
25 PRICE MAY CAUSE MARKET DECISIONS?"

1 Q. YES.

2 A. SO THE MARKET -- THE MARKETPLACE HERE, WOULD BE THE
3 DAIRY INDUSTRY IN CALIFORNIA. SO AN EXAMPLE OF A MARKET
4 DECISION COULD BE FOR A DAIRY TO SELL OUT AND PLANT TREES
5 INSTEAD OF REMAINING IN BUSINESS. SO THE MARKET IS THE DAIRY
6 INDUSTRY HERE IN CALIFORNIA.

7 Q. OKAY. SO -- OKAY. SO THE MARKET YOU ARE REFERRING TO
8 IS THE MARKET FOR MILK WITHIN CALIFORNIA?

9 A. YES.

10 Q. AND THE DECISIONS THAT YOU ARE REFERRING TO ARE THOSE
11 THAT MAY OR MAY NOT BE MADE BY PRODUCERS DAIRY FARMERS WHO SEEK
12 TO SELL THEIR MILK IN CALIFORNIA?

13 A. THAT WOULD BE ONE, YES.

14 Q. ARE THERE OTHERS?

15 A. CAN YOU REPEAT EXACTLY WHAT YOU SAID, TO MAKE SURE?

16 Q. THE DECISIONS TO WHICH YOU ARE REFERRING ARE DECISIONS
17 MADE BY DAIRY FARMERS TO SELLERS WHO NEED TO SELL THEIR MILK IN
18 CALIFORNIA?

19 A. YEAH, THE DECISIONS MADE BY THOSE FARMERS, CORRECT.

20 Q. YOU ARE TALKING ABOUT FARMER DECISIONS HERE WHEN YOU
21 USE THE TERM MARKET DECISIONS?

22 A. THAT IS WHAT WE ARE CONCERNED ABOUT.

23 Q. OKAY. THAT'S WHAT YOU ARE CONCERNED ABOUT. ARE THERE
24 ALSO MARKET DECISIONS ENCOMPASSED IN YOUR TESTIMONY MADE BY
25 THOSE THAT BUY MILK PRODUCED WITHIN CALIFORNIA?

1 A. THEY CERTAINLY WOULD BE RELATED.

2 Q. IS THAT ENCOMPASSED IN YOUR TESTIMONY?

3 A. YES, THEY ARE PART OF THE SAME MARKETPLACE.

4 Q. OKAY. WHAT -- AND IN THAT CASE, IF MARKET DECISIONS
5 INCLUDES DECISIONS BY OTHER THAN DAIRY FARMERS, TO WHAT KIND --
6 WHAT KIND OF DECISIONS ARE YOU REFERRING TO?

7 A. THE DECISION TO MAKE SPECIFIC PRODUCTS OR PURCHASE MILK
8 FROM SPECIFIC ENTITIES OR VARIOUS ENTITIES.

9 Q. OKAY. AND WITH RESPECT TO THOSE DECISIONS, ARE THERE
10 DECISIONS WHICH BUYERS THAT YOU BELIEVE ARE INTERFERING WITH
11 SOUND ECONOMIC, EITHER PROCUREMENT, TRANSPORTATION, OR
12 DISTRIBUTION OF MILK AND DAIRY PRODUCTS?

13 A. I'M NOT SURE I UNDERSTAND YOUR QUESTION. THAT ARE
14 INTERFERING?

15 Q. THAT ARE INTERFERING. NOT MY -- MY DESCRIPTION OF
16 DISORDERLY MARKETING. ARE THERE DECISIONS MADE BY BUYERS
17 WITHIN CALIFORNIA THAT YOU CAN ILLUSTRATE ARE A FORM OF
18 MARKETING DISORDER WITHIN CALIFORNIA?

19 A. I'M -- NO, I'M NOT TESTIFYING TO THAT TODAY. WHAT I'M
20 CONCERNED ABOUT IS THE INEQUALITY IN THE PRICE DIFFERENCE
21 BETWEEN THE REGULATED SYSTEM AND THE FMMO PRICES.

22 Q. OKAY. I'M LOOKING AT THE FIRST, SECOND, THIRD, FOURTH
23 FULL PARAGRAPH ON PAGE TWO OF YOUR PREPARED TESTIMONY. A
24 LITTLE BIT BELOW THE MIDDLE OF THAT PARAGRAPH. YOU ARE
25 REFERRING TO WHAT HAPPENED IN DECEMBER OF 2011, ALLOWING YOUR

1 WHEY FACTOR TO MORE CLOSELY AFFECT THE WHEY VALUE GENERATED BY
2 THE CURRENT CLASS III FORMULA.

3 BY CURRENT CLASS III FORMULA, YOU ARE -- THIS IS 2015,
4 THE SAME FEDERAL CLASS III FORMULA WAS IN EFFECT IN 2011,
5 CORRECT?

6 A. YES, I DON'T SEE WHERE YOU ARE REFERRING TO, BUT, YES,
7 THAT'S THE SAME FORMULA AS IT IS TODAY.

8 Q. OKAY. DO YOU SEE THE SENTENCE BEGINNING "AT THE TIME,
9 THE DIFFERENCE BETWEEN CALIFORNIA'S WHEY VALUE," ABOUT SEVEN
10 LINES UP FROM THE BOTTOM OF THE SECOND PAGE?

11 A. SEVEN FROM THE BOTTOM. YES. "AT THE TIME, THE
12 DIFFERENCE BETWEEN CALIFORNIA'S WHEY VALUE AND FEDERAL ORDERS
13 SINCE THE SLIDING SCALE'S IMPLEMENTATION AVERAGED \$1.88."

14 IS THAT WHAT YOU ARE REFERRING TO?

15 Q. YOU ARE REFERRING WHEN YOU SAY "FEDERAL ORDERS" THERE,
16 YOU MEANT TO INCLUDE OR MEANT TO REFER TO THE FEDERAL ORDER
17 WHEY VALUE?

18 A. THAT IS CORRECT, THAT'S WHAT IT IS MEANT TO REFER TO.

19 Q. NOT THE FEDERAL ORDER. FEDERAL ORDER'S MORE GENERIC?

20 A. THAT'S RIGHT.

21 Q. AND THE SAME WOULD BE TRUE IN THE LAST PAGE OF YOUR
22 TESTIMONY, THE SECOND LINE, "WITH CLASS 4B WHEY VALUE BEING AN
23 AVERAGE OF \$2.03 PER HUNDREDWEIGHT LOWER THAN CLASS III IN
24 2014." YOU --

25 A. CLASS III, YES, WOULD BE THE WHEY VALUE.

1 Q. THE WHEY VALUE IN CLASS III?

2 A. CORRECT.

3 Q. OKAY. AND ON THE TOP OF THE THIRD PAGE OR YOUR
4 PREPARED TESTIMONY, REFERRING TO "NO SIGNIFICANT CHANGES
5 OCCURRED, AND PRODUCERS WERE STILL GETTING A CLASS 4B PRICE
6 THAT DOES NOT TRACK FMMO CLASS III."

7 ACTUALLY, YOU ARE REFERRING TO SOMETHING THAT HAPPENED
8 IN 2012, SO THAT WOULD BE DID NOT TRACK AT THE TIME, CORRECT?

9 A. CORRECT.

10 Q. OKAY. AND BY "DID NOT TRACK FMMO CLASS III," YOU ARE
11 AGAIN REFERRING TO THE WHEY VALUE IN CLASS III?

12 A. I THINK THE SPECIFIC STATEMENT HERE WAS PERTAINING TO
13 THE CLASS 4B, AND THE ACTUAL CLASS 4B AND THE ROMAN NUMERAL
14 CLASS III, BUT THE FACT THAT IT DID NOT CORRELATE ON THE WHEY
15 PORTION IS INCLUDED IN THAT STATEMENT.

16 Q. OKAY. AND BY, "DID NOT TRACK CLASS III," WAS IT YOUR
17 INTENTION TO INSTRUCT THAT THE CALIFORNIA CLASS 4B PRICE DID
18 NOT MOVE IN SYNC WITH THE FEDERAL CLASS III PRICE?

19 A. THAT IS WHAT THAT SENTENCE -- YEAH -- SAYS.

20 Q. AND IT HAD -- IT HAD MOVED MORE IN SYNC IN THE PAST,
21 CORRECT?

22 A. IT HAD, IN THE PAST.

23 Q. OKAY. AND THAT'S WHAT YOU ARE REFERRING TO THE PAST IN
24 SYNC VERSUS 2012 AND MORE RECENTLY NOT IN SYNC, CORRECT?

25 A. YES.

1 Q. OKAY. AND IN THE PAST, WHEN STATE CLASS 4B WAS BETTER
2 IN SYNC WITH FEDERAL CLASS III, IT MOVED TO ADD A LEVEL THAT
3 WAS BELOW FEDERAL CLASS III, CORRECT?

4 A. YES, IF WE WANTED TO LOOK AT THE SPECIFIC DATA, I'M
5 PRETTY SURE THAT MR. HOLLON INTRODUCED A WIDE RANGE OF
6 COMPARISON BETWEEN THE CLASS 4B AND THE CLASS III, AND I DON'T
7 HAVE THE SPECIFIC AVERAGES IN FRONT OF ME.

8 Q. BUT THE STATE CLASS 4B PRICE INCLUDES MATHEMATICAL
9 COMPONENTS?

10 A. YES.

11 Q. A REFERENCE PRICE FOR THE COMMODITY YOU ARE LOOKING TO,
12 CORRECT?

13 A. YES.

14 Q. AN ALLOWANCE FOR THE PROCESSOR TO CONVERT RAW MILK TO
15 THAT PRODUCT, CORRECT?

16 A. RIGHT.

17 Q. AND A MARKET ADJUSTMENT TO ADJUST FOR THE VALUE OF THAT
18 PRODUCT IN CALIFORNIA VERSUS INDUSTRY MARKETS WHERE A LOT OF IT
19 IS MARKETED, CORRECT?

20 A. THEY JUST HAVE THE FORMULA AS CONSTRUCTED, YES.

21 Q. AND THAT HAS BEEN CONSTRUCTED WITHIN THE CDFA PROCESS
22 IN RESPONSE TO THE LEGISLATIVE DIRECTIVE THAT YOU REFERRED TO
23 IN THE BOTTOM OF PAGE 3, "A REASONABLE AND SOUND ECONOMIC
24 RELATIONSHIP WITH THE NATIONAL VALUE OF MANUFACTURED MILK
25 PRODUCTS," CORRECT?

1 MR. VLAHOS: EXCUSE ME, YOUR HONOR. MAY I HAVE THE
2 QUESTION REPEATED, YOUR HONOR? BECAUSE I THINK THE QUESTION
3 MAY BE DIRECTED TO THE WITNESS TO TRY TO SPECULATE WHAT WAS IN
4 THE SECRETARY'S MIND, SO I WOULD LIKE THE QUESTION REPEATED,
5 PLEASE.

6 JUDGE CLIFTON: ALL RIGHT. MR. VLAHOS IF YOU WOULD REMAIN
7 NEAR THE MICROPHONE. NO, I DON'T MEAN RIGHT THIS MINUTE, I
8 MEAN, DON'T GO BACK TO YOUR CHAIR.

9 BY MR. VETNE:

10 Q. OKAY. IT'S YOUR UNDERSTANDING, IS IT NOT, THAT THE
11 LOCATION VALUE SUBTRACTED, BUILT INTO THE CALIFORNIA HISTORICAL
12 CLASS 4B PRICE --

13 A. I'M SORRY, WHEN YOU SAY LOCATION VALUE, ARE YOU
14 REFERRING TO THE FOB ADJUSTER?

15 Q. THE MARKET ADJUSTMENT, YES.

16 A. I DON'T THINK IT'S REFERRED TO AS A LOCATION.

17 Q. OKAY. THAT -- I'LL USE YOUR TERM. IT IS A PART OF THE
18 FORMULA THAT IS SUBTRACTED TO ACCOUNT FOR VALUE OF MILK IMPACT
19 IN CALIFORNIA, CORRECT?

20 A. THE FOB ADJUSTER IS PART OF THE FORMULA, BUT I'M NOT
21 REALLY SURE WHAT -- I'M NOT SURE I CAN AGREE WITH HOW YOU ARE
22 STATING IT.

23 Q. OKAY. DESCRIBE TO ME THE FUNCTIONS OF THE FOB ADJUSTER
24 IN THE CALIFORNIA MILK PRICING SYSTEM?

25 A. I DON'T HAVE THE OFFICIAL CDFA DEFINITION IN FRONT OF

1 ME, BUT TYPICALLY IT IS DEVELOPED THROUGH THE -- IT IS ADJUSTED
2 THROUGH THE HEARING PROCESS WHEN IN THE INDUSTRY PARTICIPANTS
3 CAN LOOK AT THE DIFFERENCE BETWEEN THE CME PRICES AND PRICES
4 FOR DAIRY PRODUCTS SOLD IN CALIFORNIA.

5 MR. VLAHOS: EXCUSE ME, MR. VETNE.

6 YOUR HONOR, MAY I SIT DOWN? BECAUSE THE QUESTION THAT
7 MR. VETNE ASKED AFTER I MADE MY OBJECTION, WAS SOMEWHAT
8 DIFFERENT THAN THE ONE I OBJECTED TO. SO I CAN SIT DOWN NOW?

9 JUDGE CLIFTON: YOU MAY, THANK YOU.

10 MR. VLAHOS: THANK YOU, YOUR HONOR.

11 BY MR. VETNE:

12 Q. AND DID YOU SERVE ON HEARING PANELS WHERE THAT
13 ADJUSTMENT WAS CONSIDERED?

14 A. I CAN'T RECALL SPECIFICALLY. PERHAPS. I WOULD HAVE TO
15 GO LOOK BACK.

16 Q. AND THERE IS SUCH AN ADJUSTMENT IN THE THE CALCULATION
17 OF -- THERE IS, AND HAS BEEN, SUCH AN ADJUSTMENT IN THE
18 CALCULATIONS OF MINIMUM CALIFORNIA REGULATED PRICES FOR CHEESE,
19 AS WELL AS BUTTER, AS WELL AS FOR NONFAT DRY MILK, CORRECT?

20 A. NOT FOR THE NONFAT DRY MILK.

21 Q. PARDON?

22 A. THERE'S NOT FOR NONFAT DRY MILK.

23 Q. FOR BUTTER AND CHEESE, CORRECT?

24 A. YES.

25 JUDGE CLIFTON: AND WHAT ARE THE CME PRICES, IF YOU WILL

1 REMIND ME?

2 MS. ACMOODY: THE CME STANDS FOR CHICAGO MERCANTILE
3 EXCHANGE.

4 BY MR. VETNE:

5 Q. SO LET ME TAX MY MEMORY. IN THE PAST, IN STRUCTURING
6 THE FORMULA FOR THE REGULATED PRICE IN CALIFORNIA OR MILK USED
7 TO PRODUCE CHEESE, CALIFORNIA HAS LOOKED TO THE VALUE OF
8 MANUFACTURED PRODUCTS AS REFLECTED IN THE CME PRICE, CORRECT?

9 A. THE CME PRICES ARE WHAT IS USED TO CALCULATE THE
10 CLASS 4B PRICE IN CALIFORNIA.

11 Q. SO THE ANSWER IS YES, CALIFORNIA HAS LOOKED TO THAT AS
12 A REFLECTION OF THE MARKET VALUE THE MANUFACTURED PRODUCT?

13 A. WELL, IT DOESN'T REALLY LOOK TO IT, IT ACTUALLY USES
14 IT.

15 Q. IT ACTUALLY USES IT, OKAY.

16 A. SAME DIFFERENCE.

17 Q. OKAY. I DIDN'T INTEND THERE TO BE THE DIFFERENCE IN
18 ACTUAL USE OF MILK. AND APPLIED AN ADJUSTER, IS THAT CHICAGO
19 PRICE?

20 A. THE FOB ADJUSTER IS WHAT I REFERRED TO EARLIER,
21 CORRECT.

22 Q. HAS THAT ADJUSTER BEEN MODIFIED DURING THE TIME THAT
23 YOU HAVE BEEN WORKING AS AN ECONOMIST, EITHER FOR CDFA OR FOR
24 YOUR ORGANIZATION?

25 A. I WOULD HAVE TO GO BACK FOR THE SPECIFICS. I BELIEVE

1 IT HAS, BUT I COULDN'T RECALL THE SPECIFIC NUMBERS OR DETAILS.
2 I WOULD HAVE TO GO BACK AND LOOK AT THE RECORD.

3 Q. PERHAPS I MISHEARD. I RECALL HEARING IN RESPONSE TO A
4 QUESTION PUT TO YOU BY CHIP ENGLISH, THAT YOUR USE OF THE TERM
5 NATIONAL VALUE OF MANUFACTURED MILK PRICES, IN YOUR MIND,
6 REFERRED TO THE CLASS III, FEDERAL CLASS III PRICE.

7 A. WELL, THEY ARE THE REGULATED CLASS PRICES, NOT JUST
8 CLASS III.

9 Q. REGULATED PRICE. THERE IS, IN FACT, NO REGULATED PRICE
10 FOR MANUFACTURED MILK PRODUCTS, IS THERE?

11 A. I'M NOT SURE I GET YOUR QUESTION.

12 Q. PRODUCT IS CHEESE, PRODUCT IS BUTTER, PRODUCT IS NONFAT
13 DRY MILK, PRODUCT IS YOGURT. THERE IS NO REGULATED PRICE FOR
14 THE PRODUCT?

15 A. FOR THE COMMODITIES THEMSELVES?

16 Q. YES.

17 A. THAT IS CORRECT.

18 Q. THAT IS CORRECT. SO WHAT YOUR INTENTION WAS TO REFER
19 TO IN YOUR ANSWER TO MILK USED TO PRODUCE THOSE PRODUCTS.

20 A. RIGHT. TO THE REGULATED CLASS PRICES, YES.

21 Q. ARE YOU FAMILIAR WITH THE ECONOMIC CONCEPT OF SUPPLY
22 AND DEMAND?

23 A. I HAVE HEARD OF IT.

24 Q. AND IN A BROAD SENSE, LAWS OF SUPPLY AND DEMAND IS
25 SOMETHING THAT CDFA HAS ATTEMPTED TO APPLY TO ITS MILK PRICING

1 SCHEME?

2 A. THAT IS SOMETHING THAT THEY LOOK AT WHEN PROVIDING
3 RECOMMENDATIONS TO THE SECRETARY.

4 Q. AND THAT, IN FACT, WAS WHAT DROVE THE DECISION TO
5 REDUCE CLASS II PRICES IN YOUR DIALOGUE WITH MR. ENGLISH,
6 CORRECT?

7 A. THAT WAS PART OF THE ISSUE THAT I THINK MR. ENGLISH
8 MENTIONED IN THE 2008 DECISION THAT I WOULD HAVE TO GO BACK AND
9 LOOK AT THE PANEL REPORT TO SEE ALL THE SPECIFICS, BUT I THINK
10 THAT'S WHAT MR. ENGLISH MENTIONED WAS PART OF IT, SO I'LL TRUST
11 THAT HE DIDN'T JUST MAKE IT UP.

12 Q. OKAY. IN YOUR TESTIMONY, AND CORRECT ME IF I'M READING
13 IT WRONG, YOU REFER TO HISTORY OF CALIFORNIA 4B REGULATION AND
14 WHEY, TRACKING THE FEDERAL CLASS III PRICE IN VARIOUS PLACES.
15 AND YOU AND I HAVE DISCUSSED MOVING IN SYNC WITH BOTH, PERHAPS
16 NOT EQUAL TO, CORRECT?

17 A. TRACKING, I'M NOT REAL SURE WHAT YOU ARE REFERRING TO
18 IN THE IN SYNC THERE.

19 Q. PRIOR TO 2005, MOVING UP AND DOWN AT ABOUT THE SAME
20 TIME, ABOUT THE SAME AMOUNT AS THE FEDERAL SYSTEM, MOVING IN
21 SYNC?

22 A. PRICES IN THE CALIFORNIA -- THE CALIFORNIA CLASS 4B
23 PRICE USED TO TRACK A LITTLE CLOSER TO THE FEDERAL ORDER
24 CLASS III, PRIOR TO THE CHANGE MADE BY CDFA IN 2007.

25 Q. 2007. OKAY. THAT'S THE YEAR WE SHOULD LOOK TO.

1 OKAY. JUST SO I UNDERSTAND. TRACK MEANING MOVE UP AND
2 DOWN AT ABOUT THE SAME RATE, ABOUT THE SAME TIME?

3 A. THAT'S PRETTY RELATIVE. AND THAT MOVE ALONG CLOSELY.

4 Q. OKAY. AND THAT CHANGED IN 2007?

5 A. IN 2007, THE RELATIONSHIP WAS CHANGED DRAMATICALLY.

6 Q. OKAY. AND IN THE NEXT TO THE LAST PARAGRAPH IN YOUR
7 STATEMENT, YOU INTRODUCE FOR THE FIRST TIME, I THINK, IN YOUR
8 STATEMENT -- CORRECT ME IF I'M WRONG -- CONCEPT NOT OF TRACKING
9 OR SYNCING WITH THE FEDERAL SYSTEM PRICE, BUT EQUALING THE
10 FEDERAL SYSTEM PRICE.

11 AM I CORRECT IN MY READING, THAT'S THE FIRST TIME?

12 A. WHERE ARE YOU REFERRING TO?

13 Q. "THE CLASS PRICE DIFFERENCES," SECOND TO THE LAST
14 PARAGRAPH IN YOUR TESTIMONY. LAST PAGE.

15 A. I'M SORRY, I DON'T SEE WHERE. THE SECOND TO THE LAST
16 PARAGRAPH IN THE TESTIMONY?

17 Q. BEGINS WITH THE WORDS "THE CLASS PRICE DIFFERENCES"?

18 A. YES, I SEE THAT.

19 Q. THAT'S -- THAT'S THE FIRST PLACE IN YOUR TESTIMONY
20 WHERE YOU INCORPORATE A CONCEPT NOT MERELY MOVING IN SYNC WITH,
21 BUT EQUALING THE NUMBER. AM I CORRECT?

22 MR. VLAHOS: OBJECTION, I WOULD LIKE MR. VETNE --

23 JUDGE CLIFTON: NAME, PLEASE?

24 MR. VLAHOS: EXCUSE ME, YOUR HONOR. I WOULD LIKE MR. VETNE
25 TO SPECIFY THE LANGUAGE THAT INTRODUCES A CONCEPT.

1 JUDGE CLIFTON: MR. VETNE, I DON'T SEE THE WORD EQUAL. YOU
2 MAY NEED TO ASK YOUR QUESTION DIFFERENTLY, I DON'T KNOW.

3 MR. VETNE: OKAY. I'LL BE HAPPY TO ASK MY QUESTION
4 DIFFERENTLY. THE IMPORTANCE IS WHETHER THE WITNESS UNDERSTANDS
5 IT, NOT WHETHER COUNSEL DOES.

6 JUDGE CLIFTON: OH, I THINK WE ALL NEED TO UNDERSTAND WHAT
7 YOU ARE ASKING AND WHAT THE WITNESS IS SAYING IN RESPONSE.
8 BY MR. VETNE:

9 Q. IN THE NEXT TO THE LAST PARAGRAPH YOU ARE TALKING ABOUT
10 CLASS PRICE DIFFERENCES, CORRECT?

11 A. THAT'S HOW THE FIRST SENTENCE STARTS, YES. "CLASS
12 PRICE DIFFERENCE PLACE THE CALIFORNIA," SO ON, SO FORTH, YEAH.

13 Q. AND AT THIS POINT, YOU ARE TALKING ABOUT THE LEVEL OF
14 THE RESULTING CLASS III PRICE IN CALIFORNIA, VERSUS THE LEVEL
15 OF THE RESULTING CLASS 4B, I'M SORRY, THE LEVEL OF THE FEDERAL
16 CLASS III PRICE, VERSUS THE LEVEL OF THE STATE CLASS 4B PRICE,
17 CORRECT?

18 YOU ARE TALKING ABOUT CLASS PRICE DIFFERENCES. IS THAT
19 A CORRECT DESCRIPTION OF WHAT YOU ARE REFERRING TO AT THIS
20 POINT IN YOUR TESTIMONY?

21 A. THE CLASS PRICE DIFFERENCE, YEAH. I THINK THAT
22 SENTENCE SAYS, "THE CLASS PRICE DIFFERENCE PLACES THE
23 CALIFORNIA DAIRY OPERATIONS IN A MUCH LESS COMPETITIVE POSITION
24 THAN THEIR COUNTERPARTS, WHOSE MILK ARE PRICED BY FMMO
25 REGULATIONS." THE CLASS PRICE DIFFERENCE IS WHAT WE'RE LOOKING

1 AT.

2 Q. CORRECT. PREVIOUSLY IN YOUR TESTIMONY -- I DON'T KNOW
3 IF MR. VLAHOS NEEDS TO STAND NEXT TO ME THROUGHOUT MY
4 CROSS-EXAMINATION ANYMORE.

5 JUDGE CLIFTON: I'LL TELL YOU WHAT, LET'S TAKE 15 MINUTES.

6 PLEASE BE BACK AND READY TO GO AT 10:33.

7 (WHEREUPON, A BREAK WAS TAKEN.)

8 JUDGE CLIFTON: WE ARE BACK ON RECORD AT 10:34.

9 MR. VETNE, YOU MAY COME BACK TO THE PODIUM.

10 BY MR. VETNE:

11 Q. MS. ACMOODY, WE WERE TALKING ABOUT USE OF THE TERM
12 CLASS PRICE DIFFERENCES IN THE NEXT TO THE LAST PARAGRAPH OF
13 YOUR STATEMENT. CORRECT?

14 A. YES, CLASS PRICE DIFFERENCE. YEAH.

15 Q. OKAY. I'VE BEEN THINKING ABOUT MY QUESTION, I WANT TO
16 START FROM SCRATCH HERE A LITTLE BIT.

17 AS I UNDERSTAND YOUR TESTIMONY, IT IS ESSENTIALLY THAT
18 THINGS IN CALIFORNIA BECAME IN A BIT OF DISARRAY STARTING
19 PARTICULARLY IN 2007, WHEN THE CALIFORNIA CLASS 4B PRICE DID
20 NOT TRACK OR MOVE IN SYNC CLOSELY WITH THE FEDERAL CLASS III
21 PRICE; IS THAT CORRECT?

22 A. COULD YOU REPEAT THAT, PLEASE?

23 Q. OKAY. TRYING TO UNDERSTAND YOUR TESTIMONY. YOUR
24 TESTIMONY IS THAT THINGS IN CALIFORNIA, OR CALIFORNIA DAIRYMEN,
25 BECAME IN A BIT OF DISARRAY STARTING IN ABOUT 2007, WHEN THE

1 CALIFORNIA CLASS 4B PRICE DID NOT TRACK OR MOVE IN SYNC WITH
2 THE FEDERAL CLASS III PRICE?

3 A. I THINK THE DAIRY PRODUCERS' COMMUNITY FRUSTRATION
4 STARTED AROUND THAT TIME WHEN THE PRICES STARTED TO MOVE
5 FURTHER APART.

6 Q. OKAY. AND YOUR PROPOSED SOLUTION TO THE PROBLEM THAT
7 YOU JUST IDENTIFIED IN 2015, IS NOT TO HAVE THE PRICES MOVE IN
8 SYNC LIKE THEY DID BEFORE, BUT TO MAKE THEM THE SAME, CORRECT?

9 A. IF I UNDERSTAND CORRECTLY, I BELIEVE THAT'S WHAT THE
10 COOPS PROPOSAL IS.

11 Q. OKAY. NOW --

12 JUDGE CLIFTON: I'M SORRY, I DIDN'T HEAR ALL YOUR QUESTION,
13 AND I DIDN'T HEAR YOUR ANSWER. I HATE TO HAVE YOU DO IT AGAIN,
14 BUT IF YOU WOULD.

15 MR. VETNE: YES, MA'AM.

16 BY MR. VETNE:

17 Q. YOUR PROPOSED SOLUTION TO THE PROBLEM THAT YOU
18 IDENTIFIED AS OCCURRING SINCE 2007, IS NOT TO RECREATE THE SYNC
19 THAT PREVIOUSLY APPLIED, BUT TO ADOPT THE SAME PRICE. THAT WAS
20 MY QUESTION. YOUR ANSWER WAS?

21 A. MY ANSWER WAS THAT THE COOPS' PROPOSAL SUGGESTS TO MAKE
22 ALL THE CLASS PRICES EQUAL.

23 Q. OKAY. CAN YOU DO THIS AS AN ECONOMIST, PROVIDE A
24 SUPPLY AND DEMAND MARKETPLACE EXPLANATION FOR THE SAME
25 MANUFACTURING CLASS PRICES IN CALIFORNIA, WHERE MOST OF THE

1 PRODUCT IS MANUFACTURED A SUPPLY IN THE EAST? CAN YOU PROVIDE
2 A SUPPLY AND DEMAND EXPLANATION?

3 A. A SUPPLY AND DEMAND EXPLANATION TO WHAT?

4 Q. FOR APPLYING THE SAME PRICE IN CALIFORNIA AS ELSEWHERE,
5 RATHER THAN HAVE AN FOB ADJUSTER OR SOME OTHER REFERENCE TO THE
6 VALUE OF MILK USED TO PRODUCE PRODUCTS IN CALIFORNIA?

7 A. I'M NOT REALLY SURE I UNDERSTAND HOW I CAN ANSWER THAT.
8 I MEAN, WHAT -- WE'RE ASKING FOR PRICES THAT ARE EQUAL TO A
9 FEDERAL MILK CLASS PRICE.

10 Q. I UNDERSTAND THAT.

11 A. OKAY.

12 Q. CAN YOU CONNECT THAT REQUEST WITH RATIONAL ECONOMIC
13 ANALYSIS BASED ON SUPPLY AND DEMAND?

14 A. THE FMMO CLASS PRICES ARE USED COMMODITY PRICES ACROSS
15 THE U.S., WHICH THOSE PRICES ARE DETERMINED THROUGH WHAT
16 PROCESSOR'S SELLING THEIR PRODUCTS FOR. I WOULD ASSUME THAT
17 PROCESSORS ARE SELLING AT A PRICE THAT THEY FIND IS AN
18 EQUILIBRIUM IN THE MARKETPLACE, WHERE SUPPLY EQUALS DEMAND.

19 Q. YOUR ANSWER WAS A SUPPLY AND DEMAND ANSWER BASED ON
20 NATIONAL MARKET BEHAVIOR. AM I CORRECT?

21 A. IT IS A NATIONAL MARKET BEHAVIOR, AND CALIFORNIA IS
22 PART OF THE UNITED STATES.

23 Q. CAN YOU PROVIDED AN ANSWER TO MY QUESTION BASED ON
24 SUPPLY AND DEMAND FOR MILK AND MILK PRODUCTS WITHIN CALIFORNIA?

25 A. THE SAME ANSWER WOULD APPLY IF CALIFORNIA WAS PART OF

1 THAT NATIONAL SYSTEM.

2 Q. ARE YOU SAYING THAT CDFA HAS DONE IT WRONG FOR ABOUT 50
3 YEARS?

4 A. I DON'T WANT TO PLACE JUDGMENT ON CDFA.

5 JUDGE CLIFTON: YOU DON'T HAVE TO ANSWER THAT QUESTION,
6 THAT DOESN'T FOLLOW. GO AHEAD AND ASK A DIFFERENT QUESTION,
7 MR. VETNE.

8 BY MR. VETNE:

9 Q. CDFA HAS, AS LONG AS THERE HAVE BEEN PRICES, 4B, 4A
10 PRICES OFF OF COMMODITY, THERE'S ALWAYS APPLIED AN FOB ADJUSTER
11 OR A DIFFERENT PRICE TO THE VALUE OF MILK PRODUCED IN
12 CALIFORNIA TO MAKE PRODUCTS MANUFACTURED IN CALIFORNIA,
13 CORRECT?

14 A. I DO NOT KNOW WHEN THE FOB ADJUSTER WAS INTRODUCED IN
15 THE CALIFORNIA COST PRICE FORMULAS.

16 Q. IS IT YOUR TESTIMONY AS AN ECONOMIST THAT THE FOB
17 ADJUSTER IS ECONOMICALLY IRRATIONAL AND WRONG?

18 A. I DON'T THINK I HAVE MADE THAT STATEMENT.

19 Q. BUT YOU WOULD -- WOULD YOU ADOPT OR REJECT THAT
20 STATEMENT WHETHER YOU MADE IT OR NOT?

21 A. CAN YOU REPEAT IT?

22 Q. WOULD YOU ADOPT THE STATEMENT THAT APPLYING AN FOB
23 ADJUSTER FOR THE PRICE OF MILK USED TO PRODUCE MANUFACTURED
24 PRODUCT IS ECONOMICALLY IRRATIONAL OR WRONG? WOULD YOU ADOPT
25 THAT?

1 A. I DON'T REALLY WANT TO SUPPORT THAT STATEMENT.
2 THAT'S -- I DON'T REALLY KNOW HOW TO ANSWER THAT, I'M SORRY.

3 Q. OKAY. I'M GOING TO GO TO A WHOLE NEW TOPIC NOW.

4 A. SOUNDS GREAT.

5 Q. IN THE NEXT TO THE LAST PAGE OF YOUR TESTIMONY, THE
6 SECOND FULL PARAGRAPH, YOU TALK ABOUT A HEARING ON JUNE 3,
7 2015.

8 A. I REALLY SHOULD HAVE NUMBERED THESE PAGES.

9 Q. THE NEXT TO THE LAST PAGE?

10 A. YEP.

11 Q. I DON'T THINK THE RECORD SHOWS MUCH ABOUT THE
12 CALIFORNIA HEARING PROCESS, SO I WANT TO ASK YOU ABOUT THAT.

13 IN CALIFORNIA, LIKE THE FEDERAL SYSTEM, THE AGENCY,
14 CDFA IN THIS CASE, RECEIVES PROPOSALS, CORRECT?

15 A. IF INTERESTED PARTIES WANT TO MAKE A CHANGE TO THE
16 PRICING SYSTEM IN CALIFORNIA, YOU CAN PETITION CDFA OR THE
17 SECRETARY CAN CALL A HEARING ON THEIR OWN MOTION.

18 Q. OKAY. AND IN RESPONSE TO THAT REQUEST, IF THERE IS
19 ONE, RATHER THAN OWN MOTION, THE SECRETARY MAY DECIDE TO CALL A
20 HEARING, CORRECT?

21 A. THAT IS CORRECT, THEY CAN GRANT OR DENY THE REQUEST.

22 Q. AND IF THE DECISION IS TO CALL A HEARING, A NOTICE IS
23 ISSUED TO ALERT INTERESTED PARTIES, WE'RE GOING TO DISCUSS THIS
24 AT A PARTICULAR TIME AND PLACE, CORRECT?

25 A. YES, THEY ALWAYS ISSUE A HEARING NOTICE.

1 Q. AND THEN INTERESTED PERSONS GATHER AT A PLACE TO
2 DISCUSS THAT. BUT UNLIKE THE FEDERAL COURT OR PROCESS,
3 INTERESTED PERSONS ARE NOT ALLOWED TO ASK QUESTIONS; IS THAT
4 CORRECT?

5 A. THAT IS CORRECT. ONLY THE CDFA PANEL CAN QUESTION THE
6 WITNESSES.

7 Q. OKAY. SO THERE'S A HEARING PANEL -- LET ME SEE IF I
8 GOT THIS CORRECT. PARTIES WHO HAVE A PROPOSAL WILL APPEAR
9 BEFORE A PANEL AND PRESENT THEIR CASE AND ANSWER QUESTIONS THAT
10 THE CDFA PANEL HAS ABOUT THEIR PROPOSAL, CORRECT?

11 A. THAT IS CORRECT, TO MY KNOWLEDGE.

12 Q. AND THE PROCESS TAKES WHAT, A COUPLE DAYS? TWO, THREE
13 DAYS?

14 A. I CAN'T SPEAK TO ANY, TO ALL OF THE CDFA HEARINGS THAT
15 HAVE OCCURRED, BUT IN THE LAST FEW YEARS, THE ONES I HAVE
16 ATTENDED, BETWEEN ONE AND TWO DAYS SEEMS TO BE FAIRLY COMMON.

17 Q. AND THE SAME WOULD BE TRUE FOR THE ONES THAT YOU WERE
18 AWARE OF WHILE YOU WERE EMPLOYED BY CDFA, CORRECT?

19 A. YES.

20 Q. OKAY. AND THEN FOLLOWING THAT ONE OR TWO-DAY PROCESS,
21 PARTIES CAN SUBMIT POST-HEARING BRIEFS, CORRECT?

22 A. IF THEY ASK THE HEARING OFFICER FOR THE OPPORTUNITY TO
23 FILE A POST-HEARING BRIEF, THEN THE PANEL MAY GRANT THEM THAT
24 OPPORTUNITY.

25 Q. SO IN ORDER TO FILE A POST-HEARING BRIEF, YOU MUST ASK

1 LEAVE OF THE PANEL FIRST, CORRECT?

2 A. TECHNICALLY, I BELIEVE SO.

3 Q. AND THEN WITHIN WHAT, IS THERE A STATUTORY FIXED PERIOD
4 OF TIME THE SECRETARY MAKES A DECISION?

5 A. I DO NOT KNOW IF THERE'S A STATUTORY SPECIFIC AUTHORITY
6 ON THE LENGTH, BUT ON AVERAGE, THE LAST FEW YEARS I THINK THEY
7 GIVE BETWEEN FIVE AND TWELVE DAYS.

8 Q. TO FILE BRIEFS?

9 A. TO FILE BRIEFS.

10 Q. TO FILE BRIEFS. AFTER THAT, HOW LONG DOES IT TAKE
11 ORDINARILY TO MAKE A DECISION, ABOUT A MONTH OR LESS?

12 A. IF THERE'S GOING TO BE A CHANGE, IT HAS TO BE
13 IMPLEMENTED WITHIN 62 DAYS OF THE DATE OF THE HEARING.

14 Q. NOW, YOU REFERRED TO -- YOU REFERRED TO WHAT HAPPENED
15 IN JUNE 2015 WHEN A TEMPORARY CHANGE, A CHANGE FOR WHICH YOUR
16 MEMBERS ARE GRATEFUL, CORRECT?

17 A. YES.

18 Q. OKAY.

19 A. WELL, MOST OF THEM. I CAN'T SPEAK FOR ALL OF THEM, BUT
20 WE APPRECIATED THE EFFORT ON --

21 Q. ALL RIGHT. ARE YOU AWARE THAT THE AGRICULTURAL
22 ADJUSTMENT ACT OF 1933, WHICH WAS THE BASIS FOR, IN '35, FOR
23 WHY WE'RE HERE, WAS ENACTED AS AN EMERGENCY TEMPORARY CHANGE BY
24 U.S. CONGRESS? THAT WAS TONGUE-IN-CHEEK.

25 MY QUESTION IS, TEMPORARY THINGS SOMETIMES LAST A LONG

1 TIME.

2 A. OKAY.

3 Q. CORRECT?

4 A. WELL, IT IS --

5 JUDGE CLIFTON: I'M SORRY, LET ME STOP. LET'S BE A LITTLE
6 MORE INCISIVE, A LITTLE MORE SUCCINCT. LET'S MOVE IT A LITTLE
7 MORE QUICKLY.

8 BY MR. VETNE:

9 Q. LIKE, WERE YOU HERE EARLIER FOR SOME QUESTIONS OF
10 MR. HOLLON REGARDING A TEMPORARY CHANGE THAT WAS MADE TO
11 SOUTHEAST CLASS I PRICES? DO YOU RECALL? WERE YOU HERE?

12 A. I WAS HERE, BUT I DO NOT RECALL THAT SPECIFIC PART OF
13 THE DISCUSSION.

14 Q. AND ONE LAST QUESTION, THE CHANGE THAT WAS MADE IN
15 JUNE OF 2015, CAN BE EASILY AND FAIRLY QUICKLY EXTENDED OR MADE
16 PERMANENT BY CDFA USING THE PROCESS YOU AND I HAVE DISCUSSED,
17 CORRECT?

18 A. I DON'T THINK EASILY IS A GOOD CHOICE OF WORDS.

19 Q. WHY WOULD YOU SAY NOT EASILY? WE TALKED ABOUT HEARING,
20 NOTICE, HEARING, 60 DAYS DECISION. WHAT WOULD IMPEDE THAT? IF
21 YOU SAY IT IS NOT EASY, WHAT IS THE IMPEDIMENT?

22 A. I THINK YOU ARE USING EASY AS IN A STRAIGHTFORWARD
23 PROCESS, AND IT IS FAIRLY STRAIGHTFORWARD, BUT IT DOES NOT MEAN
24 THAT THE SECRETARY WOULD AUTOMATICALLY EXTEND A TEMPORARY PRICE
25 INCREASE. I THINK SHE'S BEEN PRETTY CLEAR IN MAKING THIS

1 TEMPORARY IN HER LETTER TO THE INDUSTRY.

2 Q. OKAY. AND THE FINAL SERIES OF QUESTIONS.

3 IN THE SAME PAGE, PARAGRAPH BELOW THAT. "WESTERN
4 UNITED DAIRYMEN HOSTED A PANEL IN 2012 AND 2014 CONCERNING A
5 POSSIBLE MOVE TO THE FEDERAL SYSTEM." IS THAT CORRECT?

6 A. OH, I SEE HERE. YES. WE -- YEAH, WE DID HOST SOME
7 PRESENTATIONS.

8 Q. OKAY. DID ANY OF THE PROPONENTS, COOPERATIVES OF THE
9 PROPOSAL NUMBER 1, MAKE PRESENTATIONS IN 2012 AND/OR 2014?

10 A. THEY WERE PART OF THE PANEL.

11 Q. PART OF THE PANEL THAT PRESENTED TO YOUR MEMBERSHIP?

12 A. THEY DISCUSSED THE TOPIC AND ANSWERED QUESTIONS.

13 Q. AND IN 2014, DID PROPONENT MEMBERS OF THE PANEL TALK
14 ABOUT AND SUMMARIZE THE STATEMENTS IMPLICIT IN THE STUDY?

15 A. I DON'T RECALL THE SPECIFICS OF THE PRESENTATION. I
16 DON'T THINK SO, BUT I COULDN'T SAY FOR CERTAIN.

17 Q. DID THEY MAKE REPRESENTATIONS TO THE PARTICIPANTS AT
18 THOSE PANELS ON WHAT WOULD BE THE IMPACT IF THE FEDERAL ORDER
19 WERE ADOPTED?

20 A. IF THEY MADE -- I'M SORRY, COULD YOU REPEAT THE
21 QUESTION?

22 Q. DID THEY MAKE REPRESENTATIONS EXPLAINING WHAT THEY
23 BELIEVED WOULD BE THE IMPACT ON DAIRY FARMERS IF A FEDERAL
24 ORDER WERE ADOPTED?

25 A. THOSE WERE MAINLY EDUCATIONAL PRESENTATIONS. I BELIEVE

1 THEY SPOKE TO DETAILS OF WHAT FMOS ARE LIKE, BUT AT THE TIME,
2 BEING THAT THERE WAS NO PROPOSAL THAT WAS, THAT HAD BEEN PUT
3 FORTH, IT WAS PROBABLY PRETTY HARD TO SPEAK TO THE SPECIFIC
4 IMPACTS, BUT I CAN'T RECALL THE EXACT PRESENTATIONS.

5 MR. VETNE: THAT'S ALL I HAVE. THANK YOU.

6 JUDGE CLIFTON: THANK YOU, MR. VETNE.

7 WHO WOULD NEXT QUESTION MS. ACMOODY?

8 CROSS-EXAMINATION

9 BY MR. DEJONG:

10 Q. JAMES DEJONG, HILMAR CHEESE COMPANY.

11 I JUST WANTED TO PIGGYBACK ON SOMETHING MR. VETNE HAD
12 ASKED ABOUT REGARDING FOB ADJUSTERS. I BELIEVE YOU CORRECTLY
13 STATED THAT THERE'S NO FOB ADJUSTER FOR NONFAT DRY MILK. COULD
14 YOU DESCRIBE TO ME WHAT NONFAT DRY MILK PRICE IS USED IN THE
15 4A AND 4B MODEL?

16 A. IT IS A CALIFORNIA-WEIGHTED AVERAGE PRICE THAT IS
17 COLLECTED BY CDFA. IT IS THE PRICES OF NONFAT DRY MILK
18 REALIZED BY PLANTS IN CALIFORNIA.

19 Q. OKAY. WOULD YOU DESCRIBE THAT PRICE AS HIGHER OR LOWER
20 THAN THE NONFAT DRY MILK PRICE USED IN CLASS 4?

21 A. WITHOUT LOOKING AT THE DATA SET, I CAN'T SPEAK TO THE
22 SPECIFICS.

23 Q. WHY DO YOU BELIEVE CDFA USES THE CALIFORNIA-WEIGHTED
24 AVERAGE PRICE?

25 A. I DON'T REALLY WANT TO GIVE AN OPINION. COULD YOU --

1 Q. IN YOUR PROFESSIONAL CAREER, YOU ARE AN ECONOMIST WITH
2 CDFA?

3 A. YES.

4 Q. YOU PROBABLY HAVE SOME KNOWLEDGE AS TO HOW THAT PRICE
5 WAS USED, WHY THEY USED IT. DO YOU HAVE AN OPINION, IN YOUR
6 PROFESSIONAL CAPACITY, OF WHY THAT WAS DONE?

7 A. THEY -- WHEN I STARTED AT CDFA, THEY WERE ALREADY USING
8 THAT DATA SET, SO I CAN'T REALLY SPEAK TO HOW THAT CAME ABOUT.
9 THAT'S WHAT THEY WERE USING.

10 Q. SO YOU DON'T KNOW WHY THEY ARE USING IT OR HOW IT
11 REFERENCES VERSUS THE ADPSR PRICE?

12 A. I DON'T WANT TO SPECULATE WHY THEY DECIDED TO PUT THAT
13 IN.

14 Q. BUT TO REITERATE, YOU DON'T KNOW IF IT'S HIGHER OR
15 LOWER, YOU HAVE NEVER DONE THAT TYPE OF ANALYSIS?

16 A. WITHOUT LOOKING AT THE SPECIFIC DATA SET, I WOULD
17 RATHER NOT ANSWER OFF THE TOP OF MY HEAD.

18 Q. OKAY. NO FURTHER QUESTIONS.

19 JUDGE CLIFTON: THANK YOU, MR. DEJONG.

20 WHO NEXT WILL QUESTION MS. ACMOODY?

21 CROSS-EXAMINATION

22 BY MR. RICHMOND:

23 Q. BILL RICHMOND, USDA.

24 THANK YOU, MS. ACMOODY, FOR YOUR TESTIMONY. WE
25 APPRECIATE IT. JUST A COUPLE OF CLARIFYING QUESTIONS.

1 DO YOU KNOW THE APPROXIMATE NUMBER OF MEMBERS OF
2 WESTERN UNITED?

3 A. WE REPRESENT APPROXIMATELY HALF OF THE DAIRIES IN
4 CALIFORNIA.

5 Q. ANY IDEA ON THE NUMBER?

6 A. IT'S HARD TO COME UP WITH A SPECIFIC NUMBER, BECAUSE WE
7 HAVE MEMBERS THAT HAVE MULTIPLE DAIRIES, SO WE KIND OF GO FOR
8 ABOUT HALF.

9 Q. OKAY. ARE ALL THE MEMBERS LOCATED WITHIN THE STATE OF
10 CALIFORNIA?

11 A. YES.

12 Q. OKAY. DO YOU HAVE ANY IDEA OF THE APPROXIMATE NUMBER
13 OF DAIRY MEMBERS THAT MAYBE CONSIDERED TO BE SMALL BUSINESSES?

14 A. THAT IS A, THAT IS A VERY HARD QUESTION. WE DON'T HAVE
15 STATS ON SIZE OF THE HERDS FOR EACH MEMBER, BECAUSE THEY ALL
16 GET THE SAME TREATMENT REGARDLESS OF WHETHER THEY ARE SMALL OR
17 LARGE, SO I DON'T HAVE A SPECIFIC ANSWER.

18 Q. OKAY. AND AS I UNDERSTAND, WESTERN UNITED FULLY
19 SUPPORTS THE ENTIRE PROPOSAL AS SUBMITTED BY THE THREE COOPS,
20 CORRECT?

21 A. THAT IS CORRECT.

22 Q. AND THAT INCLUDES THINGS LIKE THE MAINTENANCE OF THE
23 QUOTA PROGRAM AS PROPOSED, AND SUPPORTS THE CONCEPT OF, WE HAVE
24 BEEN REFERRING TO AS THE INCLUSIVE POOLING CONCEPT?

25 A. YES.

1 Q. OKAY. THAT'S ALL WE HAVE. APPRECIATE IT. THANK YOU.

2 A. THANK YOU.

3 CROSS-EXAMINATION

4 BY MS. REED:

5 Q. GOOD MORNING. KRISTINE REED, SELECT MILK PRODUCERS.

6 I HAVE JUST A COUPLE OF QUESTIONS. FIRST, A FOLLOW UP
7 OF MR. RICHMOND'S QUESTION.

8 DO YOU HAVE AN IDEA OF THE PERCENTAGE OF YOUR
9 MEMBERSHIP THAT ALSO HAS DAIRIES OUTSIDE OF CALIFORNIA?

10 A. NO, I DON'T HAVE THAT INFORMATION.

11 Q. OKAY. ARE YOU AWARE THAT SOME OF YOUR MEMBERSHIP DOES
12 HAVE DAIRIES OUTSIDE OF THE STATE, THOUGH?

13 A. REPRESENT THE INTEREST OF CALIFORNIA DAIRY PRODUCERS
14 ON THAT, AND NO, I WOULDN'T KNOW.

15 Q. OKAY. LET ME TAKE YOU BACK TO SOME QUESTIONS THAT
16 MR. VETNE ASKED YOU, AND DRAW YOUR ATTENTION TO PAGE 3 IN YOUR
17 WRITTEN TESTIMONY, THE SECOND FULL PARAGRAPH.

18 YOU HAD A DISCUSSION WITH MR. VETNE ABOUT THE RECENT
19 ACTIONS OF CDFA THAT BECAME EFFECTIVE THIS PAST SUMMER.
20 CORRECT?

21 A. YES, I DID.

22 Q. OKAY. THAT MOST RECENT CHANGE TO THE WEIGH SCALE THAT
23 YOU DESCRIBED, IF THAT HAD BEEN A PERMANENT CHANGE AND NOT A
24 TEMPORARY CHANGE, WOULD WUD STILL BE SUPPORTING THE COOPERATIVE
25 PROPOSAL FOR AN FMMO IN CALIFORNIA?

1 MR. VLAHOS: OBJECTION, THIS WITNESS CANNOT ANSWER WHAT THE
2 BOARD OF DIRECTORS AT WUD WOULD DO BASED ON A HYPOTHETICAL SET
3 OF FACTS.

4 JUDGE CLIFTON: AND YOUR NAME?

5 MR. VLAHOS: I'M SORRY, JOHN VLAHOS.

6 MS. REED: I'M HAPPY TO ASK THE QUESTION SLIGHTLY
7 DIFFERENTLY AND SEE IF THAT SATISFIES MR. VLAHOS.

8 BY MS. REED:

9 Q. IS THE QUESTION THAT I JUST GAVE YOU, IS THAT SOMETHING
10 THAT WAS DISCUSSED BY YOUR BOARD?

11 A. NOT THE SPECIFIC HYPOTHESIS THAT YOU JUST GAVE.

12 Q. OKAY. IF THIS -- THIS RULE-MAKING HEARING DOES NOT
13 RESULT IN THE IMPLEMENTATION OF AN FMMO IN CALIFORNIA, IS THERE
14 ANYTHING THAT WOULD PREVENT WUD OR ANY OTHER CALIFORNIA
15 PRODUCERS FROM SEEKING AN ADJUSTMENT TO THE WHEY FACTOR IN
16 CALIFORNIA THROUGH CDFA?

17 A. SO YOU ARE SAYING, WUD -- CAN YOU REPEAT THE QUESTION?

18 Q. SURE. IF THIS PROCEEDING DOESN'T RESULT IN A FEDERAL
19 ORDER IN CALIFORNIA, OKAY? IS THERE ANYTHING THAT PREVENTS YOU
20 OR A DIFFERENT PRODUCER GROUP FROM GOING BACK TO CDFA TO SEEK
21 ADDITIONAL RELIEF THERE?

22 A. I'M NOT AWARE OF ANY CDFA STATUTE THAT WOULD PREVENT US
23 FROM DOING THAT.

24 Q. SIMILARLY, IF UNDER THAT SAME HYPOTHETICAL WHERE
25 THERE'S NO FEDERAL ORDER IMPLEMENTATION FOR A FEDERAL ORDER IN

1 CALIFORNIA, COULD YOU SEEK LEGISLATIVE RELIEF IN CALIFORNIA?

2 A. I DON'T THINK THERE WOULD BE ANYTHING SPECIFIC
3 PREVENTING US FROM DOING THAT.

4 Q. DOES WESTERN UNITED DAIRYMEN ROUTINELY LOBBY ITS
5 LEGISLATURE ON DAIRY ISSUES IN CALIFORNIA?

6 A. YES. THAT WAS TOO STRAIGHTFORWARD A QUESTION.

7 Q. THANK YOU -- I THINK. OKAY.

8 AND THEN ONE LAST QUESTION. IF IT WERE TO HAPPEN THAT
9 THE TEMPORARY ADJUSTMENT THAT WAS RECENTLY MADE IN CDFA WOULD
10 EXPIRE BEFORE WE GET A FINAL DECISION IN THIS PROCEEDING, DO
11 YOU HAVE AN OPINION ABOUT, OR WHAT WOULD YOU ANTICIPATE THE
12 CALIFORNIA PRODUCER REACTION TO BE?

13 A. I DON'T WANT TO SPECULATE ON THAT. I THINK WE'RE GOING
14 TO HAVE TO CROSS THAT BRIDGE WHEN WE GET THERE, IF IT HAPPENS.

15 Q. IS THAT SOMETHING THAT YOUR BOARD HAS CONSIDERED AT
16 THIS POINT IN TIME?

17 A. THAT -- CAN YOU REPEAT IT? WHAT --

18 Q. YES. IS THAT SOMETHING, IS THAT A POSSIBILITY,
19 SOMETHING THAT YOUR BOARD HAS DISCUSSED?

20 A. WHAT IS A POSSIBILITY, I'M SORRY? COULD YOU GO BACK
21 TO --

22 Q. YEAH, THAT THIS HEARING, THAT THE TEMPORARY ADJUSTMENT,
23 THE WHEY PRICING IN CALIFORNIA EXPIRES BEFORE WE GET A FINAL
24 DECISION IN THIS HEARING.

25 A. THAT IS A POSSIBILITY THAT THE CDFA DECISION WILL

1 EXPIRE BEFORE THESE PROCEEDINGS ARE DONE.

2 Q. YEAH, SO MY QUESTION IS, IS THAT SOMETHING YOUR BOARD
3 HAS DISCUSSED ALREADY?

4 A. THAT IT IS A POSSIBILITY THAT IT WILL EXPIRE, YES, WE
5 TALKED ABOUT THAT.

6 Q. OKAY. THANKS.

7 JUDGE CLIFTON: THE QUESTIONS WERE ALL EXCELLENT, THE
8 ANSWERS ARE IMPOSSIBLE, ARE THEY NOT? AT THIS STAGE?

9 MS. ACMOODY: YES. A LOT OF SPECULATION.

10 JUDGE CLIFTON: RIGHT. WHO ELSE WOULD LIKE TO ASK
11 MS. ACMOODY QUESTIONS? IS THERE ANYTHING YOU WOULD LIKE TO
12 ADD?

13 MR. HILL: YOUR HONOR, I THINK I WOULD LIKE TO ASK A
14 QUESTION.

15 JUDGE CLIFTON: I'M SORRY, MR. HILL, GO AHEAD AND STATE
16 YOUR NAME.

17 CROSS-EXAMINATION

18 BY MR. HILL:

19 Q. BRIAN HILL.

20 MR. ENGLISH, IN HIS OPENING STATEMENT, MENTIONED THAT
21 HE BELIEVES THAT THE QUOTA SYSTEM MAY BE ILLEGAL.

22 JUDGE CLIFTON: I NEED A LITTLE MORE VOLUME ON HIS MIC,
23 PLEASE.

24 BY MR. HILL:

25 Q. THAT THERE WAS A TREE BARRIER ISSUE WITH THE QUOTA

1 SYSTEM. IF THAT IS TRUE, I'M NOT SAYING IT IS TRUE, BUT I'M
2 ARGUING -- IF THAT IS TRUE, WOULD YOUR MEMBERS -- WOULD YOUR
3 MEMBERS BE OKAY WITH A CHANGE IN THAT SYSTEM, THAT QUOTA
4 SYSTEM, AS PROPOSED BY THE COOPS OR WOULD THAT BE THE DEATH OF
5 THIS FEDERAL MILK MARKETING ORDER?

6 A. THAT IS A PRETTY STRONG QUESTION.

7 MR. VLAHOS: EXCUSE ME. EXCUSE ME. JOHN VLAHOS.

8 I DON'T EVEN KNOW IF IT IS NECESSARY TO STATE A GROUNDS
9 FOR THE OBJECTION, BUT I OBJECT TO THAT QUESTION AS ASKING FOR
10 SPECULATION, ASKING FOR OPINION THAT THIS WITNESS IS NOT ABLE
11 TO GIVE, AND I SUGGEST, I RESPECTFULLY REQUEST THAT THE
12 OBJECTION BE SUSTAINED.

13 MR. HILL: WELL, I'M ASKING ABOUT HER MEMBERS THAT SHE'S
14 REPRESENTING.

15 MR. VLAHOS: PARDON? I MISSED THAT. I'M SORRY, MR. HILL,
16 I DIDN'T CATCH YOU.

17 MR. HILL: I WAS ASKING IF THE MEMBERS THAT SHE'S
18 REPRESENTING HERE, HOW THEY FEEL AS A GROUP. MAYBE SHE KNOWS,
19 MAYBE SHE DOESN'T KNOW, I'M NOT SURE, THAT'S WHY I'M ASKING THE
20 QUESTION.

21 MR. ENGLISH: CHIP ENGLISH.

22 I THINK WE SHOULD RESOLVE THIS EARLIER RATHER THAN
23 LATER. I THINK THE QUESTION IS ENTIRELY APPROPRIATE BECAUSE
24 THE DEPARTMENT, OF COURSE, HAS TO LOOK AT ALL PROPOSALS. AND
25 AS YOUR HONOR NOTED LAST FRIDAY, WE'RE HAVING A WIDE-OPEN

1 PROCEEDING TO CONSIDER THE MOST DIRECT POSSIBLE ORDER, AND I
2 THINK -- THE DEPARTMENT ISN'T SAYING, I DID NOT HEAR THAT
3 QUESTION, THE DEPARTMENT IS AGREEING WITH ME, AND MAY HAVE
4 STATED IT A LITTLE DIFFERENTLY THAN I STATED IN MY OPENING
5 STATEMENT. BUT I THINK WHAT THE DEPARTMENT IS ASKING, QUITE
6 PROPERLY, IS, IF A CERTAIN LEGAL ARGUMENT TURNS OUT TO BE
7 CORRECT, WOULD YOUR MEMBERS SUPPORT A CHANGE, OR MEANING THAT
8 THEY DON'T WANT A FEDERAL ORDER -- AS I HEARD THE QUESTION.
9 AND I THINK THAT IS AN ENTIRELY APPROPRIATE QUESTION.

10 MR. HILL: THAT IS MY QUESTION.

11 MR. VLAHOS: AND I THINK IT IS AN ENTIRELY INAPPROPRIATE
12 QUESTION BECAUSE SHE CANNOT SPEAK FOR WHAT HER MEMBERS MAY
13 THINK IN THIS HYPOTHETICAL SITUATION.

14 MR. BESHORE: IF I MAY JUST JOIN MR. VLAHOS' COMMENT --
15 OBJECTION. THE DIFFICULTY I HAVE WITH IT IS THAT -- THAT
16 WE'RE, THE ANSWER WOULD IMPLY SOME PRECISION ABOUT WHAT WOULD
17 SPECULATIVELY BE ON THE TABLE. WE DON'T HAVE, I MEAN, I
18 UNDERSTAND MR. HILL'S, YOU KNOW, INTEREST IN THE INQUIRY, BUT
19 WITHOUT HAVING SOMETHING PRECISE TO SPECULATE ABOUT, THE ANSWER
20 CAN'T EVEN BE GOOD SPECULATION.

21 JUDGE CLIFTON: THE THING I HAVE LOVED ABOUT THIS,
22 MS. ACMOODY, IS, FOR SOME REASON YOU HAVE DRAWN ALL THESE
23 EXTREMELY IMPORTANT QUESTIONS TO WHICH THERE ARE NO ANSWERS.
24 YOU KNOW, SO THIS IS GOOD. THIS FOCUSES OUR ATTENTION.
25 MR. HILL?

1 MR. HILL: I WILL POINT OUT THAT I'M NOT ASKING FOR ANY
2 SPECIFIC PROPOSAL, I'M JUST ASKING IF IT'S EITHER THIS OR
3 NOTHING ELSE.

4 JUDGE CLIFTON: AND I'M NOT GOING TO PERMIT YOU TO ANSWER,
5 BECAUSE YOU HAVE NO IDEA HOW YOUR MEMBERS ARE GOING TO VOTE,
6 BUT I REALLY APPRECIATE THE QUESTION, AND IT IS REALLY
7 IMPORTANT TO THOSE DRAFTING A RECOMMENDATION TO THE SECRETARY,
8 TO HAVE ALL OF THE INFORMATION THEY CAN HAVE ON WHETHER THERE
9 IS SOME SORT OF RESTRAINT OF TRADE OR OTHER IMPEDIMENT TO
10 MAINTAINING THE QUOTA SYSTEM, TO MAINTAINING THE EXEMPT QUOTA,
11 ALL OF THAT, THAT IS EXTREMELY IMPORTANT TO COVER. BUT I DON'T
12 THINK MS. ACMOODY HAS TO DO IT BY HERSELF.

13 MR. HILL: FAIR ENOUGH, YOUR HONOR.

14 JUDGE CLIFTON: SO YOUR OBJECTION IS SUSTAINED.

15 MR. VLAHOS: THANK YOU, YOUR HONOR.

16 JUDGE CLIFTON: YOU'RE WELCOME.

17 YES, THESE QUESTIONS THAT YOU HAVE BEEN ASKED, ARE A
18 GOOD PLACE TO LOOK IN THE TRANSCRIPT FOR THESE WEIGHTY ISSUES.

19 NOW, IS THERE ANYTHING YOU WOULD LIKE TO ADD?

20 MS. ACMOODY: NO, THANK YOU.

21 JUDGE CLIFTON: YOU'RE WELCOME. YOU MAY STEP DOWN.

22 MR. BESHORE: MARVIN BESHORE. AT THIS TIME WE CALL AS OUR
23 NEXT WITNESS, GEORGE MERTENS. WE DO HAVE A WRITTEN STATEMENT
24 MR. MERTENS IS GOING TO READ, AND IT WILL BE DISTRIBUTED -- IN
25 THE PROCESS OF BEING DISTRIBUTED. WOULD THIS BE EXHIBIT 26,

1 YOUR HONOR?

2 JUDGE CLIFTON: IT WILL. AND DOES MS. FRISIUS HAVE THREE?

3 MS. FRISIUS: I DO.

4 JUDGE CLIFTON: GOOD. AND DOES EVERYONE ELSE WHO WANTS A
5 COPY -- OH, THEY ARE STILL BEING DISTRIBUTED. LET'S WAIT JUST
6 A MINUTE WHILE THOSE ARE DISTRIBUTED.

7 MR. BESHORE: I WOULD JUST NOTE THAT EXHIBIT 26 HAD BEEN
8 PRE-MARKED, IT'S ALSO IDENTIFIED IN THE LOWER RIGHT, THE FIRST
9 PAGE AS COOPERATIVE EXHIBIT 2 AND CONSISTS OF 6 PAGES, AND WE
10 WERE SUCCESSFUL IN NUMBERING THEM.

11 JUDGE CLIFTON: PLEASE RAISE YOUR HAND IF YOU WANT A COPY
12 AND DON'T HAVE ONE YET.

13 AND NOW PLEASE RAISE YOUR HAND AND IF YOU WANT A COPY
14 AND DON'T HAVE ONE YET.

15 MR. MERTENS, I WILL SWEAR YOU IN IN A SEATED POSITION.
16 RAISE YOUR RIGHT HAND, PLEASE.

17 DO YOU SOLEMNLY SWEAR OR AFFIRM, UNDER PENALTY OF
18 PERJURY, THAT THE EVIDENCE YOU WILL PRESENT WILL BE THE TRUTH?

19 MR. MERTENS: I DO.

20 JUDGE CLIFTON: THANK YOU. PLEASE STATE AND SPELL YOUR
21 NAME.

22 MR. MERTENS: GEORGE, G-E-O-R-G-E; MERTENS, M-E-R-T-E-N-S.

23 JUDGE CLIFTON: THANK YOU. AND DO YOU HAVE IN FRONT OF YOU
24 A COPY OF THIS EXHIBIT 26?

25 MR. MERTENS: YES.

1 JUDGE CLIFTON: I KNOW YOURS ISN'T MARKED, BUT WE HAVE HAD
2 A CHANCE TO MARK OURS. IT WILL BE KNOWN AS EXHIBIT 26.

3 (THEREAFTER, EXHIBIT 26 WAS MARKED
4 FOR IDENTIFICATION.)

5 JUDGE CLIFTON: MR. BESHORE, YOU MAY PROCEED.

6 DIRECT EXAMINATION

7 BY MR. BESHORE:

8 Q. THANK YOU. MR. MERTENS, WOULD YOU PROCEED TO READ FROM
9 YOUR STATEMENT, WHICH IS MARKED IN EXHIBIT 26, BEGINNING WITH
10 THE TEXT ON PAGE 2?

11 A. OKAY.

12 GOOD DAY, JUDGE CLIFTON.

13 JUDGE CLIFTON: GOOD DAY

14 MR. MERTENS: MY NAME IS GEORGE MERTENS. MY ADDRESS IS
15 1100 BONNEAU ROAD, SONOMA, CALIFORNIA, 95476. I APPRECIATE THE
16 OPPORTUNITY TO TESTIFY AT THIS HEARING, AND THANK THE UNITED
17 STATES DEPARTMENT OF AGRICULTURE, AND THE UNITED STATES
18 DEPARTMENT OF DAIRY PROGRAM DIVISION FOR CALLING OF THIS
19 HEARING AT THE REQUEST OF THE OVERWHELMING MAJORITY OF DAIRY
20 FARMER FAMILIES IN CALIFORNIA.

21 I AM A DAIRY PRODUCER. I, AND MY WIFE, AND TWO OF MY
22 FIVE SONS, OPERATE MERTENS DAIRY IN SONOMA. OUR FARM HAS BEEN
23 OPERATIONAL FOR 50 YEARS. OUR HERD HAS 900 MILKING COWS AND
24 HEIFERS, AND MILK FROM OUR FARM SERVES MARKET IN THE NORTH BAY
25 AREA OF CALIFORNIA EVERYDAY.

1 WE ARE MEMBERS OF THE DAIRY FARMERS OF AMERICA, INC.,
2 (DFA). DFA MANAGES ITS DAY-TO-DAY OPERATIONS IN SEVEN
3 MULTI-STATE GEOGRAPHICAL UNITS, AND OUR FARM IS PART OF THE
4 WESTERN AREA COMPOSED OF APPROXIMATELY 300 MEMBERS, WITH
5 INVESTMENT IN SIX PLANTS IN CALIFORNIA AND NEVADA.

6 I HAVE BEEN PERSONALLY ACTIVE IN MY LOCAL DAIRY
7 COOPERATIVE, AS WELL AS OTHER AGRICULTURAL GROUPS, MY ENTIRE
8 LIFE. I HAVE BEEN INVOLVED AS A PARTICIPANT IN THE LEADERSHIP
9 IN FARM ORGANIZATIONS, TRADE ORGANIZATIONS, AND GOVERNMENTAL
10 COMMISSIONS. IN ADDITION, I HAVE SERVED ON SEVERAL CURRENT AND
11 ONGOING CALIFORNIA REGULATORY ADVISORY GROUPS AS A DAIRY FARMER
12 PARTICIPANT.

13 Q. LET ME INTERRUPT YOU AT THAT POINT, MR. MERTENS. NOW,
14 YOU HAVEN'T ENUMERATED YOUR MANY INDUSTRY INVOLVEMENTS IN THE
15 TEXT HERE, BUT I WOULD LIKE EVERYONE TO KNOW, AND THE RECORD TO
16 REFLECT, SOME OF THE CAPACITIES IN WHICH YOU HAVE SERVED THE
17 INDUSTRY OVER THE YEARS. SO COULD YOU JUST GO BACK AND PERHAPS
18 STARTING IN THE PERIOD OF TIME WHEN YOUR, YOU KNOW, IN THE SAY
19 1980'S, AND RELATE SOME OF THE POSITIONS AND ORGANIZATIONS AND
20 BOARDS THAT YOU HAVE REPRESENTED THE INDUSTRY?

21 A. WELL, ONE OF THE FIRST BOARDS IN THE '70'S THAT I
22 REPRESENTED, I WAS INVOLVED WITH ASSOCIATED DAIRYMEN OF LODI.
23 IT WAS THE FORERUNNER TO THE NEGOTIATIONS TO FORM WESTERN
24 UNITED IN THE EARLY, IN THE MID-70'S, WHICH WAS FINALLY
25 CULMINATED IN THE -- WELL, IT WAS THE EARLY '80'S WHEN WESTERN

1 UNITED WAS FINALLY FORMED WITH TWO OTHER ORGANIZATIONS, ONE WAS
2 CONSOLIDATED MILK PRODUCERS OF CALIFORNIA, AND THE OTHER ONE
3 WAS WESTERN.

4 Q. WHAT CAPACITY DID YOU SERVE ASSOCIATED DAIRYMEN?

5 A. IN THE TIME WE HAD TERM LIMITS, AND IN THE SIX YEARS,
6 THE LAST TWO YEARS, I WAS CHAIRMAN OF THE BOARD ON THAT, OF
7 THAT ORGANIZATION. THEN AFTER THAT, I WAS THE SONOMA COUNTY
8 FARM BUREAU PRESIDENT FOR THREE YEARS. AFTER THAT, IN ANY
9 SIGNIFICANCE, LET'S SEE, IN 1986 I WAS APPOINTED BY SECRETARY
10 OF AGRICULTURE RICHARD LANE.

11 Q. THAT'S U.S. SECRETARY OF AGRICULTURE?

12 A. U.S. SECRETARY OF AGRICULTURE, RICHARD LANE, TO A
13 COMMISSION ON DAIRY POLICY, THAT RAN FOR, LET'S SEE, WE GAVE
14 THAT REPORT IN 1989.

15 BETWEEN 1983 AND 1991 I WAS A PLANNING COMMISSIONER FOR
16 THE COUNTY OF SONOMA, AND DEALT WITH AGRICULTURE -- I WAS THEIR
17 AGRICULTURAL REPRESENTATIVE THERE.

18 WHAT HAPPENED AFTER THAT? OH, AFTER THAT, I HAD, I WAS
19 A LITTLE, TOOK A LITTLE BREATHER AND IT WAS IN 1993 I HELPED
20 FORM CALIFORNIA DAIRY CAMPAIGN WITH A COUPLE OF OTHER DAIRYMEN
21 FROM THE CENTRAL VALLEY DOWN HERE.

22 IN 2001 I WAS ELECTED TO THE COUNCIL OF DAIRY FARMERS
23 OF AMERICA. AND IN 2008 I WAS ELECTED CHAIRMAN, WHICH I SERVED
24 UNTIL NOW. AND AS CHAIRMAN, I ALSO SERVED ON THE NATIONAL MILK
25 PRODUCERS FEDERATION, AT NATIONAL MILK, WHICH IS A NATIONAL

1 ORGANIZATION.

2 Q. OKAY. WHAT -- WELL, IT IS IN YOUR TEXT, I WON'T ASK
3 THAT AS YOU GO ON. THANK YOU FOR, FOR THAT SERVICE AND FOR
4 RELATING IT HERE.

5 A. OKAY.

6 Q. AND COULD YOU, THEN, CONTINUE WITH YOUR STATEMENT?

7 A. I MISSED ONE. THE FIRST ONE WAS, I WAS PRESIDENT,
8 FINALLY WAS PRESIDENT OF THE PETALUMA BOYS CLUB. AND AFTER
9 LISTENING TO THE DISTINGUISHED COUNSEL, CHIP ENGLISH AND ALVIN
10 HOLLON GOING ALONG YESTERDAY, I THOUGHT I WAS BACK IN BOYS
11 CLUB.

12 JUDGE CLIFTON: LET ME ASK, MR. MERTENS, WHILE WE HAVE GOT
13 YOU INTERRUPTED, AT THE TOP OF YOUR STATEMENT YOU GIVE AN
14 ADDRESS. IS THAT A BUSINESS ADDRESS?

15 MR. MERTENS: YES, THAT'S WHERE THE DAIRY IS. THAT'S THE
16 DAIRY ADDRESS.

17 JUDGE CLIFTON: GOOD. WE CAN PUT -- WE CAN KEEP BUSINESS
18 ADDRESSES IN ALL OUR DOCUMENTS, WE DON'T LIKE TO KEEP PEOPLE'S
19 PERSONAL ADDRESSES, BECAUSE IT'S KNOWN AS PERSONALLY
20 IDENTIFYING INFORMATION, SO, OR PERSONALLY IDENTIFIABLE
21 INFORMATION. SO I'M GLAD TO KNOW IT'S A BUSINESS ADDRESS.

22 ALL RIGHT. YOU MAY PICK UP WHERE YOU LEFT OFF.

23 MR. MERTENS: WHERE DID I LEAVE OFF? OKAY.

24 MR. BESHORE: BOTTOM OF PAGE 2.

25 MR. MERTENS: I AM AN ACTIVE MEMBER OF DFA AND SERVE OUR

1 MEMBERS AS THE DFA AREA COUNCIL, AS WELL AS DFA BOARD OF
2 DIRECTORS. I AM IN CONSTANT CONTACT WITH DFA MEMBERS OF
3 CALIFORNIA AND THE REST OF THE UNITED STATES. THEY ARE ALL
4 VERY INTERESTED IN THIS HEARING.

5 DFA MEMBERSHIP AND LEADERS HAVE PARTICIPATED IN
6 NUMEROUS INFORMATIONAL SESSIONS ABOUT THE PROPOSAL, AND ASK NOT
7 ONLY OUR STAFF, BUT ALSO USDA AND THE CDFA STAFF MANY QUESTIONS
8 ABOUT SPECIFIC POINTS OF THE PROPOSAL AND THE PROCESS FOR
9 ESTABLISHING A FEDERAL MILK MARKETING ORDER.

10 I EXPECT YOU WILL HEAR FROM MORE DFA MEMBERS OVER THE
11 NEXT SEVERAL WEEKS. THE WESTERN AREA COUNCIL, WORKING IN
12 CONJUNCTION WITH FARMER LEADERSHIP OF CALIFORNIA DAIRIES,
13 INC., AND LAND O'LAKES, INC., HAS FULLY AND FORMALLY ENDORSED
14 PURSUING AND PARTICIPATING IN THE HEARING TO BRING A FEDERAL
15 MILK MARKETING ORDER TO CALIFORNIA.

16 MEMBERS ARE CONCERNED ABOUT THEIR FARMS AND THE
17 INVESTMENT IN THEIR COOPERATIVE BUSINESS. WE ALSO REALIZE WE
18 MUST HAVE VIABLE SUCCESSFUL CUSTOMERS IN ORDER FOR OUR FARM
19 INVESTMENT TO SUCCEED AND BE PROFITABLE. BUT WITHOUT A VIABLE
20 MILK SUPPLY, THOSE, AND OUR BUSINESS INVESTMENTS WILL FAIL.

21 I SPEAK REGULARLY WITH DFA MEMBERS AND OTHER DAIRYMEN
22 ACROSS THE U.S. IT IS CLEAR TO CALIFORNIA DAIRY FARMERS THAT
23 THEIR MILK PRICE IS NOT ON PAR WITH THE REST OF THE COUNTRY.
24 WHILE I AM NOT A STUDENT OF THE DETAILS OF MILK PRICING
25 FORMULAS, I DO UNDERSTAND THAT MILK USED TO MAKE CHEESE AND

1 WHEY IN THE FEDERAL ORDER, IS VALUED ABOVE MILK USED TO MAKE
2 THE SAME PRODUCTS IN CALIFORNIA.

3 OVER THE PAST FEW YEARS, THAT DIFFERENCE HAS, AT TIMES,
4 BEEN MORE THAN \$3 PER HUNDREDWEIGHT. DFA MAKES CHEESE AND WHEY
5 PRODUCTS IN PLANTS THAT WE OWN DIRECTLY OR JOINTLY WITH OTHER
6 PARTNERS AROUND THE COUNTRY. OUR PLANTS SELL THOSE PRODUCTS IN
7 COMPETITION WITH CALIFORNIA-BASED PLANTS ALL OVER THE U.S. AND
8 THE WORLD. IT IS DIFFICULT TO UNDERSTAND WHY THE CALIFORNIA
9 4B MILK PRICE IS SO MUCH LOWER THAN THE FEDERAL ORDER
10 CLASS III PRICE, BUT NOT TOO HARD TO FEEL SOME OF THE IMPACT.

11 CALIFORNIA DAIRY FARMERS, LIKE MANY IN THE U.S., HAVE
12 FACED INCREASES IN OUR OPERATING COSTS. TWO RECENT SITUATIONS
13 THAT ARE SOMEWHAT UNIQUE AND VERY IMPACTFUL TO THE CALIFORNIA
14 DAIRY INDUSTRY, ARE THE SEVERE DROUGHT-CAUSING RESTRICTIONS IN
15 WATER USE (WHICH IS FORCING DAIRYMEN TO DRILL WELLS AND DEEPER
16 AND MORE EXPENSIVE WELLS) AND THE INCREASING CONVERSION OF LAND
17 USED AWAY FROM DAIRY FEED STUFFS, TO TREE NUTS AND BUYING
18 PRODUCTION. WE DON'T EXPECT THE DROUGHT TO LAST FOREVER, BUT
19 AT PRESENT, IT IS A SIGNIFICANT COST FACTOR.

20 THE LAND CONVERTED FROM FEED PRODUCTION TO TREE NUT AND
21 VINE PRODUCTION, IS LIKELY IRREVERSIBLE. THIS FACT PUSHES UP
22 THE COST OF ACQUIRING FEED, AS THEY MUST BE SOURCED FROM LONGER
23 DISTANCES AND IN COMPETITION WITH DAIRY AND BEEF INTERESTS IN
24 OTHER REGIONS OF THE COUNTRY. THESE TWO FACTORS ARE DIFFICULT
25 TO ISOLATE AND CATEGORIZE IN THE PUBLISHED STUDIES ON THE COST

1 OF MILK PRODUCTION, BUT ARE, IN FACT, VERY REAL. IT IS
2 DIFFICULT TO COMPETE FOR MILK PRODUCTION INPUTS WITH OTHER
3 DAIRIES IN OTHER REGION OF THE COUNTRY, WHEN OUR PRICES ARE NOT
4 IN A REASONABLE RELATIONSHIP WITH THEIRS.

5 WE NOTE THAT WHEN CALIFORNIA SECRETARY OF AGRICULTURE
6 ROSS ANNOUNCED THE MOST RECENT CHANGE IN THE CLASS 4B PRICE
7 FORMULA EFFECTIVE FOR ONE YEAR AND BEGINNING ON AUGUST 1ST,
8 EVEN SHE REMARKED: "THE CHANGES ARE NECESSARY TO ASSIST
9 PRODUCERS IN DEALING WITH INCREASED COSTS OF PRODUCTION AND
10 EFFECT OF THE ONGOING DROUGHT, BUT THESE CDF CHANGES ARE
11 TEMPORARY."

12 CALIFORNIA HAS OPERATED ITS STATE MILK MARKETING SYSTEM
13 FOR MANY YEARS. I WAS INVOLVED IN A DAIRY, AS A DAIRY FARM
14 PARTICIPANT IN THE PROCESS WHEN IT WAS PUT IN PLACE IN THE
15 '60'S. I HAVE ATTENDED -- I HAVE ATTENDED MANY HEARINGS,
16 COMMITTEE AND WORKING GROUPS, WITH THE CALIFORNIA DEPARTMENT OF
17 FOOD AND AGRICULTURE SINCE THEN. FOR MANY YEARS, THE STATE
18 ORDER HAS OFFERED A REASONABLE BALANCE BETWEEN PRODUCER
19 INTEREST AND PROCESSOR INTEREST, AND I UNDERSTAND THE
20 MAINTAINING THE BALANCE IS NOT ALWAYS EASY.

21 OUR THREE COOPERATIVES AND THE THREE STATE PRODUCER
22 STATE TRADE ASSOCIATION HAVE MADE MULTIPLE REQUESTS AT THE
23 STATE ORDER, THROUGH THE HEARING PROCESS TO BETTER ALIGN
24 CALIFORNIA MILK PRICES WITH THOSE OF THE REST OF THE COUNTRY.
25 HOWEVER, THOSE REQUESTS HAVE NOT RESULTED IN MILK PRICES THAT

1 SEEM IN A FAIR RELATIONSHIP TO PRICES PRESENT IN THE FEDERAL
2 ORDER.

3 DFA MEMBERS, AND THE MEMBERS OF OTHER COOPERATIVES
4 ASKING FOR THESE HEARINGS, ARE APPRECIATIVE OF THE RECENT
5 TEMPORARY CHANGE MADE IN CALIFORNIA'S CLASS 4B MILK PRICE
6 FORMULA, WE, NEVERTHELESS, FEEL THAT NOW IS THE TIME FOR THE
7 CALIFORNIA INDUSTRY TO JOIN THE NATIONAL SYSTEM.

8 I WILL BE GLAD TO ANSWER ANY QUESTIONS I CAN, BUT MAY
9 HAVE TO DIRECT SOME OF THEM TO OUR LATER STAFF WITNESSES.

10 THANK YOU FOR HOLDING THE HEARING AND ALLOWING ME TO
11 PARTICIPATE. THANK YOU.

12 Q. THANK YOU, MR. MERTENS, AND HE'S AVAILABLE FOR
13 QUESTIONS FROM OTHER PERSONS.

14 JUDGE CLIFTON: THANK YOU. MR. MERTENS, ARE SOME OF THE
15 STAFF WITNESSES THAT YOU REFERRED TO HERE TODAY?

16 MR. MERTENS: YES.

17 JUDGE CLIFTON: ALL RIGHT. SO IF YOU ARE ASKED A QUESTION,
18 WHETHER OR NOT YOU PROVIDE SOME ANSWER TO IT, IF THERE IS
19 SOMEONE ELSE IN THE ROOM THAT YOU BELIEVE IS KNOWLEDGEABLE ON
20 THAT TOPIC, WOULD YOU MENTION THAT PERSON BY NAME FOR US?

21 MR. MERTENS: I WILL.

22 JUDGE CLIFTON: OKAY. GOOD. ALL RIGHT. WHO WOULD LIKE TO
23 BEGIN THE QUESTIONING OF MR. MERTENS?

24 CROSS-EXAMINATION

25 BY MR. ENGLISH:

1 Q. CHIP ENGLISH.

2 AND NOT TO TAKE YOU DOWN TO THE BOYS' CLUB, BUT WHEN
3 YOU TALK ABOUT THE YEARS YOU HAVE BEEN MILKING, AND GOING BACK
4 TO MY CONVERSATIONS WITH MR. HOLLON, YOU WERE A MEMBER OF
5 ANOTHER COOPERATIVE THAT MERGED INTO DAIRY FARMERS OF AMERICA,
6 CORRECT?

7 A. RIGHT.

8 Q. WOULD THAT BE CALIFORNIA GOLD?

9 A. YES.

10 Q. AND I THINK I ASKED SOME QUESTIONS, AND MR. HOLLON
11 WASN'T ENTIRELY CLEAR, THERE WAS -- WHAT WAS THE PLANT IN
12 PETALUMA THAT CALIFORNIA GOLD HAD?

13 A. PARDON ME?

14 Q. WHAT WAS THE PLANT THAT CALIFORNIA GOLD HAD IN
15 PETALUMA? WHAT PRODUCTS DID IT MAKE?

16 A. IT WAS BLOCK CHEESE IN PETALUMA, BUT WE ALSO HAD A
17 PLANT IN TRACY. THE CHEESE PLANT THAT LEPRINO OWNS NOW IN
18 TRACY WAS OURS. WE BUILT IT IN 1972. WE BOUGHT THE FOREMOST
19 PLANT IN HUGHSON, AND I CAN'T REMEMBER WHEN WE BOUGHT THAT, AND
20 WE BOUGHT THE TURLOCK PLANT IN, OH, I DON'T KNOW, THAT WAS
21 PROBABLY 1989, '90, SOMEWHERE IN THERE. I WASN'T ON THE BOARD,
22 I WAS JUST A MEMBER.

23 Q. I WAS ACTUALLY REFERRING TO CAL GOLD?

24 A. YEAH, CALIFORNIA GOLD COOPERATIVE CREAMERY OWNED THAT.

25 Q. THEY OWNED THOSE PLANTS AS WELL?

1 A. ALL OF THOSE PLANTS, YES.

2 Q. BY THE TIME THE MERGER WITH DAIRY FARMERS OF AMERICA,
3 HOWEVER, THEY HAD SOLD OFF THOSE PLANTS, OR NOT?

4 A. NO.

5 Q. NOT?

6 A. THEY WENT WHEN WE MERGED WITH CALIFORNIA GOLD, AND THEY
7 SOLD OFF THE PLANTS.

8 JUDGE CLIFTON: YOU LOST ME. SO WHILE YOU WERE WITH
9 CALIFORNIA GOLD, DID IT OWN THE BLOCK CHEESE PLANT IN PETALUMA?

10 MR. MERTENS: YES.

11 JUDGE CLIFTON: AND THE ONE IN, THE PLANT IN TRACY?

12 MR. MERTENS: YES.

13 JUDGE CLIFTON: NOW, WHEN YOU MENTIONED FOREMOST, ARE YOU
14 TALKING ABOUT HUGHSON, THE CALIFORNIA LOCATION?

15 MR. MERTENS: YEAH, FOREMOST, AS FAR AS I KNOW, I THINK
16 THEY WERE, THEY HAD IT BEFORE WE DID. FOREMOST, WE BOUGHT IT
17 FROM FOREMOST, KNUDSEN WHICH MERGED TOGETHER. I MEAN, THIS
18 THING WAS ALL CONSOLIDATED OVER TIMES, GUYS.

19 JUDGE CLIFTON: AND HOW DID YOU SPELL HUGHSON?

20 MR. MERTENS: HU-- IT'S HUGHSON, H-U-G-H-S-O-N.

21 MR. ENGLISH: YES. I THINK THAT'S HOW IT WAS SPELLED BY
22 MR. HOLLON YESTERDAY.

23 JUDGE CLIFTON: AND THEN, STILL TALKING ABOUT CALIFORNIA
24 GOLD, DID IT ALSO OWN THE TURLOCK PLANT?

25 MR. MERTENS: RIGHT.

1 JUDGE CLIFTON: AND WHEN DID -- IF ANY OF THOSE PLANTS ARE
2 NO LONGER OWNED BY COOP THAT YOU ARE IN, TELL ME WHAT YOU KNOW
3 ABOUT WHAT HAPPENED.

4 MR. MERTENS: OKAY. PETALUMA WAS, THE CHEESE PLANT IS
5 OWNED BY LARRY PETER, WE SOLD THAT.

6 IN THE MERGER WITH DFA, DFA SUBSEQUENTLY SOLD THE TRACY
7 PLANT TO LEPRINO, WHO HAD BEEN LEASING IT.

8 WE STILL OWN THE HUGHSON, WHICH IS A BUTTER POWDER
9 PLANT, AND THE TURLOCK PLANT, WHICH WE BOUGHT IN THE LATE
10 '80'S, EARLY '90'S, WE STILL OWN. DFA STILL OWNS THAT. AND
11 THAT'S A MOZZARELLA PLANT.

12 BY MR. ENGLISH:

13 Q. NOW, AS AN ACTIVE MEMBER OF DFA WESTERN AREA COUNCIL,
14 AS WELL AS DFA'S BOARD OF DIRECTORS, ARE YOU AWARE OF A STUDY
15 THAT THE COOPS REQUESTED OF MARK STEPHENSON AND CHUCK NICHOLSON
16 WITH RESPECT TO THE FEDERAL RULES OF CALIFORNIA?

17 A. YES.

18 Q. MR. BESHORE, I'M MERELY LAYING A FOUNDATION, I'M NOT
19 GOING TO ASK HIM TO TELL ME ANYTHING ABOUT IT.

20 MR. BESHORE: I WANT TO BE NEAR TO SAVE TIME.

21 BY MR. ENGLISH:

22 Q. HAVE YOU SEEN THAT STUDY?

23 A. NO.

24 Q. ALL RIGHT.

25 JUDGE CLIFTON: I LIKE PROMPT OBJECTIONS, I HAVE NO -- AND

1 I THINK HE HAS A CERTAIN AFFECT JUST BY APPROACHING YOU,
2 MR. ENGLISH.

3 MR. ENGLISH: I HAVE NEVER STRAYED ACROSS THAT LINE I SAID
4 I WOULDN'T STRAY ACROSS. WHEN WE GET TO THIS ISSUE, WE'LL GET
5 TO THIS ISSUE. WE'RE MERELY LAYING A FOUNDATION, YOUR HONOR.
6 BY MR. ENGLISH:

7 Q. SO YOU HAVE INDICATED YOU ARE NOT A STUDENT OF THE
8 DETAILS OF MILK PRICING, AND NONETHELESS YOU HAVE MADE A
9 COMPARISON OF FEDERAL MILK ORDER PRICES AND CALIFORNIA PRICES,
10 CORRECT?

11 A. RIGHT.

12 Q. AND YOU HAVE MENTIONED PLANTS THAT DFA MAKES CHEESE AND
13 WHEY AROUND THE COUNTRY, CORRECT?

14 A. YES.

15 Q. AND YOU WERE HERE YESTERDAY FOR THE TESTIMONY OF
16 MR. HOLLON, WHICH YOU JUST TOLD US THAT YOU WERE, ESPECIALLY
17 FOR MY QUESTIONING OF HIM, CORRECT?

18 A. YES.

19 Q. AND DO YOU UNDERSTAND THAT FOR PURPOSES OF FEDERAL MILK
20 MARKETING ORDERS, THAT MILK USED TO PRODUCE PRODUCTS,
21 MANUFACTURED PRODUCTS, IS VOLUNTARILY POOLED? IT IS NOT
22 REQUIRED TO BE POOLED? DO YOU UNDERSTAND THAT FROM WHAT YOU
23 HAVE HEARD?

24 A. NO, I DON'T UNDERSTAND WHAT YOU ARE TALKING ABOUT.

25 Q. ON PAGE 5 IN YOUR TESTIMONY, YOU REFERRED TO MILK

1 PRICES THAT, THOSE, THE REQUESTS FOR CALIFORNIA, HAVE NOT
2 RESULTED IN MILK PRICES THAT SEEM IN A FAIR RELATIONSHIP TO
3 PRICES PRESENT IN THE FEDERAL ORDERS.

4 A. RIGHT.

5 Q. NOW, YOU HAVE JUST TOLD ME YOU DON'T KNOW SOMETHING
6 ABOUT VOLUNTARY POOLING, CORRECT?

7 A. RIGHT.

8 Q. SO WHAT IS YOUR DEFINITION OF A FAIR RELATIONSHIP USED
9 ON PAGE 5?

10 A. WHEN I'M COMPARING THE CALIFORNIA 4B PRICE TO THE
11 FEDERAL ORDER CLASS III PRICE. PERIOD.

12 Q. OKAY. AND YOU UNDERSTAND THAT SOME OF THOSE
13 COMPETITORS OUTSIDE OF CALIFORNIA DO NOT HAVE TO PAY A MINIMUM
14 REGULATED CLASS B PRICE?

15 A. WELL, THAT'S TRUE IN CALIFORNIA, TOO.

16 Q. WOULD IT BE TRUE UNDER THE PROPOSED ORDER THAT YOU ARE
17 SUPPORTING FOR COOPERATIVES PROPOSAL?

18 A. I WAS UNDER THE IMPRESSION THAT IT COOPERATIVE COULD
19 PAY THEIR MEMBERS JUST -- THEY HAVE TO PAY THE REGULATED PRICE.

20 Q. BUT DO YOU UNDERSTAND --

21 A. LIKE I SAID, I'M NOT A STUDENT IN THIS STUFF.

22 Q. WELL, I UNDERSTAND THAT, BUT YOU HAVE MADE A
23 COMPARISON, SO I'M TRYING TO UNDERSTAND HOW --

24 A. THAT WAS STRICTLY ON THE PUBLISHED THING. HOW THEY GOT
25 TO THOSE FIGURES, I HAVE NO IDEA.

1 Q. AND YOU DON'T KNOW WHETHER THOSE NUMBERS ARE
2 COMPARABLE?

3 A. NO.

4 Q. OKAY. NOW, FOR THE NEXT SET OF QUESTIONS I'M GOING TO
5 BE DELIBERATELY SOMEWHAT NOT SPECIFIC, BOTH FOR THE PURPOSES OF
6 DAIRY FARMERS OF AMERICA AND FOR A CUSTOMER OF YOURS.

7 BUT MR. HOLLON HAS DONE A TABLE WITH RESPECT TO
8 COMPARISON OF 4B TO CLASS III PRICES IN HIS EXHIBIT. WERE YOU
9 HERE TO SEE HIS EXHIBIT? DO YOU HAVE A COPY OF THAT EXHIBIT?

10 A. I LOOKED THROUGH IT, YEAH. I COULDN'T SEE IT, IT WAS
11 PRINTED TOO SMALL.

12 Q. MAYBE I SHOULD HAVE OBJECTED TO ADMITTING IT BECAUSE IT
13 WAS TOO SMALL, YOUR HONOR.

14 JUDGE CLIFTON: FOR THE PURPOSE OF EXAMINING THIS WITNESS,
15 I DO HAVE A MAGNIFYING GLASS HERE IF YOU WANT TO GO TO IT.

16 MR. ENGLISH: WELL, I THINK I'M GOING TO TRY TO KEEP IT A
17 LITTLE SHORTER THAN THAT, YOUR HONOR.

18 JUDGE CLIFTON: OKAY.

19 BY MR. ENGLISH:

20 Q. JUST ACCEPT WITH ME FOR A MOMENT THAT ON EXHIBIT 20, IN
21 TABLE 1F5, MR. HOLLON DID SOME VARIOUS AVERAGES. AND ONE OF
22 THEM WAS AN AVERAGE OF AUGUST 2012 THROUGH JULY OF 2015.

23 ARE YOU AWARE THAT A SIGNIFICANT CUSTOMER OF DFA DURING
24 THAT TIMEFRAME VOLUNTARILY OR CONTRACTUALLY WITH DFA, PAID A
25 PREMIUM BASED UPON THE VALUE OF WHEY?

1 MR. BESHORE: I RECOGNIZE THAT A NAME WAS NOT PROVIDED IN
2 THE QUESTION, I APPRECIATE THAT. BUT I DO OBJECT TO HIS
3 INQUIRY INTO THE DOLLAR FIGURES IN PRIVATE TRANSACTIONS BETWEEN
4 THE COOPERATIVE AND INDIVIDUAL CUSTOMERS, WHICH IS INFORMATION
5 THAT DOES NOT NEED TO BE DISCLOSED.

6 JUDGE CLIFTON: ALL RIGHT. THANK YOU.

7 MR. ENGLISH: I DELIBERATELY NOT DID ASK A DOLLAR FIGURE.

8 JUDGE CLIFTON: I KNOW, HE'S WARNING YOU.

9 MR. ENGLISH: HE DIDN'T HAVE TO WARN ME, YOUR HONOR,
10 BECAUSE I SPECIFICALLY SAID I'M NOT GOING TO GET INTO THOSE
11 ISSUES. AND NONETHELESS -- LOOK, SOME OF THESE OBJECTIONS,
12 YOUR HONOR, ARE SPEAKING OBJECTIONS. AND -- AND A WARNING
13 ISN'T NECESSARY.

14 JUDGE CLIFTON: WELL --

15 MR. ENGLISH: ESPECIALLY WHEN I SAY I'M LAYING A
16 FOUNDATION. I'M NOT GOING TO SPECIFIC NUMBERS.

17 JUDGE CLIFTON: -- DON'T BE SO CONFIDENT THAT YOU DON'T
18 ALLOW PARTICIPATION OF THE REST OF US.

19 MR. ENGLISH: AND I'M NOT EXPRESSING THAT. I THINK,
20 HOWEVER, MR. BESHORE SOMETIMES JUMPS UP TO INTERRUPT THE FLOW
21 OF THE EXAM, AND THAT'S INAPPROPRIATE, YOUR HONOR.

22 JUDGE CLIFTON: NO, HE DOES NOT. HE'S VERY PATIENT. I
23 APPRECIATE, AS I HAVE SAID BEFORE, I LIKE OBJECTIONS EARLY. SO
24 WHAT MR. BESHORE DID WAS ENTIRELY APPROPRIATE. AND IF YOU
25 WOULD, IF YOU WOULD LIKE MR. MERTENS TO LOOK AT TABLE 1F5 WITH

1 A MAGNIFYING GLASS SO THAT HE SEES WHAT YOU ARE TALKING ABOUT,
2 YOU MAY. I UNDERSTAND THAT YOU ARE NOT GOING TO ASK HIM
3 SPECIFICS ABOUT WHO THE CUSTOMER IS, OR ANY PRICES.

4 YOUR QUESTION IS, IS HE AWARE THAT A CUSTOMER OF DFA
5 PAID A PREMIUM, AND THEN IT WAS SOMETHING ABOUT BASED ON WHEY.
6 AND THE WITNESS MAY ANSWER THAT QUESTION. I DON'T KNOW WHETHER
7 YOU WANT HIM TO LOOK AT THE TABLE WHILE HE'S FORMULATING HIS
8 ANSWER.

9 MR. ENGLISH: WHILE HE'S CERTAINLY WELCOME TO, I DON'T
10 BELIEVE IT IS NECESSARY AS A PREDICATE.

11 MR. MERTENS: NEITHER DO I.

12 MR. ENGLISH: BUT HE'S ENTITLED TO LOOK AT IT, AND I HAVE
13 NO PROBLEM WITH HIM LOOKING AT IT.

14 JUDGE CLIFTON: MR. MERTENS, IF YOU DON'T NEED IT, THEN YOU
15 MAY RESPOND TO THE QUESTION, WHICH IS JUST WHETHER YOU ARE
16 AWARE.

17 MR. MERTENS: I AM VERY AWARE THAT WE GET A PREMIUM FROM
18 ALL OUR CHEESE -- FROM ALL OUR CLIENTS, WHENEVER WE SELL MILK.
19 BY MR. ENGLISH:

20 Q. ISN'T IT THE CASE, WITHOUT NAMING THE CUSTOMER OR THE
21 LEVEL, THAT SPECIFICALLY DURING THAT TIME PERIOD, THERE WAS A
22 SPECIFIC PREMIUM, A WHEY PREMIUM, THAT WAS PAID AND THAT'S THE
23 ONLY QUESTION.

24 MR. BESHORE: I WILL OBJECT TO THE QUESTION AND INSTRUCT
25 MR. MERTENS NOT TO ANSWER, BECAUSE IT IS REACHING A POINT OF

1 SPECIFICITY, WHICH INEVITABLY PROBES INTO THE IDENTITY OF
2 CUSTOMERS. MR. MERTENS SHOULD NOT ANSWER THE QUESTION.

3 JUDGE CLIFTON: I DON'T AGREE. IF THERE'S SOME KIND OF
4 DISTORTION IN THE SUMMARY FIGURES BECAUSE OF A ONE-TIME
5 CONDITION, OR ONE-TIME TRANSACTION, I -- I THINK IT'S PROPER
6 FOR US TO BE MADE AWARE OF IT. SO I DON'T HONOR THAT
7 OBJECTION.

8 MR. MERTENS, YOU MAY ANSWER. AND DO YOU REMEMBER THE
9 QUESTION?

10 MR. MERTENS: YES.

11 JUDGE CLIFTON: YOU MAY RESPOND, WITHOUT SPECIFICS.

12 MR. MERTENS: WITHOUT SPECIFICS, AND I DON'T KNOW ALL OVER
13 THE UNITED STATES WHETHER WE GET A WHEY PREMIUM, LIKE HE
14 STATED, RIGHT? IS THAT WHAT YOU ARE ASKING?

15 MR. ENGLISH: I'M ASKING IN CALIFORNIA. IN CALIFORNIA.

16 MR. MERTENS: OH, NOW IT IS JUST CALIFORNIA.

17 MR. ENGLISH: I'M SORRY, I APOLOGIZE.

18 MR. MERTENS: YES.

19 MR. ENGLISH: I APOLOGIZE.

20 MR. MERTENS: YES.

21 MR. ENGLISH: AND THE ANSWER IS YES. THANK YOU. THAT'S
22 ALL I HAVE.

23 JUDGE CLIFTON: IS THAT THE KIND OF BOYS' CLUB STUFF YOU
24 MEANT?

25 MR. MERTENS: YEAH.

1 JUDGE CLIFTON: OKAY. WHO WILL NEXT ASK QUESTIONS OF
2 MR. MERTENS?

3 MS. HANCOCK: NICOLE HANCOCK FOR THE CALIFORNIA PRODUCER
4 HANDLERS ASSOCIATION.

5 CROSS-EXAMINATION

6 BY MS. HANCOCK:

7 Q. GOOD MORNING, MR. MERTENS.

8 A. GOOD MORNING.

9 Q. I PROMISE TO BE A LITTLE BIT EASIER.

10 A. THAT WAS EASY.

11 Q. IN YOUR STATEMENT ON EXHIBIT 26, YOU SAY IN HERE THAT
12 YOU WERE INVOLVED AS A DAIRY FARMER PARTICIPANT IN THE 1960'S
13 WHEN THE POOLING ACT WAS PUT IN PLACE?

14 A. YES.

15 Q. CAN YOU TELL ME HOW YOU WERE A PARTICIPANT?

16 A. WELL, IF YOU WANT TO HEAR IT, OKAY.

17 MY FIRST BRUSH WITH IT WAS WHEN I WAS ACTUALLY IN,
18 STILL BREEDING COWS, WHICH I WAS AN ARTIFICIAL INSEMINATOR, AND
19 I WAS A VERY GOOD FRIEND OF THE PERSON WHO ORIGINALLY WROTE THE
20 GONZALVES ACT, THAT EVENTUALLY BECAME THE GONZALVES ACT, AND
21 THAT WAS IN 1961 AND HIS NAME WAS RAY GAMBONINI.

22 I WENT ALL THROUGH SCHOOL WITH HIS SON DICK, AND SO I
23 KNEW RAY VERY WELL, AND HE -- I WALKED IN THE BARN ONE DAY AND
24 HE SAYS, HE HANDED ME A YELLOW PAPER PAD, LEGAL PAD, WITH
25 PENCIL WRITTEN ALL OUT, IN ABOUT 40 PAGES OF IT. AND HE SAYS,

1 "HERE, GEORGE, READ THIS. SEE WHAT YOU THINK OF IT." AND I
2 WASN'T THAT INTERESTED AT THAT AGE. BUT I READ THROUGH A
3 LITTLE BIT OF IT, AND I GOT A LITTLE GIST OF IT, AND THAT WAS
4 MY FIRST BRUSH WITH IT.

5 AS FAR AS, I JUST HEARD STORIES BACK FROM RAY AND OTHER
6 PEOPLE OF WHAT THEY WENT THROUGH TO GET IT PASSED AND
7 EVERYTHING ELSE.

8 Q. DID YOU EVER TESTIFY?

9 A. NO.

10 Q. DID YOU ATTEND ANY OF THE LEGISLATIVE SESSIONS?

11 A. NO.

12 Q. DID YOU PARTICIPATE AT ALL IN ANY DISCUSSIONS OR
13 MEETINGS?

14 A. I JUST HEARD A LOT OF ABOUT IT AND IT WOULD BE
15 SECONDHAND SAYING, SO I DON'T WANT TO SAY TOO MUCH ABOUT IT.

16 Q. WERE YOU SUPPORTIVE OF THE POOLING ACT BEING ENACTED IN
17 1969?

18 A. OH YEAH, WE HAD ALMOST DEREGULATION BEFORE THAT, AND IT
19 WASN'T PRETTY. THE PROCESSORS FAIRLY WELL CONTROLLED IT, AND I
20 CAN GIVE YOU SOME PERSONAL STORIES ON THAT, BECAUSE WHEN I WENT
21 IN THE DAIRY BUSINESS, IN ORDER TO GET IN THE DAIRY BUSINESS,
22 BECAUSE IF YOU WEREN'T IN CAHOOTS WITH THE PROCESSOR, YOU
23 DIDN'T GET IN THE DAIRY BUSINESS BECAUSE YOU DIDN'T HAVE A
24 PLACE TO SHIP YOUR MILK, OTHER THAN THE COOPS. AND THE COOPS
25 WEREN'T TAKING ON ANYBODY. SO I, WHEN I FINALLY GOT IN THE

1 DAIRY BUSINESS I WENT TO A FOREMOST PRODUCER, AND WE HAD IT
2 PRETTY WELL SET UP TO BUY IT. BUT WHEN HE MENTIONED IT, JUST
3 MENTIONED IT TO HIS FIELDMAN, HE SAYS, IF YOU EVER MENTION THAT
4 AGAIN, YOU GOT 30 DAYS AND YOU ARE OUT OF HERE.

5 Q. MENTIONING THE POOLING ACT?

6 A. NO, NO, SELLING THE BUSINESS TO ME. THE POOLING ACT
7 HAD NOTHING TO DO WITH IT. SO WHEN I FINALLY WENT AND BOUGHT A
8 SAFEWAY CONTRACT, I PAID \$40,000 UNDER THE TABLE, NOBODY KNEW
9 ABOUT IT, IT WAS NOT MENTIONED IN THE BILL OF SALE OR ANYTHING.
10 IT WAS JUST A GIFT TO HIM TO GET THAT TRANSFERRED.

11 AND THEN ONCE WE GOT THE POOLING ACT IN, IT GAVE THE
12 DAIRYMEN, THE INDIVIDUAL DAIRYMEN, SOME DIGNITY IN THE
13 INDUSTRY, IN MY ESTIMATION.

14 Q. AND HOW DID -- WHAT ABOUT THE POOLING ACT GAVE THEM THE
15 DIGNITY THAT YOU WERE JUST TALKING ABOUT?

16 A. BECAUSE THEN WE OWNED WHAT WE -- QUOTA AND OUR SHIPPING
17 RIGHTS. WE OWNED THEM, NOT THE PROCESSOR.

18 Q. SO IT WAS THE ESTABLISHMENT OF THAT QUOTA SYSTEM THAT
19 GAVE YOU THAT DIGNITY THAT YOU WERE DESCRIBING?

20 A. RIGHT. EXACTLY.

21 Q. AND IT GAVE THE PRODUCERS BACK SOME LEVERAGE IN THE
22 DISCUSSIONS?

23 A. WELL, YEAH, IT GAVE THEM SOME.

24 Q. AND WHAT DO YOU REMEMBER WAS THE QUOTA SYSTEM WHEN THE
25 POOLING ACT WAS PUT IN PLACE?

1 A. WHAT DO I REMEMBER?

2 Q. WELL, WHAT DO YOU REMEMBER ABOUT HOW THE QUOTA SYSTEM
3 OPERATED? WHAT WAS THE QUOTA SYSTEM, IN YOUR UNDERSTANDING?

4 A. OH. THE QUOTA JUST GIVES YOU YOUR PIECE OF THE CLASS 1
5 MARKET. IT HAS NOTHING TO DO WITH PRODUCTION, CONTROL OF
6 PRODUCTION, OR ANYTHING ELSE.

7 Q. AND THAT, THAT QUOTA THAT PIECE OF YOUR CLASS 1 MARKET,
8 THAT WAS ASSIGNED AS QUOTA BASED ON YOUR HISTORICAL PRODUCTION
9 OF CLASS 1 MILK?

10 A. PRETTY MUCH SO. NOT ENTIRELY. THERE WERE SOME
11 DEVIATIONS, BUT IT WAS PRETTY MUCH SO. IT WAS A TOUGH SELL.
12 IT WAS A TOUGH SELL TO GET IN.

13 Q. AND IN ADDITION, THERE WAS BASE THAT WAS ASSIGNED AT
14 THE SAME TIME?

15 A. YEAH. BUT THAT'S PRETTY WELL ALL BEEN GONE NOW. I
16 MEAN, THEY STILL LIST IT, BUT IT DON'T REALLY MEAN NOTHING.

17 Q. BECAUSE YOU PRODUCE OVER THAT, AND IT IS CALCULATED AS
18 THE OVER BASE PRODUCTION?

19 A. EXACTLY.

20 Q. AND ALL OF THAT WAS PUT IN PLACE AT THE SAME TIME THAT
21 THE QUOTA SYSTEM WAS ESTABLISHED?

22 A. MOST OF IT. THEY -- WE HAD SUBSEQUENT HEARINGS AND
23 STUFF THAT WE CHANGED A FEW THINGS IN THERE AND POOLED
24 DIFFERENT THINGS AND DID DIFFERENT THINGS, BUT IT WAS, THE
25 BASIS WAS THERE.

1 Q. AND AT THE SAME TIME, THE EXEMPT QUOTA WAS ESTABLISHED
2 FOR THE PRODUCER-HANDLERS AS WELL.

3 A. AS I UNDERSTAND IT.

4 Q. AND THEN, YOU WERE PART --

5 A. THAT WAS DONE BEFORE I WAS IN THE DAIRY BUSINESS.

6 Q. WELL, THAT WAS DONE AS PART OF THE POOLING ACT THAT WAS
7 PUT IN PLACE IN 1969?

8 A. RIGHT. YEAH, BUT THE AGREEMENT BETWEEN THE
9 PRODUCER-HANDLERS AND THEM WAS ALREADY DONE, BECAUSE THAT'S --
10 I WENT INTO BUSINESS IN '68, AND THAT'S ABOUT WHEN IT WENT INTO
11 THE, WHEN IT WAS PASSED, AND RONALD REAGAN SIGNED IT.

12 Q. AND HE WAS GOVERNOR OF CALIFORNIA AT THE TIME?

13 A. YEAH.

14 Q. SO I GUESS THE POOLING ACT WAS ACTUALLY PASSED IN 1967
15 AND THEN WENT INTO EFFECT IN 1969? IS THAT YOUR UNDERSTANDING?

16 A. I THINK IT WAS JANUARY 1ST OF '68. WAIT A MINUTE NOW.
17 I DON'T KNOW, I CAN'T REMEMBER EXACTLY. IT'S ONE OF THOSE,
18 IT'S ONE OF THOSE DAYS, WHICH REALLY DON'T MAKE THAT MUCH
19 DIFFERENCE.

20 Q. OKAY. IT WENT INTO EFFECT SHORTLY AFTER -- SHORTLY
21 AFTER YOU BEGAN DAIRY FARMING?

22 A. YEAH.

23 Q. OKAY. AND BY THE TIME YOU BEGAN DAIRY FARMING, YOUR
24 UNDERSTANDING IS THAT THE EXEMPT QUOTA WAS ALREADY ESTABLISHED
25 AS PART OF THE QUOTA SYSTEM?

1 A. WELL, IT REALLY, THE EXEMPT QUOTA, WE DIDN'T -- WE
2 DIDN'T HAVE TOO MANY PRODUCER-HANDLERS UP IN THE NORTH BAY,
3 FIRST OFF. THEY WERE MOSTLY IN SOUTHERN METRO. I DID ASK RAY
4 GAMBONINI ABOUT THAT ISSUE, AND WE -- BASICALLY HE SAID WE HAD
5 TO GIVE THEM THAT EXEMPTION FOR THEM NOT TO BE AGAINST IT
6 POLITICALLY, AND THEY HAD A LOT OF POLITICAL POWER. AND SO WE
7 SAID, OKAY. FINE. YOU CAN HAVE YOUR EXEMPTION, AS LONG AS YOU
8 SUPPORT IT. AND THEY DID, AND THAT'S WHY WE GOT IT THROUGH.

9 Q. SO PART OF A COMPROMISED POSITION TO GET THE POOLING
10 ACT PUT IN PLACE?

11 A. YEAH, THIS -- WELL, YEAH. YOU CAN CALL IT THAT.

12 Q. OKAY. AND THEN YOU WERE A PART OF THE DAIRY INDUSTRY
13 THROUGH THE SUBSEQUENT AMENDMENTS THAT OCCURRED?

14 A. YEAH, BUT I CAN'T REMEMBER THEM ALL. I MEAN, THEY HAD
15 QUITE A FEW OF THEM, DIFFERENT, THEY TWEAKED THE POOLING ACT
16 HERE AND THERE, AND THEN THEY, THERE WAS A BIG ONE IN, WHICH I
17 WAS -- I WAS BUILDING A DAIRY AT THAT TIME, SO I DON'T REMEMBER
18 TOO MUCH IN THE '77 OR '78, IN WHICH THEY POOLED CLASS 4A AND
19 4B TOGETHER. BUT BEFORE THAT, THERE WAS A DIFFERENTIAL DEAL IN
20 THERE.

21 Q. OKAY. AND OTHERWISE, YOUR QUOTA SYSTEM REMAINED
22 INTACT?

23 A. RIGHT. IT'S BEEN INTACT SINCE DAY ONE.

24 Q. I HAVE NO FURTHER QUESTIONS, THANK YOU.

25 JUDGE CLIFTON: WOULD YOU SPELL THE LAST NAME OF YOUR GOOD

1 FRIEND RAY?

2 MR. MERTENS: GAMBONINI? G-A-M-B-O-N-I-N-I.

3 JUDGE CLIFTON: IF YOU KNOW, MR. MERTENS, WHY DID IT CAUSE
4 ANGER WHEN YOU REVEALED THAT YOU WERE GOING TO BE BUYING A
5 BUSINESS TO YOUR FIELDMEN?

6 MR. MERTENS: BECAUSE THEY JUST LIKED THEIR CUT AND THEIR
7 DIFFERENT THINGS THAT THEY COULD GET OUT OF WHATEVER YOU DID.
8 LIKE I SAID, IT WASN'T PRETTY. I MEAN, THEY GOT, FIELDMEN GOT
9 HUNTING CLUB MEMBERSHIPS AND ALL KINDS OF THINGS TO BE ABLE TO
10 SHIP TO A CERTAIN OUTFIT.

11 JUDGE CLIFTON: AND WHAT WAS THE JOB OF A FIELDMAN?

12 MR. MERTENS: HE JUST WENT AROUND AND MADE SURE EVERYTHING
13 WAS RIGHT, ROADS WERE KEPT UP IN GOOD SHAPE, AND THE FARMS --
14 AND AT SAFEWAY, YOU PAINTED FENCES, AND YOU PAVED YOUR ROADS,
15 AND YOU DID ALL THAT. AND WHEN THAT FIELDMAN CAME ON, AND THE
16 IF FENCE LOOKED A LITTLE SHABBY AND HE SAID, YOU BETTER GO OUT
17 THERE AND PAINT IT, YOU BETTER GO OUT THERE AND PAINT IT, OR
18 YOU WOULDN'T BE SHIPPING THERE, BECAUSE HE WOULD CUT YOU OFF
19 JUST LIKE THAT.

20 JUDGE CLIFTON: SO THE FIELDMAN REPRESENTED THE PROCESSOR?

21 MR. MERTENS: YES.

22 JUDGE CLIFTON: AND YOU FELT REQUIRED TO DO AS YOU WERE
23 TOLD?

24 MR. MERTENS: OH, YEAH.

25 JUDGE CLIFTON: WHO NEXT?

1 MR. MERTENS: BUT THE QUOTA SYSTEM TOOK CARE OF ALL THAT.

2 JUDGE CLIFTON: NOW, WAS IT THE QUOTA SYSTEM THAT TOOK CARE
3 OF IT OR THE POOLING ACT?

4 MR. MERTENS: THE POOLING ACT, THE GONZALVES POOLING ACT,
5 WHICH INCLUDED THE QUOTA SYSTEM.

6 JUDGE CLIFTON: ALL RIGHT. WHO NEXT HAS QUESTIONS FOR
7 MR. MERTENS?

8 CROSS-EXAMINATION

9 BY MR. RICHMOND:

10 Q. THANK YOU, MR. MERTENS. WE JUST WANTED TO LET YOU KNOW
11 THAT WE APPRECIATE YOUR TESTIMONY AND YOUR INSIGHT INTO THE
12 CALIFORNIA DAIRY INDUSTRY.

13 A. THANK YOU.

14 JUDGE CLIFTON: AND YOUR NAME?

15 MR. RICHMOND: I APOLOGIZE, BILL RICHMOND, USDA.

16 MR. MERTENS: THANKS, BILL.

17 JUDGE CLIFTON: EVEN THOUGH WE KNOW WHO ALL THESE PEOPLE
18 ARE, I ASK FOR THE NAME. I FIGURE PEOPLE WILL FIGURE OUT WHO I
19 AM, SO I DON'T SAY IT. BUT WE HAVE AN AUDIO FEED, THAT'S
20 HELPFUL FOR THEM. AND IT'S ALSO HELPFUL FOR THE TRANSCRIPT TO
21 ATTRIBUTE REMARKS TO THE RIGHT SPEAKER. SO -- ALL RIGHT.

22 DOES ANYONE ELSE HAVE QUESTIONS FOR MR. MERTENS BEFORE
23 HE STEPS DOWN? MR. MERTENS, THANK YOU SO MUCH. YOU MAY STEP
24 DOWN.

25 MR. BESHORE: I'D MOVE FOR THE ADMISSION OF EXHIBIT 26.

1 JUDGE CLIFTON: IS THERE ANY OBJECTION TO THE ADMISSION
2 INTO EVIDENCE OF EXHIBIT 26?

3 MR. HILL: NO OBJECTION, YOUR HONOR.

4 JUDGE CLIFTON: AND THERE ARE NO OTHERS OBJECTING. EXHIBIT
5 26 IS ADMITTED INTO EVIDENCE.

6 (THEREAFTER, EXHIBIT 26 WAS
7 RECEIVED INTO EVIDENCE.)

8 MR. BESHORE: MR. TOLLENAAR, YOUR HONOR.

9 MR. TOLLENAAR: SIETSE TOLLENAAR. MY ADDRESS IS 3355
10 VIRGINIA ROAD, IN WHEATLAND, W-H-E-A-T-L-A-N-D, CALIFORNIA.

11 JUDGE CLIFTON: IS THAT A BUSINESS ADDRESS?

12 MR. TOLLENAAR: YES, IT IS.

13 JUDGE CLIFTON: GOOD. ALL RIGHT. I'M GOING TO SWEAR YOU
14 IN IN A SEATED POSITION, AND THEN BELIEVE IT OR NOT, I'M GOING
15 TO ASK YOU TO SPELL YOUR LAST NAME AGAIN.

16 WOULD YOU RAISE YOUR RIGHT HAND? DO YOU SOLEMNLY SWEAR
17 OR AFFIRM UNDER PENALTY OF PERJURY THAT THE EVIDENCE YOU WILL
18 PRESENT WILL BE THE TRUTH?

19 MR. TOLLENAAR: YES, I DO.

20 JUDGE CLIFTON: THANK YOU. PLEASE. AGAIN, STATE SLOWLY,
21 YOUR LAST NAME AND SPELL IT FOR ME.

22 MR. TOLLENAAR: TOLLENAAR, T-O-L-L-E-N-A-A-R.

23 JUDGE CLIFTON: AND I'M GOING TO ASK YOU TO SPELL YOUR
24 FIRST NAME AGAIN, TOO.

25 MR. TOLLENAAR: S-I-E-T-S-E. MY NICKNAME IS SEAN, SO IT

1 MIGHT BE EASIER.

2 JUDGE CLIFTON: AND WHEN YOU ARE KNOWN BY SEAN, HOW DO YOU
3 SPELL THAT?

4 MR. TOLLENAAR: S-E-A-N.

5 JUDGE CLIFTON: THANK YOU SO MUCH. MR. BESHORE, YOU MAY
6 PROCEED.

7 MR. BESHORE: THANK YOU, YOUR HONOR.

8 DIRECT EXAMINATION

9 BY MR. BESHORE:

10 Q. GOOD MORNING, MR. TOLLENAAR. THANK YOU FOR COMING HERE
11 TODAY. WHAT DO YOU DO FOR A LIVING?

12 A. I'M A DAIRY FARMER.

13 Q. HOW LONG HAVE YOU BEEN A DAIRY FARMER?

14 A. MY WIFE AND I, THIS IS OUR 20TH YEAR IN BUSINESS
15 TOGETHER. WE STARTED IN 1995. AND WE HAVE WE LIVED -- IT'S A
16 NEAT STORY, BUT WE HAVE BEEN IN THE DAIRY BUSINESS FOR 20
17 YEARS.

18 Q. CAN YOU JUST BRIEFLY TELL US A LITTLE BIT ABOUT YOUR
19 PERSONAL BACKGROUND EDUCATIONALLY, AND OTHER WORK, IF THERE WAS
20 SUCH, BEFORE YOU GOT INTO DAIRY FARMING?

21 A. WELL, I HAVE A BACHELOR OF SCIENCE IN DAIRY SCIENCE
22 FROM CAL POLY. WE -- I MANAGED MY PARENTS DAIRY SINCE I WAS 12
23 YEARS OLD. WHEN I CAME BACK FROM COLLEGE, I GOT MARRIED AND
24 THEN WAS -- WAS RUNNING MY PARENTS' DAIRY, AND IT WAS REALLY A
25 STRUGGLE ON MY MARRIAGE. MY WIFE FILED FOR DIVORCE, AND IT

1 WAS, WE REALIZED THAT -- I REALIZED THAT I NEEDED TO LEAVE ME
2 PARENTS DAIRY, BECAUSE WE LIVED ACROSS THE STREET FROM THEM.
3 IT WAS JUST AN UNHEALTHY DYNAMIC. WE WENT TO -- WENT TO WORK
4 IN SOUTHERN CALIFORNIA FOR TWO AND A HALF YEARS. RECONCILED MY
5 MARRIAGE. AND THEN THE WONDERFUL MAN THAT I -- I WORKED FOR
6 SAID TO ME, AFTER I WAS THERE TWO YEARS, HE SAID, "YOU NEED TO
7 GET IN THE DAIRY BUSINESS." AND I SAID, "WE DON'T HAVE ANY
8 MONEY." AND I THOUGHT HE WAS TRYING TO FIRE ME. BUT HE -- SO
9 I ACTUALLY WENT TO A COUNSELOR, BECAUSE I THOUGHT, YOU KNOW,
10 HOW DO YOU WORK SO MANY HOURS AND DO SO MANY THINGS. AND THE
11 COUNSELOR SMILED AND HE JUST SAID, HE LOVES YOU SO MUCH THAT HE
12 DOESN'T WANT TO HOLD YOU BACK.

13 SO WE FOUND A DAIRY. IT WAS THE BIGGEST JUNKYARD YOU
14 HAVE EVER SEEN IN YOUR LIFE, BUT IT WAS AN OPPORTUNITY FOR US
15 TO GET STARTED. AND SO 20 YEARS LATER, WE'RE STILL THERE,
16 SO --

17 Q. OKAY. SO TELL US A LITTLE BIT ABOUT YOUR DAIRY TODAY.

18 A. WELL, RIGHT NOW WE MILK ABOUT 1250 COWS. WE HAVE ABOUT
19 1400 HEIFERS, AND WE SELL ABOUT 400 COWS FOR DAIRY PURPOSES A
20 YEAR TO OTHER DAIRY FARMERS. WE HAVE ABOUT 260 ACRES AND JUST
21 I ABSOLUTELY LOVE WHAT I DO FOR A LIVING.

22 Q. SO JUST TELL US A LITTLE BIT ABOUT THE FACT YOU SELL
23 400 COWS TO OTHER FARMERS. I MEAN, JUST GIVE US A LITTLE
24 FLAVOR. MOST OF THE -- MOST OF THE DISCUSSION HERE, OF COURSE,
25 IS ABOUT SELLING MILK, PRODUCING MILK AND SELLING MILK. BUT

1 YOU HAVE, AS A DAIRYMAN, YOU ARE SELLING A VERY SUBSTANTIAL
2 AMOUNT OF BREEDING STOCK. SO JUST TELL US A LITTLE BIT ABOUT
3 THAT AS PART OF YOUR BACKGROUND.

4 A. OKAY. WELL, I'M A -- THIS IS KIND OF A WEIRD THING TO
5 SAY ABOUT YOURSELF. PEOPLE CALL ME THE COW WHISPERER. I TALK
6 COW, THEY TALK TO ME, AND WE JUST WE HAVE GREAT COMMUNICATIONS.
7 SO IT IS JUST VERY STRANGE THAT I CAN TALK WITH COWS AND THEY
8 CAN TALK BACK AND FORTH WITH ME. THEY ARE JUST -- I JUST
9 REALLY HAVE A SENSE WHEN A COW IS STARTING TO, YOU KNOW, HAVE
10 FEET PROBLEMS BEFORE THEY START HAVING FEET PROBLEMS, MASTITIS
11 PROBLEMS, AND SO WE JUST REALLY ARE PROACTIVE IN MAKING THE
12 MOST WONDERFUL PLACE FOR THAT COW TO LIVE.

13 AND SO JUST, IN REAPING THE BENEFITS OF THAT, IS THAT
14 WE JUST HAVE EXCESS COWS TO SELL BECAUSE WE'RE ON IT. WE SAY
15 THAT WE ARE BETTER THAN THE HOLIDAY INN BECAUSE WE MAKE THEIR
16 BED TWICE A DAY, AND HOLIDAY INN ONLY DOES IT ONCES A DAY. SO
17 WE -- WE JUST REALLY -- PEOPLE SAY THAT HAPPY COWS COME FROM
18 CALIFORNIA, AND BUT THEY REALLY COME FROM WHEATLAND. BECAUSE
19 WE FEED -- WE HAVE THIS WONDERFUL THING THAT WE FEED A LOT OF
20 TORANI SYRUP. WE HAVE A KIND OF A NEAT RELATIONSHIP WITH A LOT
21 OF DIFFERENT WAREHOUSES THAT SEND US THEIR DISTRESSED PRODUCTS
22 OR WHATEVER. SO OUR COWS ACTUALLY EAT CHOCOLATE SYRUP AS ONE
23 OF THEIR FEED SOURCES, SO THEY HAVE SMILES ON THEIR FACES ALL
24 THE TIME.

25 JUDGE CLIFTON: I LOVE YOUR TESTIMONY. I DO HAVE TO ASK

1 FOR THE TRANSCRIPT, I WANT TO GET THESE WORDS RIGHT. SO AFTER
2 YOU MENTIONED THAT YOU SEE THE FEET PROBLEMS COMING BEFORE THEY
3 HAPPEN, AND THEN YOU USED A WORD THAT I BELIEVE HAS TO DO WITH
4 THE COW'S UDDER. MASS --

5 MR. TOLLENAAR: MASTITIS.

6 JUDGE CLIFTON: ALL RIGHT. AND WOULD YOU SPELL THAT FOR
7 ME?

8 MR. TOLLENAAR: M-A-S-T-I-T-I-S.

9 JUDGE CLIFTON: ALL RIGHT. AND SO YOU ALSO HAVE AN
10 AWARENESS OF WHEN THAT KIND OF PROBLEM IS ABOUT TO DEVELOP?

11 MR. TOLLENAAR: WELL, IT'S MOSTLY PREVENTION. WE'RE REALLY
12 INTO PREVENTING THINGS. AND SO YOU HAVE, BECAUSE THEY GET
13 MASTITIS, IT'S TOO LATE. BUT IF WE REALLY, REALLY, HENCE,
14 MAKING THEIR BED TWICE A DAY. WE JUST REALLY WANT TO GET THEM
15 COMFORTABLE. A COMFORTABLE COW ALWAYS -- THE MORE COMFORTABLE
16 THEY ARE, THE MORE, THE BETTER THEY DO FOR YOU.

17 JUDGE CLIFTON: AND THEN, IF YOU WOULD ALSO HELP ME SPELL
18 THE KIND OF SYRUP THEY GET.

19 MR. TOLLENAAR: TORANI, IT IS JUST -- IT IS -- IT IS A VERY
20 NICE THING YOU SEE IN COFFEE SHOPS AND STUFF. IT'S
21 T-O-R-I-N-I. TORANI. IT'S REALLY -- PEOPLE LAUGH. THEY SEE
22 ALL THESE BOXES AND STUFF SET UP, AND THEY SAY, "WHAT DO YOU DO
23 WITH THAT?" WE FEED IT TO OUR COWS. IT IS AN ENERGY SOURCE.
24 BUT IT'S -- PEOPLE SAY, MAN, IT SMELLS LIKE CHOCOLATE HERE, AND
25 THEY ARE RIGHT.

1 BY MR. BESHORE:

2 Q. SO MR. TOLLENAAR, WHERE DO YOU, HOW DO YOU MARKET MILK?

3 A. OUR MILK GETS PICKED BY DAIRY FARMERS OF AMERICA, AND
4 MOST OF OUR MILK GOES TO SUNNYSIDE FARMS OR BAYVIEW FOR FLUID
5 MILK.

6 Q. SO YOU ARE A MEMBER OF DFA?

7 A. I'M A MEMBER AND I'M ALSO A DIRECTOR AT LARGE, AND I
8 REPRESENT ABOUT 200 DAIRY FARMERS IN OUR WESTERN AREA COUNCIL.

9 Q. SO HOW LONG HAVE YOU BEEN A MEMBER OF DFA MARKETING
10 THROUGH DAIRY FARMERS OF AMERICA?

11 A. WELL, WE STARTED WITH MID AM, WHICH MERGED WITH FOUR
12 COOPS, AND THEN THAT BECAME DFA, AND THAT WAS IN 1998 WHEN DFA
13 WAS ESTABLISHED, BUT WE MET WITH MID AM IN 1995.

14 Q. OKAY. SO YOU ARE AN ELECTED DIRECTOR --

15 A. YES.

16 Q. -- OF DFA? OKAY. JUST TELL US ABOUT HOW THAT WORKS
17 AND WHAT YOUR RESPONSIBILITIES ARE AS AN ELECTED DIRECTOR?

18 A. WELL, I AM -- I'M A DIRECTOR AT LARGE, AND I REPRESENT
19 THE DISTRICT 1, WHICH IS THE ORLAND AREA; DISTRICT 2, WHICH IS
20 THE PETALUMA AREA; DISTRICT 3, LET'S SEE, WELL, SEE DISTRICT 1,
21 2, 3, 4 AND DISTRICT 10 WHICH IS NOW THE FERNDALE, HUMBOLDT
22 AREA. AND I JUST -- I WAS ELECTED AND THEY HAVEN'T KICKED ME
23 OUT YET.

24 Q. OKAY. HOW LONG HAVE YOU BEEN A DIRECTOR?

25 A. SINCE 1999.

1 Q. OKAY. AND YOU REPRESENT ABOUT 200 --

2 A. YES.

3 Q. -- DAIRY MEMBERS?

4 A. YEAH. BUT MOSTLY SMALLER DAIRY FARMERS. THE FERNDALE
5 AREA, THE SMALLER DAIRY FARMERS.

6 Q. SO AS A DIRECTOR YOU ARE AMONG THE WESTERN AREA
7 COUNCIL?

8 A. YES.

9 Q. ARE YOU INVOLVED IN ANY OTHER ORGANIZATIONS, DAIRY
10 ORGANIZATIONS OR PRODUCER ORGANIZATIONS?

11 A. WELL, I'M -- IT'S ALWAYS SUCH AN HONOR IF YOUR PEERS
12 ASK YOU TO DO SOMETHING. I WAS -- I WAS IN THE MILK PRODUCER'S
13 REVIEW BOARD, WHICH IS A CDFA POOLING BRANCH. I WAS, WELL, ONE
14 OF TWO TERMS, THE CHAIRMAN FOR TWO YEARS, AND I WAS, WELL, TWO
15 TERM, AND I WAS CHAIRMAN FOR TWO YEARS.

16 I'M ALSO A -- AN HONOR, I JUST REAL HONOR TO BE A
17 DIRECTOR FOR MILK PRODUCER'S COUNCIL, AND THEN I WAS ALSO PART
18 OF THE 2007 WHEY COMMITTEE THAT WAS APPOINTED BY CHAIRMAN
19 MERTENS.

20 Q. OKAY. LET'S TALK ABOUT THE CDFA PRODUCER REVIEW BOARD.
21 NOW THAT'S -- THAT'S AN OFFICIAL BOARD OF THE CALIFORNIA
22 DEPARTMENT OF FOOD AND AGRICULTURE; IS THAT CORRECT?

23 A. YES. YES.

24 Q. OKAY. AND HOW DO YOU GET ON THAT BOARD?

25 A. I THINK JUST NOMINATED BY YOUR PEERS, AND YOU SAY YES.

1 I THINK THAT'S THE BIG THING IS JUST SAY YES.

2 Q. AND -- AND YOU WERE ON THAT FOR TWO TERMS, THE CHAIRMAN
3 FOR --

4 A. TWO YEARS.

5 Q. TWO YEARS?

6 A. YES.

7 Q. OKAY. WHAT'S THAT -- WHAT ARE THE RESPONSIBILITIES OF
8 THE BOARD?

9 A. WE JUST -- IT USED TO BE REALLY BORING, BUT NOW IT IS
10 REALLY EXCITING. WE REALLY -- WE GET TOGETHER AND WE LOOK AT,
11 JUST THE POOL DOLLARS, MAKING SURE THAT THE POOL DOLLARS ARE
12 GOING INTO THE, THIS IS HOW MUCH IS COMING IN, THIS IS HOW MUCH
13 GETS DISTRIBUTED WITHIN THE PARAMETERS.

14 MOST OF THE TIME IT IS BASICALLY, OKAY, WE NEED MORE
15 MONEY TO GET COMPUTERS FOR -- OR NEW PROGRAMS, AND THOSE KINDS
16 OF THINGS WERE THE DISCUSSION. BUT IT IS SOMETHING WHERE WE
17 WOULD BASICALLY, IT'S CHECKS AND BALANCES IS ONE OF THE THINGS,
18 IF YOU LOOK AT, YOU KNOW, HOW THE -- THERE'S THE GOVERNOR AND
19 THEN THERE'S THE SECRETARY AGRICULTURE, AND THEN THERE'S THE
20 DIFFERENT MARKETING DIVISIONS, AND THEN THEY HAVE TO HAVE A
21 BOARD TO GO TO, TO JUST SAY THIS IS WHAT WE'RE DOING. AND IT'S
22 BASICALLY CHECKS AND BALANCES. AND SO WE'RE ONE OF THE CHECKS,
23 I GUESS.

24 Q. THAT'S A DAIRY PRODUCER?

25 A. YES.

1 Q. ALL RIGHT. MILK PRODUCERS COUNCIL. WHAT, JUST BRIEFLY
2 INDICATE WHAT THAT ORGANIZATION IS AND WHAT YOUR ROLE HAS BEEN
3 AS A DIRECTOR OR OFFICER?

4 A. WELL, IT'S A PRODUCER -- GOSH.

5 Q. TRADE ASSOCIATION?

6 A. IT'S A TRADE ASSOCIATION. AND I -- AND I -- I HAVEN'T
7 BEEN ON IT VERY LONG, BUT IT IS UNBELIEVABLE. WE HAVE OUR CEO
8 IS ROB VANDENHEUVEL, WHO SPOKE EARLIER TODAY, AND JUST
9 UNBELIEVABLE DAIRY FARMERS THAT I GET TO BE PART OF. AND JUST,
10 REAL KINDRED SPIRIT, I GUESS.

11 Q. AND YOU ARE ON THE BOARD OF DIRECTORS, IS THAT WHAT YOU
12 SAID?

13 A. YES.

14 Q. OKAY. NOW, YOU MENTIONED A WHEY REVIEW COMMITTEE.
15 OKAY. CAN YOU TELL US WHAT THAT WAS?

16 A. OKAY. IN 2007, WHEN WE'RE JUST TRYING TO LOOK AT, YOU
17 KNOW, DIFFERENT THINGS WITHIN JUST THE PRICING MECHANISMS. AND
18 SO SECRETARY A.G. KAWAMARA PUT TOGETHER A WHEY COMMITTEE, SEVEN
19 PROCESSORS, SEVEN PRODUCERS TO COME TOGETHER AND COME UP WITH A
20 SOLUTION.

21 Q. AND LET'S STOP THERE. SO, SECRETARY CAN YOU --
22 ANTICIPATING THE JUDGE'S QUESTION ON THIS -- CAN YOU SPELL FOR
23 US THE NAME OF THE --

24 A. I CANNOT. KAWAMARA, I THINK IT IS K-A-W-A-M-A-R-A.

25 Q. SO YOU SAID SECRETARY WHAT, A.G.?

1 A. A.G. KAWAMARA, HE WAS UNDER THE SCHWARZENNEGER
2 ADMINISTRATION.

3 Q. AND SO HE WAS SECRETARY OF THE CALIFORNIA DEPARTMENT OF
4 FOOD AND AGRICULTURE?

5 A. SECRETARY OF AGRICULTURE I GUESS WOULD BE, BUT HE WAS
6 THE SECRETARY. HE WAS UNDER THE SCHWARZENNEGER ADMINISTRATION
7 AND SECRETARY OF AGRICULTURE.

8 Q. AND DID HE THEN FORM A WHEY REVIEW COMMITTEE?

9 A. YES.

10 Q. AND THIS WAS IN 2007?

11 A. CORRECT.

12 Q. OKAY. AND SO YOU BECAME A MEMBER OF THAT COMMITTEE; IS
13 THAT CORRECT?

14 A. YES.

15 Q. OKAY. SO TELL US WHAT -- HOW WAS THE COMMITTEE MADE
16 UP? WHO WAS ON IT IN TERMS OF INDUSTRY SECTORS, AND WHAT ITS
17 PURPOSE WAS?

18 A. WELL, IT WAS REALLY JUST TO COME TOGETHER AND TO TRY TO
19 FIND A SOLUTION. AND WHEN I WAS ASKED TO BE ON IT, I -- OH
20 MAN -- I REALLY STRUGGLED WITH IT, BECAUSE I JUST, AS A, IT'S
21 MY OWN PET PEEVE, BECAUSE I CANNOT STAND PEOPLE PLAYING VICTIM.
22 BECAUSE WHEN YOU ARE A VICTIM, YOU KNOW, YOU ARE NOT INTO
23 SOLUTIONS, YOU ARE JUST INTO WHINING. AND I JUST HATE IT. SO
24 I JUST SAID, I WILL DO THIS BECAUSE I WANT TO BE
25 SOLUTION-ORIENTED. I HAVE BEEN BLESSED WITH BEING CALLED THE

1 BRIDGE BUILDER, AND I JUST, I WANTED TO BE A BRIDGE BUILDER. I
2 WANTED TO WORK TOGETHER AND JUST -- THERE'S -- WHEN YOU HAVE
3 SMART PEOPLE IN A ROOM, OR PEOPLE THAT ARE COMPASSIONATE, OR
4 ENTHUSIASTIC ABOUT WHAT THEY DO FOR A LIVING, AND YOU GET THEM
5 IN A ROOM, YOU ARE GOING TO FIND A SOLUTION. THAT'S, I MEAN,
6 THAT'S JUST PURE AND SIMPLE. BILL SCHIEK AND SUE TAYLOR WERE
7 ON THAT COMMITTEE, JUST MARVELOUS. I MEAN, I HAVE SO MUCH
8 RESPECT FOR THEM. AND I THINK, MAN, I COULD BE PART OF THE
9 SOLUTION.

10 AND AT THE END OF THE DAY, I PUT SO MUCH TIME AND
11 EFFORT INTO THIS COMMITTEE, AND IT REALLY WAS COSTLY ON OUR
12 BUSINESS BECAUSE THERE WAS JUST SO MUCH TIME AND EFFORT AND --
13 MANY REVEALING, I DIDN'T KNOW ENOUGH, I HAD TO DO A LOT OF
14 STUDYING.

15 Q. AND YOU DID?

16 A. AND I DID.

17 Q. AND YOU DID STUDY?

18 A. AND I DID STUDY. BUT AT THE END OF THE DAY, IT WAS SO
19 DISCOURAGING, BECAUSE NO SOLUTION HAPPENED. AND I JUST THOUGHT
20 THAT REALLY WAS A TIPPING POINT FOR ME THAT I HAVE TO BE
21 CAREFUL WITH MY YES'S.

22 Q. WHAT WAS THE PROBLEM FOR WHICH THE SECRETARY OF
23 AGRICULTURE FORMED THIS COMMITTEE TO ADDRESS TO SEEK A
24 SOLUTION?

25 A. WELL, JUST THE 25 CENT FIXED PRICE, THE 25 CENT WHEY

1 PRICE THAT THEY CAME UP WITH. WELL, LET ME GO TAKE A STEP
2 BACK.

3 I'M PART OF AN AMAZING GROUP CALLED THE 21ST CENTURY
4 DAIRY CLUB, AND WE GET TOGETHER, IT'S DAIRY FARMERS FROM AROUND
5 THE NATION THAT GET TOGETHER FOUR TIMES A YEAR AND JUST, YOU
6 KNOW, WE, IT'S SUCH A NEAT TRANSPARENT GROUP BECAUSE WE SHARE
7 OUR VICTORIES BUT WE ALSO SHARE OUR STRUGGLES. AND IT'S A SAFE
8 HAVEN TO JUST SHARE THESE DIFFERENT THINGS. AND JUST
9 MARVELOUS, MARVELOUS, FRIENDS.

10 AND SO WE WOULD COME, AND THE FIRST THING THAT DAIRY
11 FARMERS DO IS YOU SIT TOGETHER AND YOU JUST HAVE TO BREAK THE
12 ICE. AND THEN PEOPLE SAY, HEY, YOU KNOW, WHAT ARE BULL COWS
13 BRINGING IN? AND SO SOMEONE IN WISCONSIN WILL SAY X AMOUNT OF
14 DOLLARS, AND MY FRIENDS IN FLORIDA WOULD SAY THIS MUCH, AND
15 SOMEONE IN NEW MEXICO WILL SAY THIS MUCH. AND THEN WHAT'S YOUR
16 FARM PRICE? AND WHAT'S THIS? AND THEN SOMEONE WOULD ASK ME,
17 WHAT ARE YOU DOING FOR RISK MANAGEMENT STRATEGY? AND THEN THEY
18 WOULD TALK ABOUT IT, AND THEN THEY WOULD LOOK AT ME AND SAY,
19 OH, YOU ARE FROM CALIFORNIA, YOU REALLY CAN'T PLAY THE RISK
20 STRATEGY GAME. BECAUSE THE CLASS 4B PRICE OR OVER BASE PRICE
21 DIDN'T REALLY RELATE TO THE CLASS III PRICE.

22 SO THEN IT WOULD BE INTERESTING ON JUST DIFFERENT
23 TOPICS, THAT EVERYTHING, THERE WOULD BE RELATIONSHIPS BECAUSE
24 THE PROTEIN MARKET ESTABLISHES YOUR SOY BEAN AND CANOLA PRICE,
25 AND YOUR CORN PRICE, OR YOUR, YOU KNOW, YOUR CARBOHYDRATES,

1 YOUR RICES AND YOUR BARLEYS AND ALL THOSE KIND OF THINGS ALL
2 MATCH. AND I JUST, THERE WAS SUCH A DISCONNECT, BECAUSE HERE
3 THEY ARE TALKING A FOREIGN LANGUAGE. I JUST DIDN'T UNDERSTAND
4 THAT MARKETS GO UP AND DOWN, AND TO BE SET WITH A FIXED 25
5 CENTS, YOU KNOW, JUST, HEY, WE'LL TAKE THE LOWS, BUT LET'S,
6 WE'LL TAKE THE HIGHS. JUST MARKETING, I MEAN -- THAT'S JUST,
7 THAT WAS WHY I SAID YES TO DOING IT, BECAUSE I WANTED TO BE
8 PART OF THE SOLUTION AGAIN.

9 Q. SO IN YOUR EXPERIENCE WITH THE 21ST CENTURY GROUP?

10 A. DAIRY CLUB.

11 Q. DAIRY CLUB, 21ST CENTURY DAIRY CLUB, YOU EXCHANGED
12 INFORMATION WITH OTHER PROGRESSIVE DAIRYMEN AROUND THE COUNTRY,
13 AND THERE WAS A DISCONNECT ON WHEY PRICING. IS THAT IT?

14 A. YES. WELL, JUST MILK PRICING IN GENERAL. THEY WOULD
15 JUST, THEY WOULD GET THE NEAT PRIVILEGE OF HAVING THEM COME OUT
16 TO OUR DAIRY. AND THEY WOULD JUST KEEP SAYING THAT IN ORDER TO
17 BE A DAIRY FARMER IN CALIFORNIA YOU HAVE TO BE SO MUCH BETTER.
18 AND THEY WOULD JUST BE BLOWN AWAY THAT WE SWEEP OUR COMMODITY
19 BARN, BECAUSE THERE'S PENNIES THERE, AND THERE'S THE DUTCH
20 SAYING THAT:

21 "ALS JE NIET KIJKEN NOAR, DE KLEINE DINGEN DIE
22 VERDIENEN JE NIET DE GROTE." (SIC).

23 "IF YOU DON'T WATCH THE SMALL STUFF, YOU DON'T DESERVE
24 THE BIG."

25 JUDGE CLIFTON: THE COURT REPORTER IS HAVING A LITTLE

1 TROUBLE WITH THE DUTCH, SO CAN YOU SPELL THE DUTCH WORDS FOR
2 HER?

3 MR. TOLLENAAR: NO, I CAN'T DO THAT.

4 MR. BESHORE: CAN YOU REPEAT THEM SLOWLY?

5 MR. TOLLENAAR: WELL, IT IS, "ALSJE NIET KIJKEN NOAR," IF
6 YOU DON'T WATCH THE SMALL STUFF, YOU DON'T DESERVE THE BIG.
7 THAT'S WHAT IT MEANS. SO WE'LL JUST KEEP IT THAT WAY.

8 JUDGE CLIFTON: SHE HAS TO WRITE DOWN WHAT SHE HEARS.

9 (WITNESS REPEATED DUTCH PHRASE AND TRANSLATION.)

10 BY MR. BESHORE:

11 Q. SO LET'S GO BACK TO THE WHEY, THE WHEY REVIEW
12 COMMITTEE. OKAY.

13 SO YOU TOOK YOU TOOK ON MEMBERSHIP PROJECT, BEING A
14 MEMBER OF THAT COMMITTEE, BECAUSE YOU KNEW THERE WAS A PROBLEM
15 IN 2007. AND YOU'RE SOLUTION-ORIENTED, AND YOU FELT LIKE YOU
16 COULD BE PART OF THE SOLUTION.

17 A. YES.

18 Q. DID THAT WORK OUT?

19 A. IT JUST -- I GUESS, END RESULT, NO. IT WAS JUST, WE
20 WENT THROUGH THIS TREMENDOUS EXERCISE AND NO CHANGE. AND IT
21 GAVE ME KIND OF -- IT DIDN'T KIND OF, IT GAVE ME A BAD TASTE IN
22 MY MOUTH. THAT HERE, MAYBE BEING YOUNG AND ENTHUSIASTIC, I
23 REALLY THOUGHT WE CAN CHANGE THE WORLD, AND I GOT HUMBLLED.

24 Q. SO THE CDFA SYSTEM DIDN'T WORK OUT?

25 A. NOT THAT HEARING, OR NOT THAT WHEY COMMITTEE, IT WAS A

1 WASTE OF TIME.

2 Q. HOW LONG DID THAT COMMITTEE, WAS IT IN EXISTENCE?

3 A. WELL, I THINK LIKE 16 MONTHS OR SO. I DON'T KNOW THE
4 EXACT DATES, BUT WE MET IN A LOT OF DIFFERENT TIMES. BUT JUST,
5 WE WERE PUT IN SUBCOMMITTEES, AND BOY, I GOT PUT INTO AN
6 AMAZING SUBCOMMITTEE. SCOTT HOFFEBURG, AND TWO OF THE MOST
7 BRILLIANTS MINDS IS JEFFREY VANDENHEUVEL AND JOHN JETER, I WAS
8 IN THEIR GROUP, AND THEY CALLED US THE REBELS, BECAUSE THERE
9 WAS JUST SO MUCH -- I HAVE NEVER BEEN AROUND SUCH INTELLIGENT
10 PEOPLE THAT KNEW SO MUCH ABOUT THE INDUSTRY, AND FOR ME TO SOAK
11 IT ALL IN. I DIDN'T WANT TO JUST BE LIKE A FLY ON THE WALL, OR
12 WHATEVER, I WANTED TO PARTICIPATE, SO I HAD TO JUST REALLY,
13 REALLY STUDY UP, AND AT LEAST GIVE MY TWO CENTS' WORTH.

14 Q. OKAY. SO HAS MILK PRICING PROBLEM THAT YOU IDENTIFIED
15 BACK IN 2007, IF NOT BEFORE, AND IDENTIFIED IN COMMUNICATION
16 WITH YOUR COLLEAGUES IN THE 21ST CENTURY CLUB, JUST IN YOUR OWN
17 EXPERIENCE, HAS THAT PROBLEM BEEN SOLVED TODAY?

18 A. NO. NOT -- JUST NOT FINDING THAT -- JUST BEING AN
19 AMERICAN AND ALL ABOUT MARKETING, ALL ABOUT FINDING WHAT VALUE
20 IS, JUST -- IT'S JUST KIND OF UNAMERICAN TO SAY THIS IS A SET
21 PRICE, AND THAT WAS -- THAT'S JUST ONE OF THE COMMON THEMES
22 THAT WE HAD IN DISCUSSIONS. JUST LIKE, HOW CAN THEY DO THIS OR
23 WHATEVER, AND I DON'T HAVE AN ANSWER FOR THEM. BUT IT IS JUST
24 LIKE, IT WAS FASCINATING TO TALK ABOUT BEEF PRICING, TO TALK
25 ABOUT PROTEIN PRICE, AND ENERGY PRICE, AND RISK MANAGEMENT, AND

1 WHAT DO YOU DO WITH YOUR EMPLOYEES? AND THEN, I HAD A REALLY
2 COOL THING, WE WOULD TALK ABOUT MIDDLE MANAGERS, WE WOULD TALK
3 ABOUT SO MANY THINGS THAT ARE SO TRANSPARENT. AND THEN WHEN IT
4 COMES TO, YOU KNOW, MILK PRICING, YOU KNOW, I WAS OUT OF THE
5 EQUATION BECAUSE THEY WOULD JUST, THEY WOULD SAY, OH, YOU ARE
6 FROM CALIFORNIA, WE JUST, WE DON'T UNDERSTAND YOUR SYSTEM. AND
7 I REALLY, COULDN'T REALLY EXPLAIN OUR SYSTEM VERY WELL EITHER
8 WHEN IT COMES TO THAT FIXED PRICE.

9 Q. SO YOUR COLLEAGUES WERE ALL, IN OTHER PARTS OF THE
10 COUNTRY, THEY WERE PART OF THE FEDERAL MILK MARKET ORDER
11 SYSTEM?

12 A. YEAH, MY BROTHER, MY SISTER -- MY SISTER AND
13 BROTHER-IN-LAW ALSO HAVE A DAIRY IN WISCONSIN, AND SO THEY --
14 THEY SHARE WITH, IN DIFFERENT OCCASIONS THAT THEY ARE, YOU
15 KNOW. WE HAVE KIND OF THE SAME MILK PRODUCTION, SAME MILK
16 QUALITY, SAME EVERYTHING, AND THEY ARE FOUR AND A HALF DOLLARS
17 MORE. THEY DO GET PREMIUMS, BUT IT IS -- YOU KNOW.

18 Q. OKAY. NOW, AS THE DIRECTOR OF DFA WESTERN AREA COUNCIL
19 AND AMS DIRECTOR OF MILK PRODUCERS COUNCIL, ANOTHER OFFICE YOU
20 HOLD, ARE YOU SUPPORTING A PROPOSAL IN THIS AREA?

21 A. YEAH, I JUST, I WOULD LIKE JUST TO FIND A SOLUTION.
22 AND I'M, YOU KNOW, NO MATTER WHAT HAPPENS, AT THE END OF THE
23 DAY, I, YOU KNOW, DIFFICULTY IS SOMETHING I ALWAYS GET BETTER
24 THROUGH DIFFICULTY. AND SO I'M -- WE ARE MUCH, MUCH BETTER
25 DAIRY FARMERS TODAY GOING THROUGH WHAT WE WENT THROUGH. AND SO

1 JUST LOOKING BACK, I'M SO THANKFUL FOR THE OPPORTUNITY TO GET
2 BETTER. BUT IT IS SOMETHING, TOO, THAT I JUST WOULD REALLY
3 LIKE TO HAVE A SOLUTION. I REPRESENT 200 DAIRY FARMERS THAT
4 REALLY ARE LOOKING FOR, YOU KNOW, AN ANSWER ON HOW TO, BECAUSE
5 THEY WANT TO SURVIVE. I JUST HAVE SEEN SO MANY DAIRIES GO OUT,
6 I THINK MORE DAIRIES HAVE GONE OUT IN THE CALIFORNIA IN THE
7 LAST SIX YEARS OR SEVEN YEARS, IT'S BEEN A HUGE AMOUNT, AN
8 EXODUS THAT HAVE GONE OUT.

9 Q. SO FROM YOUR PERSPECTIVE, AND YOUR EXPERIENCE, AND YOUR
10 KNOWLEDGE, AND YOUR SEARCH FOR A SOLUTION, AS A DIRECTOR IN THE
11 WESTERN AREA COUNCIL OF DFA AND MILK PRODUCERS COUNCIL, YOU
12 VOTED TO SUPPORT PROPOSAL 1 IN THIS HEARING?

13 A. YES.

14 Q. AND YOU ARE HERE TO MAKE CLEAR YOUR SUPPORT FOR THAT
15 PROPOSAL?

16 A. YES.

17 Q. IS IT YOUR FEELING THERE WILL BE A SOLUTION OR MOVE
18 TOWARD A SOLUTION TO THE PROGRESS OF DAIRY IN CALIFORNIA THAT
19 YOU HAVE IDENTIFIED?

20 A. YEAH, I DON'T KNOW THE ANSWER TO THAT. BECAUSE IT'S --
21 IF RIGHT NOW THAT LOOKS LIKE THE BEST, OUR BEST OPTION.

22 Q. OKAY. THANK YOU VERY MUCH, MR. TOLLENAAR, I HAVE NO
23 OTHER QUESTIONS.

24 JUDGE CLIFTON: THANK YOU, MR. BESHORE.

25 WHEN YOU SAY YOU REPRESENT 200 DAIRY FARMERS, THAT'S

1 THROUGH WHICH ORGANIZATION?

2 MR. TOLLENAAR: THE DFA, THE DAIRIES THAT I'M, THAT ARE IN
3 MY DISTRICT.

4 JUDGE CLIFTON: ALL RIGHT.

5 MR. TOLLENAAR: PLUS OR MINUS, BUT IT IS CLOSE TO 200.

6 JUDGE CLIFTON: NOW, WHEN YOU SAY DAIRY FARMERS, THAT'S
7 INDIVIDUALS?

8 MR. TOLLENAAR: YES.

9 JUDGE CLIFTON: AND I'M GOING TO ASK YOU TO SPELL, IF YOU
10 CAN, THE THREE GENTLEMAN WITH WHOM YOU WERE THE REBELS.
11 SCOTT'S LAST NAME?

12 MR. TOLLENAAR: H-O-F-F, I THINK, E-B-U-R-G. AND THEN JOHN
13 J-O-H-N J-E-T-E-R. AND THEN JEFF VANDENHEUVEL, THAT'S ROB, YOU
14 KNOW HIM.

15 JUDGE CLIFTON: VERY GOOD. WHO WILL BE THE FIRST AFTER
16 MR. BESHORE TO QUESTION MR. TOLLENAAR? DR. SCHIEK?

17 MR. SCHIEK: WILLIAM SCHIEK, S-C-H-I-E-K, FOR THE DAIRY
18 INSTITUTE.

19 CROSS-EXAMINATION

20 BY MR. SCHIEK:

21 Q. GOOD MORNING. IT IS ACTUALLY AFTERNOON. GOOD
22 AFTERNOON, MR. TOLLENAAR. WE SERVED ON THE WHEY REVIEW
23 COMMITTEE TOGETHER, AND I JUST WANT TO SAY AT THE OUTSET THAT
24 FROM MY PERSPECTIVE, I THINK I CAN SPEAK FOR SUE, WE REALLY
25 RESPECTED YOU AND THE WORK YOU DID ON THAT COMMITTEE, AND THE

1 ENERGY AND THE OBJECTIVITY THAT YOU BROUGHT TO THAT, SO I WANT
2 TO GET THAT ON THE RECORD.

3 I JUST, A COUPLE OF QUESTIONS, THOUGH, ABOUT THAT TIME,
4 IF YOU CAN REMEMBER. AND FOR ME, GOING BACK TO 2007, IT'S
5 HARD, I HAVE TO LOOK BACK AT MY NOTES. SO DO YOU RECALL WHAT
6 LED TO THE WHEY REVIEW COMMITTEE BEING FORMED BY THE SECRETARY?
7 WAS THERE A HEARING DECISION OR SOMETHING PRIOR TO THAT?

8 A. IT JUST -- IT WAS THE FLAT 25 CENTS.

9 Q. RIGHT. SO THAT WAS PUT IN PLACE, A REPLACEMENT FOR A
10 WHEY FORMULA THAT HAD BEEN IN PLACE BEFORE THAT?

11 A. CORRECT.

12 Q. AND THAT WHEY FORMULA WAS TRACKING WITH THE DRY WHEY
13 PRICE AND WITH THE WHEY FORMULA IN THE FEDERAL PRICING SYSTEM,
14 BETTER THAN THE FIXED FACTOR OF 25 CENTS, SO THAT WAS THE
15 CHANGE THAT WE'RE TALKING ABOUT?

16 A. YES.

17 Q. DO YOU RECALL WHY CDFA MADE THAT CHANGE OR WHAT THEIR
18 RATIONALE WAS?

19 A. WELL, I KNOW SOME OF THE PLANTS THAT DIDN'T HAVE WHEY
20 DRYING CAPACITY, THE WHEY PRICE, THEY COULDN'T CAPTURE THAT
21 WHEY STREAM, AND THAT WAS ONE OF THE BIG ISSUES, WAS THEY, I
22 BELIEVE IT WAS THE PLANT IN LOS BANOS AREA, JUST THEY DIDN'T
23 HAVE A WHEY STREAM, AND SO THEY COULDN'T COLLECT OR GENERATE
24 ANY FUNDS. WHAT I MEAN BY WHEY STREAM, THEY WEREN'T DRYING
25 WHEY, THEY WERE JUST DUMPING IT OR SENDING IT OFF TO THE FEED

1 YARDS OR WHATEVER.

2 Q. SO WOULD ONE OF THOSE DUMPS, I GUESS THERE WERE A
3 COUPLE OF MEMBERS OF THE WHEY COMMITTEE THAT REPRESENTED CHEESE
4 MAKERS WHO MAYBE DIDN'T GET FULL VALUE?

5 A. YES.

6 Q. ONE OF THOSE, WAS ONE OF THOSE MOZZARELLA FRESCA,
7 ANDREW BRANAGH, DO YOU REMEMBER THAT NAME?

8 A. YEAH, HE'S, RUBY TUESDAYS, THAT'S WHERE HE SOLD HIS
9 STUFF.

10 Q. YEAH. AND SCOTT, YOUR --

11 A. YES, EXACTLY.

12 Q. HOFFERBER WITH FARMDALE CREEK?

13 A. YES.

14 Q. AND THAT'S REALLY ALL I HAD, EXCEPT ONE THING I LOOKED
15 UP ON THE INTERNET WHILE YOU WERE TESTIFYING WAS THE SPELLING
16 OF KAWAMURA, JUST FOR THE RECORD. IT WAS AG, AND THEN
17 K-A-W-A-M-U-R-A.

18 A. YOU GOT IT.

19 Q. I DIDN'T KNOW HOW TO SPELL IT EITHER, THAT'S WHY I HAD
20 TO LOOK IT UP.

21 A. THAT'S AWESOME.

22 JUDGE CLIFTON: SO THE LAST NAME IS KAWAMURA, AND THE
23 INITIALS ARE A.G.?

24 MR. TOLLENAAR: UH-HUH.

25 JUDGE CLIFTON: EXCELLENT. AND YOU HAVE JUST INTRODUCED

1 SOME NAMES WITH YOUR QUESTIONS. CAN YOU GO BACK, CAN YOU GIVE
2 ME THE ENTITIES YOU MENTIONED BEFORE THE WORD RUBY TUESDAY?

3 MR. TOLLENAAR: ONE OF THEM, EXCUSE ME -- ONE OF THEM WAS
4 ANDREW BRANAGH, AND THE LAST NAME IS SPELLED B-R-A-N-A-G-H.
5 AND THE SECOND ONE WAS SCOTT HOFFERBER, AND THAT'S
6 H-O-F-F-E-R-B-E-R.

7 JUDGE CLIFTON: THANK YOU. WHO -- YES, YOU MAY.

8 MR. ENGLISH: CHIP ENGLISH. IF MR. BESHORE WANTS TO COME
9 UP, HE CAN COME UP. I JUST HAVE TWO QUESTIONS.

10 UNFORTUNATELY, I DID NOT GET ON THE INTERNET AND GET
11 THAT SPELLING FOR YOU.

12 CROSS-EXAMINATION

13 BY MR. ENGLISH:

14 Q. AS A DIRECTOR OF DAIRY FARMERS OF AMERICA, ARE YOU
15 AWARE THAT THERE WAS A STUDY THE COOPERATIVES REQUESTED OF
16 MARK STEPHENSON AND CHUCK NICHOLSON TO LOOK AT A FEDERAL MILK
17 MARKETING ORDER FOR CALIFORNIA?

18 A. I DID NOT. I DO, BUT NOT THROUGH DFA, THROUGH THE 21ST
19 CENTURY DAIRY CLUB, BECAUSE WE WERE IN CORNELL FOR ONE OF OUR
20 MEETINGS.

21 Q. OKAY. SO MY QUESTION, THEN, SHOULD BE REPHRASED, NOT
22 THROUGH DFA, BUT OTHERWISE, YOU ARE AWARE OF THAT STUDY?

23 A. YES.

24 Q. AND HAVE YOU READ IT?

25 A. NO.

1 Q. THOSE ARE THE ONLY TWO QUESTIONS.

2 JUDGE CLIFTON: WHO WOULD NEXT ASK QUESTIONS OF
3 MR. TOLLENAAR?

4 MR. RICHMOND: MR. TOLLENAAR, WE DON'T HAVE ANY QUESTIONS.
5 WE APPRECIATE YOUR TESTIMONY. THANK YOU.

6 MR. TOLLENAAR: THANK YOU VERY MUCH.

7 JUDGE CLIFTON: THANK YOU, MR. RICHMOND. ARE THERE ANY
8 OTHER QUESTIONS OF MR. TOLLENAAR? I THINK SOME OF YOUR REALLY
9 GOOD FRIENDS BACK THERE WOULD LOVE TO RAZZ YOU IN SOME WAY, BUT
10 THEY ARE HOLDING BACK.

11 IT IS BEEN A DELIGHT TO HAVE YOU HERE IN OUR HEARING,
12 THANK YOU.

13 MR. TOLLENAAR: THANK YOU VERY MUCH.

14 MR. BESHORE: MR. BESHORE. YOUR HONOR, I HAVE
15 MR. PETE OLSEN AS OUR NEXT WITNESS.

16 JUDGE CLIFTON: MR. OLSEN, I ADMIRE YOUR NOTES THERE. ARE
17 THEY ALL ON THE TOP PAGE?

18 MR. OLSEN: YES, MA'AM.

19 JUDGE CLIFTON: YOU HAVE GOT LIKE 20 WORDS?

20 MR. OLSEN: YES, PRETTY MUCH.

21 JUDGE CLIFTON: EXCELLENT. I'LL SWEAR YOU IN IN A SEATED
22 POSITION.

23 WOULD YOU RAISE YOUR RIGHT HAND, PLEASE. DO YOU
24 SOLEMNLY SWEAR OR AFFIRM UNDER PENALTY OF PERJURY, THAT THE
25 EVIDENCE YOU WILL PRESENT WILL BE THE TRUTH?

1 MR. OLSEN: I DO.

2 JUDGE CLIFTON: PLEASE STATE AND SPELL YOUR NAME FOR US.

3 MR. OLSEN: PETER OLSEN, P-E-T-E-R, O-L-S-E-N.

4 JUDGE CLIFTON: THANK YOU. MR. BESHORE?

5 DIRECT EXAMINATION

6 BY MR. BESHORE:

7 Q. GOOD AFTERNOON, MR. OLSEN, THANK YOU FOR COMING HERE TO
8 TESTIFY.

9 CAN YOU TELL US WHAT YOU DO FOR A LIVING?

10 A. I'M DAIRYMAN.

11 Q. WHERE'S -- WHAT'S YOUR DAIRY ADDRESS, BUSINESS ADDRESS?

12 A. THE BUSINESS ADDRESS IS 4170 BASS ROAD, B-A-S-S,
13 FALLON, NEVADA. F-A-L-L-O-N.

14 Q. HOW LONG HAVE YOU BEEN A DAIRYMAN?

15 A. I'VE BEEN IN THE DAIRY BUSINESS SINCE ABOUT 1979
16 MYSELF, AND THIS IS OUR FAMILY'S 100TH YEAR IN NEVADA THIS YEAR
17 OF MILKING COWS.

18 Q. CAN YOU JUST GIVE US A LITTLE BIT OF YOUR PERSONAL
19 BACKGROUND AND HOW YOU GOT INTO DAIRY BEGINNING IN 1979?

20 A. WELL, AS I SAID, MY FAMILY HAD BEEN IN IT A LONG TIME,
21 AND I CHOSE IT AS MY PROFESSION AS WELL. WE HAD -- I FIRST
22 WORKED ALONGSIDE MY DAD, AND THEN I BEGAN A PARTNERSHIP WITH MY
23 BROTHER. AND TODAY WE HAVE MY THREE BROTHERS. AND MY FATHER'S
24 BEEN RETIRED FOR ABOUT 15 YEARS, HASN'T DRAWN A CHECK, BUT WE
25 STILL WORK HIM AT 83 YEARS OLD.

1 Q. TELL US A LITTLE BIT ABOUT YOUR FAMILY FARM ENTERPRISE
2 THERE IN FALLON, NEVADA?

3 A. WE ARE MILKING 2200 COWS RIGHT NOW, AND THE DROUGHT'S
4 HURT US, TOO. WE HAVE A CONSIDERABLE AMOUNT OF GROUND TO FARM,
5 AND THE SIERRAS RUN WATER OFF BOTH WAYS, AND WHEN THERE ISN'T
6 ANY SNOW, IT HURTS US, TOO.

7 Q. HOW MANY ACRES ARE YOU FARMING?

8 A. ABOUT 1100.

9 Q. NOW, ARE YOU, HOW DO YOU MARKET YOUR MILK?

10 A. I'M A MEMBER OF DAIRY FARMERS OF AMERICA AND THEY TAKE
11 CARE OF ALL THE MARKETING.

12 Q. HOW LONG HAVE YOU BEEN A DFA MEMBER?

13 A. I'VE BEEN A DFA MEMBER SINCE 1998.

14 Q. AT THE TIME OF DFA WAS FORMED?

15 A. RIGHT AFTER. I WAS A MEMBER OF CAL GOLD AT THAT TIME,
16 AND WHEN THE MERGER HAPPENED WE BECAME MEMBERS OF DAIRY FARMERS
17 OF AMERICA.

18 Q. SO HAD YOUR FARM MARKETED WITH CAL GOLD FOR A NUMBER OF
19 YEARS PRIOR TO THAT?

20 A. YES. WE WERE MEMBERS OF ASSOCIATED NEVADA DAIRYMEN
21 GOING BACK INTO THE '50'S, AND I WAS PRESIDENT OF ASSOCIATED
22 NEVADA DAIRYMEN AT THE TIME WE MERGED WITH CAL COOP IN 1985.
23 WE HAD MUTUAL MARKETING ARRANGEMENTS WITH THE SAME PROCESSORS
24 IN CALIFORNIA AT THE TIME, SO IT ONLY MADE SENSE THAT WE WOULD
25 COMBINE FORCES, WHICH WE DID. AND SO FROM 1985 TO 1998, I

1 SERVED ON THE BOARD OF DIRECTORS FOR CAL COOP THEN CAL GOLD,
2 AND BRIEFLY ON DFA AFTER THE MERGER.

3 Q. SO WHEN YOU SAY CAL COOP, THAT'S CALIFORNIA?

4 A. YEAH, IT WAS CALIFORNIA COOPERATIVE CREAMERY.

5 Q. AND WHEN YOU SAY CAL GOLD, IS THAT ALSO SHORT FOR
6 CALIFORNIA GOLD?

7 A. ACTUALLY, THEY, YEAH, WE WENT BY CALIFORNIA GOLD.

8 Q. SO HOW IS IT THAT, JUST TALK A LITTLE BIT ABOUT THE,
9 YOU'RE IN THE NEVADA BUT YOU ARE A MEMBER OF CALIFORNIA
10 COOPERATIVES. IS THERE A MARKETING LINK, A DAIRY LINK, MARKET
11 LINK BETWEEN NEVADA AND CALIFORNIA IN REPRESENTED IN THIS
12 AFFILIATIONS?

13 A. YES, WE HAD A HISTORY OF GOING BACK INTO, ACTUALLY,
14 LONG BEFORE I WAS AROUND, PEOPLE WOULD SKIM THE CREAM OFF AND
15 PUT IT ON THE TRAIN AND SEND IT TO CALIFORNIA. BUT AFTER THAT,
16 STARTING IN 1959, OUR ASSOCIATED NEVADA DAIRYMEN SOLD MILK TO
17 PROCESSORS IN NORTHERN CALIFORNIA, BECAUSE THEY WERE SELLING
18 MILK IN NORTHERN NEVADA, AND THAT TRADITION OF MARKETING BACK
19 AND FORTH ACROSS THE MOUNTAIN WENT ON TO TODAY.

20 Q. OKAY. WHAT COUNTY ARE YOU LOCATED IN IN NEVADA?

21 A. CHURCHILL COUNTY.

22 Q. HOW MANY DAIRYMEN ARE THERE IN CHURCHILL COUNTY?

23 A. 16, I BELIEVE.

24 Q. ALL RIGHT. SO IS IT YOUR TESTIMONY, YOU ARE TALKING
25 ABOUT YOUR AREA AND ASSOCIATED NEVADA DAIRYMEN, IS THAT

1 PRIMARILY THE CHURCHILL COUNTY AREA THAT YOU ARE REFERRING TO?

2 A. YES. IF WE WENT BACK INTO THE '80'S THERE WAS MORE
3 DAIRIES IN OTHER PLACES, BUT THERE'S BEEN A LOT OF
4 CONSOLIDATION. WE'RE GENERALLY LOCATED IN CHURCHILL COUNTY.

5 Q. AND SO DAIRYMEN IN NEVADA NOW IS PRIMARILY LOCATED IN
6 CHURCHILL COUNTY?

7 A. IN NORTHERN NEVADA, YES.

8 Q. NORTHERN NEVADA, YES. SO DO YOU HOLD ANY POSITIONS IN
9 DFA? ANY ELECTED POSITIONS?

10 A. YES, I'M A MEMBER OF THE BOARD FOR WESTERN AREA COUNCIL
11 AND THAT IS FOR THE CALIFORNIA NEVADA AREAS. AND THEN I'M
12 ALSO, FROM THAT GROUP, I WAS ELECTED TO BE ON THE NATIONAL
13 BOARD OF DIRECTORS FOR DFA.

14 Q. FOR HOW LONG OF A PERIOD OF TIME HAVE YOU BEEN DONE
15 THIS?

16 A. I TOOK A BREAK AFTER THE MERGER IN '98, CAME BACK ON IN
17 '04, AND I THINK I HAVE BEEN ON THE NATIONAL BOARD OF DIRECTORS
18 I THINK THIS IS MY THIRD TERM THAT I'M STARTING RIGHT NOW.

19 Q. NOW, FROM YOUR FARM PERSONALLY, HAS THERE BEEN A
20 MARKETING RELATIONSHIP WITH CALIFORNIA OVER THE YEARS?

21 A. NO, MY MILK'S GONE TO CALIFORNIA AND NEVADA EVER SINCE
22 I STARTED, AND LONG BEFORE THAT.

23 Q. AND HOW IS THE MARKETED PRESENTLY?

24 A. CURRENTLY, A LOT OF MY MILK GOES TO MODEL DAIRY IN
25 RENO, CONTINUES TO GO THERE, AND DAIRY FARMERS OF AMERICA BUILT

1 A PLANT IN CHURCHILL COUNTY, AND THE REST OF MY MILK GENERALLY
2 GOES TO THAT PLANT IN CHURCHILL COUNTY.

3 Q. DOES MODEL DAIRY IN RENO MARKET CERTAIN, DISTRIBUTE IN
4 CALIFORNIA?

5 A. YES.

6 Q. OKAY. DO YOU HAVE -- CAN YOU TELL US ABOUT ANY PRICE
7 RELATIONSHIPS BETWEEN CALIFORNIA AND NEVADA OVER THE YEARS
8 PRESENTLY?

9 A. YEAH, NEVADA'S HAD A -- NEVADA STATE DAIRY COMMISSION
10 GOING BACK INTO THE 50'S, AND IN THE EARLY '70'S, MID-'70'S
11 BECAUSE THE MARKETS WERE SO INTERTWINED AND CLOSELY ALIGNED,
12 THE NEVADA STATE DAIRY COMMISSION ALWAYS PROMULGATED NEW
13 PRICES, BUT THOSE PRICES WERE, IN FACT, THE NORTHERN CALIFORNIA
14 PRICES. THEY JUST ADOPTED THE NORTHERN CALIFORNIA PRICE SHEET.
15 AND SO GOING BACK FOR 40 YEARS OR SO, THAT'S BEEN WHAT THEY
16 HAVE DONE, AND SO OUR MARKETS ATTRACT EACH OTHER, MORE OR LESS,
17 THERE ARE SOME VARIATIONS AT TIMES, THERE HAS BEEN.

18 Q. BUT THAT RELATIONSHIP HAS BEEN IN PLACE FOR WHAT, 30,
19 40 YEARS?

20 A. 40 YEARS.

21 Q. 40 YEARS. NOW, AS A NEVADA CHURCHILL COUNTY DAIRYMAN,
22 AS A MEMBER OF THE DAIRY FARMERS OF AMERICA WESTERN AREA
23 COUNCIL, DO YOU HAVE A POSITION ON THE PROPOSALS BEFORE THIS
24 COMMITTEE?

25 A. YES, WE ARE SUPPORTIVE OF PROPOSAL 1.

1 Q. DOES THAT PROPOSAL, THAT PROPOSAL IS TO CREATE A MILK
2 MARKETING ORDER FOR THE STATE OF CALIFORNIA; IS THAT CORRECT?

3 A. YES.

4 Q. OKAY. SO AS A NEVADA DAIRY FARMER, WHY DO YOU SUPPORT
5 THAT PROPOSAL AND WHAT RELATIONSHIP DOES IT HAVE TO YOUR DAIRY?

6 A. WELL, I THINK IF I -- I GO, NOT JUST AS A NEVADA
7 DAIRYMAN, BUT AS A MEMBER OF THE WESTERN AREA COUNCIL, AND AS
8 THE BOARD MEMBER OF DFA, I HAVE A SHARED RESPONSIBILITY FOR THE
9 COMPANY. WHAT WE SEE WHEN WE LOOK ACROSS THE NATIONAL SCOPE OF
10 THE MARKET, WE SEE THIS AS A DISRUPTION IN THE MARKET, WHERE
11 LOWER PRICED PRODUCT IS ABLE TO TRAVEL LONG DISTANCES TO THE
12 EAST AND INTERFERE WITH OTHER PLANTS THAT THE COOP OWNS IN
13 THOSE MARKETS. SO WE SEE THIS AS A PROBLEM FOR DFA AS A
14 NATIONWIDE COOPERATIVE. WE SEE THIS AS A PROBLEM FOR INEQUITY
15 TO THE OF CALIFORNIA PRODUCERS. AND THE NET EFFECT IS, THAT
16 THOSE PRICES, BECAUSE WE ARE LINKED TO NORTHERN CALIFORNIA,
17 THOSE TRICKLE BACK TO ME, TOO, AS A PRODUCER. SO ON EVERY
18 LEVEL, I HAVE CONCERNS THAT WOULD PUT ME TO SUPPORT THIS
19 PROPOSAL.

20 Q. WHEN YOU REFER TO LOWER PRICED PRODUCT CAUSING ISSUES
21 AND PROBLEMS IN OTHER PARTS OF THE COUNTRY, YOU ARE REFERRING
22 TO PRODUCTS SOURCED IN CALIFORNIA WITH THE CURRENT LOWER
23 REGULATED PRICES IN THAT AREA?

24 A. YES.

25 Q. OKAY. WHAT IS YOUR UNDERSTANDING OF HOW PROPOSAL

1 NUMBER 1 WOULD AFFECT OR ADDRESS MILK MARKETED, PRODUCED IN
2 CHURCHILL COUNTY, NEVADA?

3 A. WELL, I THINK IT WOULD GIVE US THE REGULATORY TIE TO
4 CONTINUE THE TRADITIONAL RELATIONSHIP THAT WE HAVE HAD WITH
5 NORTHERN CALIFORNIA IN PARTICULAR, THAT OUR PRICES ATTRACT EACH
6 OTHER.

7 Q. AND WHY DO YOU FEEL THAT IS JUSTIFIED?

8 A. WELL, I THINK FOR, BECAUSE THAT RELATIONSHIP CONTINUES
9 ON TO THIS DAY, WE WOULD -- OUR LARGEST NEIGHBOR, OUR FRIENDS
10 IN CALIFORNIA, OUR LIVES, OUR BUSINESS LIVES HAVE BEEN TIED TO
11 THEM FOR MANY, MANY YEARS, MANY DECADES.

12 Q. DOES CHURCHILL COUNTY PHYSICALLY, IS IT CONTIGUOUS TO
13 THE STATE OF CALIFORNIA?

14 A. NO.

15 Q. WHAT'S THE GEOGRAPHY THERE?

16 A. YOU HAVE GOT WASHOE COUNTY, WHERE RENO IS. SO WE'RE
17 ABOUT 65 MILES FROM THE CALIFORNIA BORDER.

18 Q. DO YOU UNDERSTAND THAT UNDER PROPOSAL 1, THAT PRODUCERS
19 IN CHURCHILL COUNTY COULD BE PART OF THE POOL, BUT WOULD BE
20 ENTITLED TO A BLEND PRICE CALCULATED AFTER THE VALUE OF QUOTA
21 OWNED BY CALIFORNIA PRODUCERS WAS PAID?

22 A. YES.

23 Q. YOU UNDERSTAND HOW THAT'S PROPOSED TO WORK?

24 A. YES.

25 Q. OKAY. WHAT'S YOUR FEELING ABOUT THAT? DO YOU SUPPORT

1 IT? DO YOU THINK IT IS REASONABLE, OR HOW DO YOU ANALYZE THAT
2 FROM YOUR PERSPECTIVE?

3 A. WELL, I THINK THERE'S A PRICE STABILITY THERE THAT'S
4 AFFORDED TO OUR MEMBERS OF BEING PART OF A POOL, THAT MORE THAT
5 MAKES UP FOR THE FACT THAT WE CAN'T PARTICIPATE IN THAT QUOTA
6 PORTION AT THIS TIME.

7 Q. SO WOULD IT BE FAIR TO SAY THAT YOU'RE SATISFIED THAT
8 THAT WOULD BE A REASONABLE PROVISION FOR NEVADA FARMERS IN THE
9 CALIFORNIA STATE, THE CALIFORNIA FEDERAL ORDER POOL?

10 A. YES.

11 Q. DO YOU HAVE ANYTHING ELSE YOU WANT TO ADD TO YOUR
12 SUPPORT FOR THE PROPOSAL HERE?

13 A. I DON'T THINK SO. I MEAN, MY FAMILY IS STILL INVOLVED.
14 MY SONS ARE MILKING COWS, THEY ARE ON THE FARM, AND DAIRY'S
15 BEEN MY LIFE. IT'S MY IDENTITY, AS MANY PEOPLE IN THIS ROOM
16 HAVE THAT SAME IDENTITY. AND I'M VERY PROUD THAT WE HAVE
17 CONTINUOUSLY FARMED FOR FOUR, AND NOW FIVE GENERATIONS. AND
18 BEING ABLE TO MARKET PRODUCT AND RECEIVE A FAIR PRICE IS VITAL
19 TO OUR INDUSTRY'S HEALTH. AND ON THE WEST COAST, WE HAVEN'T
20 HAD THAT. AND I THINK THAT THIS OFFERS OUR BEST HOPE, THE
21 OPPORTUNITY TO HAVE A FEDERAL MILK MARKETING ORDER IN THE WEST,
22 IN CALIFORNIA, PARTICULARLY, OFFERS THAT OPPORTUNITY TO US,
23 SO --

24 Q. ALL RIGHT. THANK YOU VERY MUCH, MR. OLSEN, FOR COMING
25 HERE AND FOR YOUR TESTIMONY.

1 I HAVE NO FURTHER QUESTIONS FOR MR. OLSEN, YOUR HONOR.

2 JUDGE CLIFTON: THANK YOU, MR. BESHORE.

3 MR. OLSEN, HOW DO YOU SPELL THE MODEL DAIRY IN RENO?

4 MR. OLSEN: M-O-D-E-L.

5 JUDGE CLIFTON: IT SEEMS ODD TO ME THAT THE ARRANGEMENT
6 WORKS, THE THINGS BEING SHIPPED OVER A MOUNTAIN. WHY DOES THAT
7 WORK?

8 MR. OLSEN: WELL, THERE WAS AN OPPORTUNITY FOR DAIRYMEN IN
9 NORTHERN NEVADA TO ACCESS THE MARKETS FOR CLASS I THAT, YOU
10 KNOW, HERBAL IMMIGRATION IN THE GROCERY INDUSTRY NECESSITATED
11 THAT THAT HAPPEN. BUT THEY STILL CONTINUED TO SELL MILK IN
12 NEVADA. YOU WOULD THINK IT WOULD MAKE SENSE TO BOTTLE IT ON
13 THE SAME SIDE OF THE HILL THAT IT IS GOING TO BE SOLD, BUT THAT
14 DIDN'T HAPPEN. SO THAT'S WHAT FACILITATED ALL OF THAT.

15 JUDGE CLIFTON: WHO ELSE WOULD LIKE TO ASK QUESTIONS OF
16 MR. OLSEN?

17 MR. VETNE: JOHN VETNE APPEARING FOR HILMAR CHEESE, A
18 DAIRY FARMER-OWNED CHEESE PROCESSING FACILITY.

19 CROSS-EXAMINATION

20 BY MR. VETNE:

21 Q. MR. OLSEN, ARE YOUR NEIGHBOR PRODUCERS IN YOUR COUNTY,
22 IN NORTHERN NEVADA, ALSO MEMBERS OF A DAIRY COOPERATIVE?

23 A. YES.

24 Q. TO YOUR KNOWLEDGE, ARE THERE ANY NINE MEMBER DAIRY
25 FARMERS LOCATED IN THAT AREA WHERE YOU OPERATE?

1 A. THERE'S ONE DAIRY THAT HAS A SPLIT MEMBERSHIP. HE
2 ACTUALLY HAS MULTIPLE DAIRIES ON THE SAME SIDE, AND HE HAS
3 MEMBERSHIP WITH DAIRY FARMERS OF AMERICA.

4 Q. ON SOME OF HIS MILK, AND INDEPENDENT ON THE REMAINING
5 PORTION; IS THAT CORRECT?

6 A. ON A SEPARATE FACILITY.

7 Q. OKAY. DO YOU KNOW WHETHER WITH RESPECT TO THE
8 NON-MEMBER PORTION OF THAT FARMERS' MILK, WHETHER IT IS SHIPPED
9 TO MODEL DAIRY?

10 A. THE NON-MEMBER, NO.

11 Q. YOU DON'T KNOW?

12 A. I KNOW IT'S NOT SHIPPED TO MODEL DAIRY, THE NON-MEMBER
13 PORTION.

14 Q. IT'S SHIPPED INTO CALIFORNIA?

15 A. LAST I HEARD.

16 Q. OKAY. DOES YOUR FAMILY FARM BUSINESS FOR WHICH YOU
17 GAVE AN ADDRESS, DOES THAT HAVE A NAME OTHER THAN PETE OLSEN?

18 A. YES, HILLSIDE DAIRY.

19 Q. OKAY. THAT WOULD BE THE SAME DAIRY WHICH IS ON THE
20 CASE CAPTION OF THE SUPREME COURT CASE, CORRECT?

21 A. YOU WOULD KNOW THAT, MR. VETNE, YES.

22 Q. WHEN YOUR FARM WAS A MEMBER OF CALIFORNIA GOLD PRIOR TO
23 THE MERGER --

24 A. UH-HUH.

25 Q. -- WITH DFA, MILK FROM YOUR FARM WAS GOING TO

1 CALIFORNIA BUYERS, CORRECT?

2 A. YES.

3 Q. AND IT WAS ALSO GOING TO MODEL DAIRY?

4 A. YES.

5 Q. OKAY. AND WITH RESPECT TO BOTH TRANSACTIONS, WAS MILK
6 SOLD AT WHAT IS CALLED A PLANT BLEND?

7 A. OKAY.

8 Q. WITH RESPECT TO TRANSACTIONS TO CALIFORNIA?

9 A. LET ME BACK UP A LITTLE BIT. WHEN I WAS A MEMBER OF A
10 COOPERATIVE, I DID NOT DIRECT WHERE MY MILK WENT, THEY DIRECTED
11 WHERE MY MILK WENT. AS FAR AS WHAT WAS IN MY MILK CHECK, THERE
12 WAS A LOT OF DIFFERENT THINGS THAT HAPPENED IN THAT MILK CHECK.
13 I THINK IT COULD GENERALLY FAIRLY BE SAID THAT WE GOT POINT OF
14 PLANT RECEIPT, FIRST PLANT RECEIPT.

15 Q. OKAY. AND IN BOTH CASES, YOUR MILK, WHEN IT WENT TO
16 CALIFORNIA AS WELL AS WHEN IT WENT TO NEVADA BUYER, YOUR MILK
17 GENERALLY WENT TO A CLASS 1 PROCESSOR; IS THAT CORRECT?

18 A. WE USUALLY, ONE WAY OR THE OTHER, WE WERE 80 PERCENT OR
19 SO. WE STILL HAD MILK GOING TO HUGHSON, CALIFORNIA THAT WAS
20 CLASS 4, GENERALLY.

21 Q. OKAY. BY "WE", ARE YOU REFERRING TO THE COOPERATIVE TO
22 WHICH YOU BELONGED?

23 A. YES, FOR THE NORTHERN NEVADA MEMBERS OF THAT
24 COOPERATIVE, YES.

25 Q. YOU REFERRED TO THE NEVADA MILK COMMISSION?

1 A. NEVADA STATE DAIRY COMMISSION.

2 Q. NEVADA STATE DAIRY COMMISSION. THAT IS AN ORGANIZATION
3 THAT ESTABLISHES MINIMUM CLASS PRICES FOR PRODUCER MILK SOLD IN
4 NEVADA, TO NEVADA BUYERS; IS THAT CORRECT?

5 A. YES.

6 Q. AND FOR NORTHERN NEVADA YOU INDICATED, TELL ME IF I'M
7 CORRECT, THAT THE NEVADA DAIRY COMMISSION ADOPTS AND
8 INCORPORATES THE NORTHERN CALIFORNIA CLASS PRICES; IS THAT
9 CORRECT?

10 A. YES. IN ALMOST ALL INSTANCES, I THINK THERE MIGHT BE A
11 LITTLE VARIATION ON 4B OR CLASS III. I THINK THE NEVADA USES
12 CLASS III.

13 Q. OKAY.

14 A. BUT THERE ISN'T ANY CLASS III IN NEVADA, SO THE
15 NORTHERN NEVADA.

16 Q. ALL RIGHT. AS AN ASIDE, DO YOU KNOW WHETHER THE NEVADA
17 DAIRY COMMISSION ALSO REGULATES MINIMUM CLASS PRICES FOR MILK
18 SOLD IN THE LAS VEGAS AREA?

19 A. NO, I'M NOT SURE ABOUT THAT.

20 Q. OKAY. FOR, AGAIN, LOOKING AT YOUR MARKETING PRIOR TO
21 THE MERGER, DID YOU RECEIVE A FARM PAY PRICE FROM THE
22 COOPERATIVE THAT REFLECTED A PRICE EQUAL TO OR HIGHER THAN THE
23 QUOTA PRICE PAYABLE TO YOUR COUNTERPARTS IN CALIFORNIA?

24 A. DEPENDS WHERE YOU ARE LOOKING AT IN THE EQUATION,
25 BEFORE OR AFTER III.

1 Q. GIVE ME BOTH.

2 A. BEFORE, THERE WERE TIMES WHEN WE RECEIVED LESS THAN
3 QUOTA. QUOTA DEPENDING ON WHENEVER YOU HAVE MARKETING
4 VARIATIONS, THERE CAN BE TIMES WHEN, BECAUSE OF THE HIGHER OATH
5 AND ALL THOSE THINGS THAT GO BACK INTO IT -- I SHOULD PREFACE
6 THIS TO SAY I'M NO EXPERT IN THESE THINGS. I'M AN OBSERVER.
7 SO I HAVE OBSERVED WHEN TIMES QUOTA WAS HIGHER THAN CLASS 1,
8 BUT GENERALLY IT WAS USUALLY LESS. AND AT TIMES, DEPENDING ON
9 PLANT USAGE, WE COULD ACHIEVE, IN THAT PARTICULAR, IN A
10 PARTICULAR PLANT AT TIMES, HIGHER THAN WHAT A QUOTA SHIPPER
11 COULD GET INSIDE OF CALIFORNIA. BUT THEN AFTER WE PAID THE
12 FREIGHT, WHICH TYPICALLY RAN NORTH OF A 1.70, AND LATER ON,
13 MUCH MORE THAN THAT, YOU NETTED THAT OUT, WE WERE MUCH LESS.

14 Q. SO LET ME SEE IF I UNDERSTAND YOUR ANSWER CORRECTLY.
15 PREDOMINANTLY, THE PRICE RECEIVED BY YOUR FARM, FOLLOWED
16 CALIFORNIA CLASS 1, WHICH WAS ALSO NEVADA CLASS 1. AND FOR THE
17 MOST PART, THAT PRICE EXCEEDED QUOTA, EXCEPT WHEN THERE WAS AN
18 UPSIDE DOWN RELATIONSHIP BETWEEN CLASS 1 AND THE QUOTA?

19 A. YES. AND TO THE EXTENT THAT THE PORTION OF OUR AMOUNT
20 THAT WENT TO HUGHSON AS WELL, I'M A DAIRYMAN. I DON'T LOOK AT
21 THIS PART OF MY CHECK, THAT PART OF MY CHECK. IT'S THE BLEND I
22 GET FOR EVERYTHING. SO IF I TOOK THAT BLEND PRICE WHERE I HAD
23 SOME CLASS 4, AND HAD A \$1.75 FREIGHT ON TOP OF THAT, TOO, AND
24 NETTED THAT OUT, IT WAS THAT BLEND PRICE THAT I WAS LOOKING AT
25 NET TO ME.

1 Q. OKAY. FOR THE NORTHERN NEVADA MEMBERS OF CAL GOLD,
2 YOUR PRICE WAS BLENDED BASED ON THE UTILIZATION OF THAT
3 NORTHERN NEVADA MILK SUPPLY; IS THAT CORRECT?

4 A. YES.

5 Q. AND WOULD THE SAME BE TRUE FOR SALES TO MODEL DAIRY,
6 THAT THAT WAS PART OF THE BLEND CALCULATIONS WHICH CREATED THE
7 PRICE THAT YOU AND YOUR FELLOW COOPERATIVE MEMBERS RECEIVED; IS
8 THAT CORRECT?

9 A. THAT WAS PART OF IT, YES.

10 Q. OKAY. APPROXIMATELY WHAT PORTION OF THAT MILK SUPPLY
11 WAS ALLOCATED IN THE CALCULATION OF THE CLASS 1 USE?

12 A. AT MODEL DAIRY?

13 Q. NO, YOUR MILK AND YOUR FELLOW COOPERATIVE MEMBERS, YOU
14 TALKED ABOUT CREATING A BLEND FOR THAT, THAT POOL OF MILK.

15 A. YOU KNOW, THE ONLY THING I COULD GIVE YOU WAS A BIG
16 GUESS. IT IS NORTH OF 50 PERCENT. HOW MUCH NORTH, I DON'T
17 KNOW.

18 Q. THAT'S GOOD ENOUGH FOR ME, THANK YOU.

19 AFTER THE MERGER OF CAL GOLD AND DAIRY FARMERS OF
20 AMERICA, WERE YOUR BLEND PRICES, AND THOSE OF THE OTHER
21 PRODUCERS IN YOUR AREA, CALCULATED IN A SIMILAR WAY?

22 A. YOU ARE GOING TO HAVE TO --

23 Q. IN A SIMILAR WAY, BASED ON THE UTILIZATION OF THAT,
24 THAT MILK FROM NORTHERN NEVADA THAT YOU DESCRIBED APPLIED --

25 A. YEAH, THE NET PROCEEDS FROM WHERE IT WAS MARKETED, YES.

1 Q. BASED UPON CLASS 1 USAGE OF THE NEVADA MILK SUPPLY,
2 CORRECT?

3 A. YES. THERE WAS SOME OTHER THINGS THAT WENT ON THERE,
4 TOO, THAT ULTIMATELY ENDED UP WITH THE HILLSIDE LAWSUIT. SO I
5 DON'T KNOW WHERE YOU ARE GOING WITH THIS, IF YOU ARE GOING TO
6 ASK QUESTIONS ABOUT THAT.

7 Q. WELL, DID IT CONTINUE TO BE PRICED THE SAME WAY AFTER
8 THE CONCLUSION OF THE HILLSIDE CASE, HOW THE MILK SUPPLY FROM
9 NORTHERN CALIFORNIA PRODUCERS WAS USED BY VARIOUS BUYERS IN
10 VARIOUS CLASSES?

11 A. WAS THE MILK PRICED AT THE PLANT?

12 Q. NO, NO, NO. THE CHECK THAT YOU RECEIVED, WAS IT
13 CALCULATED ANY DIFFERENTLY AFTER THE CONCLUSION OF THE HILLSIDE
14 LAWSUIT THAN BEFORE?

15 A. YES.

16 Q. HOW -- HOW WAS THAT DIFFERENT?

17 A. AFTER THE HILLSIDE LAWSUIT, BUT WE GENERALLY RECEIVED A
18 LITTLE BIT MORE.

19 Q. BECAUSE IT RETURNED TO THE WAY IT WAS BEFORE THE
20 LAWSUIT WAS NECESSITATED, CORRECT?

21 A. THAT WAS WHY WE RECEIVED A LITTLE BIT MORE, YES.

22 Q. OKAY. AND DO YOU ANTICIPATE IF A FEDERAL MARKETING
23 ORDER IS ADOPTED AS PROPOSED, THAT YOUR MILK CHECKS WILL
24 CONTINUE TO BE CALCULATED IN ABOUT THE SAME WAY THAT THEY WERE
25 FOR CAL GOLD, AND WERE WITH DFA PRIOR TO THE LAWSUIT, AND AFTER

1 THE CONCLUSION OF THE LAWSUIT? DO YOU ANTICIPATE ANY
2 SIGNIFICANT DIFFERENCE?

3 A. IN THE SENSE THAT THE NEVADA PRODUCERS WOULD BE SINGLED
4 OUT PRICED DIFFERENTLY OR POOLED DIFFERENTLY OR WHAT IS YOUR
5 QUESTION?

6 Q. YEAH, MY QUESTION IS, DO YOU ANTICIPATE THAT YOUR MILK
7 CHECK WILL BE CALCULATED IN THE SAME WAY, USING THE SAME
8 PROCEDURES THAT YOU HAVE DESCRIBED?

9 A. I'M NOT SURE I CAN ANSWER THAT.

10 Q. LET ME ASK YOU THIS, DO YOU ANTICIPATE THAT THE CHECK
11 THAT YOU WILL BE RECEIVING IF A FEDERAL ORDER IS ADOPTED WILL
12 BE AN OVER BASED PRICE -- OVER BASED CALIFORNIA PRICE?

13 A. I HAVE HEARD A DIFFERENT TERM PUT TO IT.

14 Q. WHAT TERM?

15 A. BLEND PRICE FOR THE ORDER, NOT OVER BASE IS A STATE
16 ORDER TERM. THE FEDERAL ORDER DOESN'T USE THAT TERM, IF I
17 UNDERSTAND THINGS CORRECTLY.

18 Q. FEDERAL ORDER USES DIFFERENT LANGUAGE, YES?

19 A. UH-HUH.

20 Q. AND WHAT'S YOUR UNDERSTANDING OF THE EQUIVALENT
21 LANGUAGE FOR OVER BASE?

22 A. I THINK IT WOULD BE THE ORDER BLEND PRICE.

23 Q. OKAY. AND IS IT YOUR UNDERSTANDING THAT POST-REFORM,
24 THAT WILL BE THE PRICE REFLECTED IN YOUR ACTUAL MILK CHECK AS
25 OPPOSED TO THE CLASS UTILIZATION OF NORTHERN NEVADA MILK THAT

1 HAS PREVIOUSLY BEEN INCLUDED?

2 A. I THINK SO. IF I UNDERSTAND THE QUESTION RIGHT.

3 Q. DO YOU HAVE ANY EXPECTATION THAT MILK WILL BE REBLENDED
4 BY THE COOPERATIVE TO CONTINUE TO PAY YOU AND YOUR NEIGHBORS IN
5 NORTHERN NEVADA ON THE SAME BASIS THAT THEY HAVE BEEN PAID IN
6 THE PAST?

7 A. I DON'T ANTICIPATE THAT, BUT I'M NOT GOING TO SAY IT
8 CAN'T HAPPEN, OR WON'T HAPPEN, OR THINGS DON'T HAPPEN.

9 Q. DO YOU HAVE ANY ESTIMATE ON THE HIT YOU WILL TAKE IF
10 YOUR MILK CHECK IS CALCULATED ON THE BASIS OF A FEDERAL ORDER
11 BLEND, VERSUS THE NEVADA SOURCE UTILIZATION THAT YOU HAVE BEEN
12 PAID ON? DO YOU HAVE ANY ESTIMATE OF THE HIT, REVENUE HIT YOU
13 WILL TAKE?

14 A. YES. BUT I WOULDN'T USE THE WORD HIT.

15 Q. OKAY. PRICE REDUCTION COMPARED TO?

16 A. THERE REALLY WOULDN'T BE.

17 Q. THERE WOULDN'T BE. YOU EXPECT TO RECEIVE A
18 RELATIONSHIP TO CLASS PRICES ABOUT THE SAME THAT YOU HAVE BEEN
19 RECEIVING FOR THE LAST?

20 A. WHAT WE SEE IS STABILITY. WE REALLY SEE NO ADVANTAGE
21 TO THE NEVADA DAIRYMEN AS FAR AS INCREASING THE PRICE, REDUCING
22 THE PRICE THAT WE'RE RECEIVING. WE SEE STABILITY IN BEING
23 INVOLVED IN A POOL.

24 Q. DIDN'T QUITE ANSWER MY QUESTION AS TO PRICE BEFORE AND
25 PRICE AFTER.

1 A. THAT'S THE BEST I CAN DO FOR YOU.

2 Q. ARE YOU AWARE THAT THE COOPERATIVE OF WHICH YOU ARE A
3 MEMBER, MAY REBLEND WITHIN THIS ORGANIZATION, PRICES IT
4 RECEIVES AS MINIMUM PRICES UNDER A FEDERAL OR STATE MARKETING
5 ORDER SYSTEM?

6 A. SURE THEY CAN.

7 Q. ARE YOU FAMILIAR WITH INSTANCES IN WHICH REBLENDING HAS
8 OCCURRED WITHIN CALIFORNIA?

9 MR. BESHORE: IF I MIGHT? I WANT TO OBJECT TO THAT UNTIL
10 OR UNLESS THE TERM REBLENDING IS DEFINED, BECAUSE IT'S A TERM
11 THAT IS USED FOR MANY PURPOSES. IT SERVES MANY VARIATIONS OF
12 MEANING IN MANY CONTEXTS. AND EXACTLY HOW MR. VETNE INTENDS
13 MR. OLSEN TO ATTEMPT TO RESPOND TO THAT, I DON'T KNOW. BUT I
14 THINK MR. OLSEN IS ENTITLED TO THAT.

15 JUDGE CLIFTON: THANK YOU, MR. BESHORE.

16 MR. VETNE: I AGREE.

17 BY MR. VETNE:

18 Q. MR. OLSEN, BY REBLEND, I MEAN DISTRIBUTION OF REVENUE
19 TO MEMBER DAIRY FARMERS ON A BASIS OTHER THAN, I.E., MORE OR
20 LESS, OR DIFFERENT, FROM REGULATED BLEND PRICES? DOES THAT
21 SATISFY -- IS THAT A DEFINITION THAT YOU CAN ACCEPT?

22 A. YES. I MEAN --

23 Q. WITH THAT DEFINITION, ARE YOU -- ARE YOU AWARE THAT THE
24 DFA HAS REBLENDED WITHIN CALIFORNIA, PROCEEDS OF SALE OF MILK
25 AMONG ITS DAIRY FARM MEMBERS?

1 A. IT HAS REBLENDED PROCEEDS OF SALES, SO NO.

2 Q. YES. SO THAT ITS MEMBERS WERE -- PRODUCERS, DO NOT
3 RECEIVE THE MINIMUM REGULATED BLEND PRICES, AND CALIFORNIA
4 WOULD BE QUOTA OVER BASE, AND NEVADA WOULD BE SOMETHING
5 DIFFERENT.

6 A. YOU KNOW, THE ONLY TIME I CAN RECOLLECT THAT WE DID
7 THAT, WAS WHEN WE HAD EXCESS PRODUCTION, AND WE HAVE
8 IMPLEMENTED A BASIS OF, AND WE HAVE TOLD PEOPLE THAT FOR THIS
9 ONE OVER, AND ACCORDING TO WHAT THEIR PREVIOUS HISTORY WAS THAT
10 THEY WILL GET PAID WHATEVER THE RECEIPT WAS FOR THE MILK. BUT
11 GENERALLY, I DON'T REMEMBER EVER PAYING LESS THAN CLASS PRICES
12 TO OUR MEMBERS.

13 Q. MEMBERS DON'T GET CLASS PRICES, THEY GET A COMBINATION
14 OF CLASS PRICES.

15 A. WELL, YOU KNOW, AGAIN, I'M NOT AN EXPERT. BUT I DON'T,
16 IF YOU ARE ASKING IF WE TAKE MONEY FROM THIS PERSON AND GIVE IT
17 TO THAT --

18 Q. YOU ARE NOT FAMILIAR WITH INSTANCES IN WHICH THAT KIND
19 OF THING OCCURRED?

20 A. I'M -- YOU KNOW, I'M GOING TO HAVE TO THINK ABOUT THAT.

21 Q. OKAY.

22 A. I'M NOT SURE. I'M GOING TO HAVE TO THINK ABOUT THAT.

23 Q. OKAY. AND YOU DO NOT INCLUDE IN THE DEFINITION OF
24 REBLENDING AS I EXPLAINED IT, YOU DO NOT INCLUDE THE RECEIPT BY
25 THE NEVADA PORTION OF DFA MEMBERSHIP OF ANY PRICE BASED ON THE

1 BLEND OF THEIR USE DIFFERENT FROM CALIFORNIA. YOU DON'T
2 CONSIDER THAT A REBLEND?

3 A. SAY THAT ONE MORE TIME, PLEASE.

4 Q. YOU DO NOT CONSIDER PAYMENTS TO NORTHERN NEVADA DAIRY
5 FARMERS, BASED ON THE UTILIZATION OF THEIR PORTION OF MILK, AS
6 A REBLEND WITHIN THE DFA SYSTEM? LET ME SUGGEST YOUR ANSWER
7 COULD BE, I DON'T CONSIDER IT, I DO CONSIDER IT, OR I DON'T
8 UNDERSTAND THE QUESTION OR DON'T KNOW?

9 A. WELL, I GUESS I'M BEGINNING TO UNDERSTAND THE QUESTION
10 NOW THAT YOU HAVE SAID IT A COUPLE OF DIFFERENT WAYS.

11 Q. YES?

12 A. AND IN THINKING OF DIFFERENT SCENARIOS THERE, THAT,
13 WHERE WE HAVE SEEN MONEY THAT HAS MOVED, BUT THAT'S KIND OF A
14 PROPRIETARY THING BETWEEN THE MEMBERS TO DECIDE WHAT TO DO.

15 Q. OKAY. OH, MAYBE I FORGOT TO ASK THIS, ALTHOUGH NEVADA
16 HAS MINIMAL --

17 A. NEVADA?

18 Q. NO?

19 A. NEVADA?

20 Q. YES, SIR. NOT NEVADA?

21 A. WE CAN TELL WHERE YOU ARE FROM.

22 Q. ALL RIGHT. ALTHOUGH NEVADA HAS MINIMUM CLASS PRICE
23 REGULATION, IT DOES NOT, LIKE CALIFORNIA, HAVE STATE,
24 ADMINISTRATIVE, AND REGULATED POOLING OF THOSE MINIMAL PRICE
25 REVENUES, CORRECT?

1 A. CORRECT.

2 Q. SO IN NEVADA, WHEN A PRODUCER SELLS TO A PROCESSOR,
3 THAT PRODUCER OR SUPPLIER, EFFECTIVELY, IN ENFORCING THE
4 MINIMUM PRICES, EFFECTIVELY GETS A BLEND PRICE BASED ON MINIMUM
5 PRICES OF ALL CLASSES IN THAT PLANT, RATHER THAN IN THE WHOLE
6 MARKET?

7 A. YES.

8 Q. THANK YOU.

9 JUDGE CLIFTON: WHO NEXT WOULD LIKE TO QUESTION MR. OLSEN?

10 MS. HANCOCK: GOOD AFTERNOON, MR. OLSEN.

11 NICOLE HANCOCK.

12 CROSS-EXAMINATION

13 BY MS. HANCOCK:

14 Q. I JUST WANT TO UNDERSTAND A COUPLE OF THINGS HERE. CAN
15 YOU TELL ME AGAIN WHAT THE WHAT THE NAME OF YOUR DAIRY IS?

16 A. HILLSIDE DAIRY.

17 Q. AND IF I UNDERSTOOD WHAT YOU WERE TALKING ABOUT WITH
18 MR. BESHORE, YOU UNDERSTAND THE COOPERATIVE PROPOSAL AS IT'S
19 WRITTEN WOULD ALLOW THE PRODUCERS IN NEVADA TO BE, THEY WOULD
20 ONLY BE ENTITLED TO BE PAID THE NONQUOTA POOL BLEND PRICE OUT
21 OF THE POOL; IS THAT RIGHT?

22 A. YES.

23 Q. OKAY. SO BUT NOT, AND THAT WOULD BE A CHANGE FROM THE
24 STATE CALIFORNIA POOLING PAYMENT SYSTEM THAT EXISTS TODAY; IS
25 THAT RIGHT?

1 MR. BESHORE: MAY I? I WANT TO OBJECT TO THAT QUESTION IN
2 THE MANNER IT'S STATED. I THINK IT IS INCORRECTLY INACCURATELY
3 STATED. THE STATE DOES NOT PRESCRIBE PRICES TO BE PAID TO THE
4 OUT-OF-STATE PRODUCERS, IT CANNOT PRESCRIBE.

5 MS. HANCOCK: I GUESS, FAIR ENOUGH.

6 BY MS. HANCOCK:

7 Q. MY POINT IS TO TRY AND CLARIFY IT.

8 A. HE'S RIGHT.

9 Q. SO MY POINT IS THAT IT WOULD BE DIFFERENT IN THE WAY
10 YOU WOULD BE PAID AS A NEVADA PRODUCER DELIVERING INTO
11 CALIFORNIA TODAY; IS THAT RIGHT?

12 A. I WOULD BE PAID DIFFERENTLY, YES.

13 Q. BECAUSE YOU DON'T PARTICIPATE IN THE CALIFORNIA POOL?

14 A. CORRECT.

15 Q. OKAY. SO YOU WOULDN'T -- AND IN ESSENCE, RIGHT NOW YOU
16 WOULD BE PAID MORE THAN WHAT YOU WOULD BE PAID UNDER THE
17 COOPERATIVES' PROPOSAL; IS THAT RIGHT?

18 A. IT DEPENDS WHICH PLANT I WENT TO. MIGHT BE PAID LESS.

19 Q. OKAY. IF YOU STAYED THE SAME AS YOU ARE DELIVERING
20 TODAY, WOULD YOU BE PAID LESS UNDER THE FEDERAL ORDER SYSTEM
21 BECAUSE YOU ARE DELIVERING FROM NEVADA?

22 A. I, YOU KNOW, THE ONLY, I MEAN, IT'S KIND OF A LOADED
23 QUESTION. BECAUSE I CAN ONLY ANSWER IT AS TO WHERE MY MILK
24 COULD GO IN CALIFORNIA TODAY. AND TYPICALLY WHERE IT COULD GO
25 TODAY, WOULD BE -- COULD BE MORE OR LESS, JUST DEPENDS ON WHAT

1 THE MARKETS ARE DOING.

2 Q. AND -- OKAY. WELL, LET'S FREEZE TIME WHERE WE ARE
3 RIGHT NOW. IF THERE WAS A FEDERAL ORDER SYSTEM IN PLACE TODAY
4 AS THE COOPERATIVE HAS PROPOSED IT, AND YOU WERE PAID THE
5 NONQUOTA PLANT BLEND, WOULD THAT BE LESS THAN WHAT YOU ARE PAID
6 TODAY UNDER, AS IT EXISTS TODAY?

7 A. I'M NOT SURE.

8 Q. I THINK YOU TESTIFIED THAT YOU ARE A MEMBER OF THE
9 BOARD OF DIRECTORS FOR THE DFA; IS THAT RIGHT?

10 A. YES.

11 Q. AND YOU SAID THAT YOU SUPPORT THE COOPERATIVES'
12 PROPOSAL, EVEN THOUGH YOU, AS NEVADA PRODUCERS, WOULD BE PAID
13 ON THE NONQUOTA PLANT BLEND PRICE BECAUSE OF A FIDUCIARY
14 OBLIGATION THAT YOU OWE TO YOUR MEMBERSHIP; IS THAT RIGHT?

15 MR. BESHORE: MAY I? I THINK THE QUESTION -- I THINK
16 MS. HANCOCK MISSTATED. THERE'S NO SUCH THING AS A NONQUOTA
17 PLANT BLEND, TO MY KNOWLEDGE, CERTAINLY NOT IN PROPOSAL 1.

18 JUDGE CLIFTON: WHAT WOULD BE A CORRECT WAY TO STATE HER --

19 MR. BESHORE: I THINK AS MR. OLSEN SUGGESTED TO MR. VETNE,
20 THE BLEND.

21 JUDGE CLIFTON: JUST THE BLEND?

22 BY MS. HANCOCK:

23 Q. WELL, I THINK YOU HAVE ALREADY CLARIFIED, BUT YOU
24 UNDERSTAND THAT THE BLEND PRICE IS CALCULATED BY FIRST TAKING
25 OUT THE QUOTA CALCULATIONS; IS THAT RIGHT?

1 A. CORRECT, YES.

2 Q. SO I CALLED IT A NONQUOTA PLANT BLEND, BUT DID YOU
3 UNDERSTAND THAT THAT MEANS A PLANT BLEND PRICE UNDER THE
4 FEDERAL ORDER SYSTEM?

5 A. YES.

6 Q. OKAY.

7 A. WELL, I MEAN, MAYBE I -- NOW THAT YOU HAVE CLARIFIED,
8 YES.

9 Q. OKAY.

10 MR. BESHORE: THERE'S NO PLANT BLEND.

11 MS. HANCOCK: THE BLEND PRICE.

12 MR. OLSEN: IT'S A POOL BLEND.

13 BY MS. HANCOCK:

14 Q. THE POOL BLEND PRICE. THANK YOU FOR THAT.

15 SO MY QUESTION TO YOU IS, LET ME BACK UP AND RESTATE
16 WHAT I WAS TRYING TO ASK NOW THAT WE'RE GOING TO CALL IT THE
17 BLEND PRICE -- YOU, I THINK IF I'M UNDERSTANDING THIS
18 CORRECTLY, YOU TESTIFIED WITH MR. BESHORE THAT YOU SUPPORT THE
19 COOPERATIVE PROPOSAL AS IT'S WRITTEN, EVEN THOUGH THE NEVADA
20 PRODUCERS WOULD BE PAID THE BLEND PRICE, BECAUSE OF YOUR
21 FIDUCIARY OBLIGATIONS THAT YOU OWE AS A BOARD MEMBER TO YOUR
22 DFA MEMBERSHIP; IS THAT CORRECT?

23 A. I THINK YOU MIXED TERMS. WHAT OR AT LEAST AS I WAS
24 UNCLEAR THEN, IF YOU GOT THAT. WHAT I WAS SAYING IS, AS A
25 BOARD MEMBER THAT, LOOKING AT DFA AS A NATIONAL ORGANIZATION

1 WITH PLANTS ACROSS THE COUNTRY, THAT WHAT WE SEE IS, IS THAT
2 OUT OF THE MARKET, WE HAVE SOME PEOPLE THAT ARE ABLE TO COME IN
3 AND UNFAIRLY COMPETE, BASICALLY. THEY HAVE GOT A MUCH LOWER
4 RAW PRODUCT COST AND THEY ARE ABLE TO TRANSPORT GREAT DISTANCES
5 TO COMPETE WITH OUR PLANTS THAT ARE IN A LOCALE MORE THAN
6 HALFWAY ACROSS THE COUNTRY, AND STILL BE ABLE TO PUT A MUCH
7 LOWER PRICE ON THAT PRODUCT. AND BECAUSE OF THAT, WE SEE THAT
8 OUR PLANTS AT TIMES HAVE SUFFERED. AND WE HAVE NO WAY TO
9 COMPETE BECAUSE THE RAW PRODUCT COST IS SO MUCH LOWER IN
10 CALIFORNIA ON 4B. SO FROM THAT PERSPECTIVE, I WOULD SAY THAT'S
11 THE FIDUCIARY RESPONSIBILITY. AND I KIND OF LAYERED THAT BACK
12 DOWN TO LOOKING AT THE PEOPLE THAT WE HAVE IN CALIFORNIA, THE
13 PRODUCERS THAT WE HAVE, THE 300 PRODUCERS THAT ARE IN DFA IN
14 CALIFORNIA, THAT IT IS A FUNDAMENTAL UNFAIRNESS. AND THAT THAT
15 UNFAIRNESS THERE, ULTIMATELY DID TRICKLE BACK INTO MY MILK
16 CHECK AS WELL AS AN INDIVIDUAL. SO THERE WAS DIFFERENT LAYERS
17 AND DIFFERENT SOURCES OF RESPONSIBILITY, SENSES OF
18 RESPONSIBILITY, DEPENDING ON WHICH PLACE I WAS LOOKING AT.

19 Q. OKAY. SO I GUESS I WANT TO BE CLEAR ON THIS. SO YOU
20 ARE LOOKING THROUGH THE LENS OF THE COOPERATIVE. THERE'S
21 MEMBERS THAT ARE WITHIN CALIFORNIA, THAT YOU, THAT IT WOULD BE
22 FAIR FOR THEM TO HAVE THE PRICE STABILITY; IS THAT RIGHT?

23 A. YES.

24 Q. OKAY. AND THEN WHILE YOU MIGHT RECEIVE A LOWER PAYMENT
25 AS A NEVADA PRODUCER FOR THE PLANT BLEND PRICE, ULTIMATELY,

1 IT'S PART --

2 JUDGE CLIFTON: OKAY. MIGHT RECEIVE A LOWER PRICE AS A
3 PRODUCER IN NEVADA FOR THE BLEND.

4 BY MS. HANCOCK:

5 Q. I'M SORRY, I HAVE GOT PLANT BLEND STUCK IN MY HEAD --
6 FOR THE BLEND PRICE -- THANK YOU. IT ULTIMATELY WILL ROLL BACK
7 TO YOU THROUGH KIND OF THE GREATER GOOD OF THE COOPERATIVE. IS
8 THAT -- IS THAT A FAIR CHARACTERIZATION?

9 A. I'M NOT SURE. YOU MIGHT TAKE ONE MORE STAB AT IT,
10 MAYBE I CAN ANSWER.

11 Q. WELL, I'M JUST TRYING TO MAKE SURE THAT I UNDERSTOOD
12 WHAT YOU WERE TESTIFYING TO WITH MR. BESHORE.

13 WERE YOU SAYING THAT YOU WERE WILLING TO TAKE THE PLANT
14 BLEND PRICE -- I'M SO SORRY -- THE BLEND PRICE -- OH MY GOSH, I
15 CAN'T GET IT OUT OF MY HEAD. HOLD ON, LET ME WRITE IT DOWN,
16 MAYBE IT WILL HELP ME OUT.

17 LET ME START AGAIN. WERE YOU SAYING THAT YOU WERE
18 WILLING TO TAKE THE BLEND PRICE AS A NEVADA PRODUCER BECAUSE OF
19 THE GREATER GOOD THAT THE FEDERAL ORDER OFFERS TO THE
20 COOPERATIVE?

21 A. YOU ARE LINKING TWO THINGS THAT I DIDN'T SAY. SO WHAT
22 I WOULD SAY IS, IS THAT I THINK THAT FOR A CALIFORNIA
23 PRODUCERS, OUR CALIFORNIA MEMBERS, THAT IT WOULD BE MUCH FAIRER
24 FOR THEM GENERALLY TO FOLLOW PRICING AS THE FEDERAL MILK MARKET
25 ORDER HAS DONE. ULTIMATELY, THAT WOULD RESULT IN A POOL PLAN

1 FOR CALIFORNIA, AND IF THAT WAS, IF CHURCHILL COUNTY WAS
2 INCLUDED IN THAT POOL, THOSE RECEIPTS THAT OUR DAIRYMEN WOULD
3 RECEIVE THERE, WE THINK WOULD PROVIDE STABILITY TO OUR DAIRYMEN
4 IN CHURCHILL COUNTY.

5 Q. WHICH WOULD POTENTIALLY INCREASE THE PROFITS FOR THE
6 COOPERATIVE AS A WHOLE; IS THAT RIGHT?

7 A. YOU CAN FOLLOW THAT ROAD DOWN, I SUPPOSE.

8 Q. OKAY. AND THEN ULTIMATELY YOU WOULD RECEIVE --

9 A. BUT HONESTLY, YOU KNOW, AS A BOARD MEMBER OF THE
10 COOPERATIVE, WE LIKE TO SEE THE COOPERATIVE MAKE A LITTLE
11 MONEY, BUT WHAT WE WOULD LIKE TO SEE IS DAIRYMEN MAKE MONEY.
12 THAT'S WHAT WE'RE IN BUSINESS FOR.

13 Q. AND I DON'T DISAGREE WITH YOU ON ANY OF THAT.

14 A. OKAY. WELL, I'M JUST MAKING A POINT OF CLARIFICATION.
15 WE DON'T CARE IF THE COOP MAKES A TREMENDOUS AMOUNT OF MONEY,
16 WHAT WE WOULD RATHER SEE IS OUR DAIRYMEN BE PROFITABLE.

17 Q. OKAY. AND IF THE OVERALL PROFITS INCREASE, THOSE
18 PROFITS ARE REDISTRIBUTED BACK TO THE COOPERATIVE MEMBERS; IS
19 THAT CORRECT?

20 A. THEY ARE.

21 Q. OKAY. AND I WANT TO SHIFT GEARS. I THINK YOU TOUCHED
22 ON THIS A LITTLE BIT WITH MR. VETNE, BUT I WANT TO JUST CLARIFY
23 IT FOR THE RECORD. HILLSIDE DAIRY WAS THE ENTITY THAT
24 PARTICIPATED IN THE LITIGATION PERTAINING TO OUT-OF-STATE
25 PRODUCTION FOR MILK; IS THAT RIGHT?

1 A. YEAH, WE WERE ONE OF THE MANY, BUT WE ENDED UP WITH OUR
2 NAME ON TOP OF THE LIST.

3 Q. I UNDERSTAND HOW THAT WORKS. SO TELL ME WHAT YOU
4 UNDERSTAND THAT LAWSUIT TO HAVE BEEN ABOUT?

5 A. WELL, THERE WAS A '97 AMENDMENT TO THE POOLING ACT, AND
6 WHAT THAT DID WAS, IS, INSTEAD OF WHAT HAD BEEN PAST PRACTICE
7 AT POINT PLANT RECEIPT, IF IT WENT TO A CLASS 1 PLANT -- AND
8 I'M GOING OFF OF, THESE MEMORIES ARE GETTING OLD NOW, 18 YEARS
9 AGO -- BUT THAT THERE WAS MONEY THERE THAT WAS REDISTRIBUTED
10 ACROSS THE CALIFORNIA POOL. THEY TOOK A SWIPE. YOU CAN ONLY
11 RECEIVE THE QUOTA PRICE AT A CLASS 1 PLANT. IT WAS USUALLY,
12 EVEN WHEN YOU HAD THESE VARIATIONS IN THE PRICE, IT WAS ALWAYS
13 THE WORST OF. SO YOU EITHER GOT QUOTA PRICE, OR IF THE QUOTA
14 PRICE WAS HIGHER THAN THE CLASS 1 PRICE, WHICH CAN HAPPEN,
15 PRICE AVERSIONS, YOU STILL GOT THE LOWER OF, YOU COULDN'T GET
16 THE CLASS 1 PRICE, ONLY IF IT WAS LOWER THAN THE QUOTA PRICE.
17 AND SO WE LIVED WITH THAT, AND WE SAID THAT, TO US, THAT WAS A
18 PRETTY CLEAR VIOLATION OF THE COMMERCE CLAUSE. AND IT TOOK A
19 LOT OF DOING, BUT WE EVENTUALLY ESTABLISHED THAT WE WERE RIGHT.

20 Q. SO WHAT, WOULD YOU SAY IT WAS, YOUR POSITION WAS, IS
21 THAT THIS WAS A VIOLATION OF THE COMMERCE CLAUSE, WHAT DO YOU
22 UNDERSTAND THAT TO MEAN?

23 A. WELL --

24 MR. BESHORE: MAY I?

25 MR. OLSEN: I'M NO LAWYER, SO I UNDERSTAND WHAT I

1 UNDERSTAND.

2 MR. BESHORE: I WOULD OBJECT TO FURTHER QUESTIONS ASKING
3 MR. OLSEN TO ELABORATE ON THE LAWSUIT, THE LEGAL CONCEPTS. AND
4 SUCH. IT'S NOT HELPFUL.

5 JUDGE CLIFTON: YOU MAY, MS. HANCOCK, ASK HIM HOW HE
6 UNDERSTANDS THE RESULT AS IT IMPACTED HIS OPERATION.

7 MS. HANCOCK: BUT, YOUR HONOR, IF I MAY, I THINK ONE OF THE
8 CRITICAL COMPONENTS I'M TRYING TO GET AT HERE IS THE POSITION
9 THAT THEY TOOK, AND THEN THE ULTIMATE RESULT. SO IF YOU WOULD
10 ALLOW ME TO ASK THAT QUESTION, I THINK WE COULD STREAMLINE IT.

11 JUDGE CLIFTON: ALL RIGHT. YOU WANT A TREATISE ON THE
12 VIOLATION OF THE COMMERCE CLAUSE, OR -- WHAT DO YOU WANT FROM
13 THIS WITNESS?

14 MS. HANCOCK: I WANT TO KNOW HIS PERSPECTIVE ON THE
15 POSITION THAT THEY TOOK IN THIS LAWSUIT, NOT ON A TREATISE ON
16 THE COMMERCE CLAUSE, BUT WHAT THEY BELIEVED WAS HAPPENING THAT
17 WAS IMPROPER.

18 MR. BESHORE: HE JUST ANSWERED THAT, THAT QUESTION
19 COMPLETELY.

20 JUDGE CLIFTON: WELL, HE DID SAY THAT HE FELT IT WAS A
21 VIOLATION OF THE COMMERCE CLAUSE TO RESTRICT THEM TO THE LOWER
22 QUOTA PRICE OR CLASS 1, BUT YOU WANTED MORE DETAIL ON THAT?

23 MS. HANCOCK: I WANT TO KNOW WHY HE BELIEVES IT WAS A
24 VIOLATION, WHAT THE ACTIONS OR ACTIVITIES WERE THAT WERE THE
25 VIOLATION.

1 MR. BESHORE: I OBJECT.

2 MS. HANCOCK: I WANT THE SUBSTANCE BEHIND IT.

3 MR. BESHORE: HE TESTIFIED TO THE SUBSTANCE. HE -- HE
4 TESTIFIED TO THE SUBSTANCE. I THINK TO ASK FOR FURTHER LEGAL
5 OVERLAY ON WHAT, ON THE SUBSTANCE OF IT, THE LOWER OF PRICE, I
6 DON'T -- IT'S NOT USEFUL. I OBJECT TO IT.

7 MS. HANCOCK: HE WAS A PARTY TO A LEGAL ACTION. I WANT TO
8 KNOW WHAT THEIR POSITION WAS AND IF IT'S, AND I THINK THAT IT
9 BEARS HEAVILY ON THE FACTS OF THIS CASE, AND THE LATER
10 POSITIONS THAT PONDEROSA DAIRY WILL BRIEF FOR THE USDA. SO I
11 THINK IT'S CRITICAL FOR OUR POSITION TO FLUSH THIS OUT AND MAKE
12 SURE THAT IT'S ON THE RECORD.

13 JUDGE CLIFTON: MR. OLSEN, ARE YOU GOING TO BE HERE FOR ANY
14 OTHER DAYS OF THE HEARING?

15 MR. OLSEN: I WASN'T PLANNING ON IT, BUT I COULD.

16 JUDGE CLIFTON: WELL, WASN'T PLANNING ON IT.

17 DO YOU HAVE A COPY OF THE HILLSIDE DECISION?

18 MS. HANCOCK: I HAVE AN ELECTRONIC COPY, I DON'T HAVE A
19 HARD COPY WITH ME.

20 JUDGE CLIFTON: ALL RIGHT. CAN YOU CALL TO HIS ATTENTION
21 SOME OF THE LANGUAGE THAT YOU SPECIFICALLY WANTED HIM TO
22 EXPLAIN FROM HIS PERSPECTIVE?

23 MS. HANCOCK: I COULD, BUT I WASN'T INTENDING TO EVEN GO
24 INTO THAT MUCH DETAIL. I JUST NEEDED TO KNOW THAT OVERALL,
25 OVERARCHING, WHAT THEIR POSITION WAS AND WHAT HIS UNDERSTANDING

1 OF THE RESULT WAS. I THINK THE OBJECTIONS HAVE TAKEN THIS INTO
2 A MUCH MORE DETAILED AREA THAN WHAT MY QUESTIONS WERE EVER
3 DESIGNED TO ENGAGE IN.

4 MR. HILL: YOUR HONOR?

5 JUDGE CLIFTON: MR. HILL?

6 MR. HILL: BRIAN HILL. WE MIGHT BE GOING INTO A LOT OF
7 ARGUMENT HERE. I DON'T WANT THIS TO GET TOO MUCH DEEPER,
8 BECAUSE I THINK AT THIS POINT THE COURT REPORTER IS PROBABLY ON
9 HER LAST LEG SO FAR AT THE MOMENT, AND IF THIS IS GOING TO TAKE
10 MUCH LONGER, I THINK WE SHOULD BE SHOULD HAVE A BREAK AND THESE
11 PARTIES CAN DISCUSS THIS.

12 JUDGE CLIFTON: WHAT I WOULD PREFER IS TO FINISH MR. OLSEN
13 AND THEN GO TO LUNCH, BUT LET ME HEAR FROM YOU, SIR.

14 MR. VLAHOS: JOHN VLAHOS. I'M GOING TO JOIN IN
15 MR. BESHORE'S OBJECTION, BUT ON A LIGHTLY DIFFERENT GROUND, THE
16 GROUND THAT WHAT IS RELEVANT IS WHAT THE HOLDINGS OF THE CASE
17 ACTUALLY WERE, AND NOT WHAT SOMEONE'S UNDERSTANDING OF IT MIGHT
18 BE, BECAUSE THE UNDERSTANDING MAY BE CORRECT OR INCORRECT. AND
19 WHETHER IT IS CORRECT OR INCORRECT, WHAT IS REALLY RELEVANT IS
20 WHAT THE COURT HELD.

21 MS. HANCOCK: WITH ALL DUE RESPECT, I DISAGREE. BECAUSE I
22 THINK THAT MR. OLSEN HAS TESTIFIED ABOUT HIS OPINION OF WHETHER
23 DAIRY FARMERS IN NEVADA SHOULD BE SUBJECTED TO THE PLANT BLEND
24 PRICE AS A PAYMENT MECHANISM UNDER THE NEW FEDERAL ORDER. SO
25 WHAT I WOULD LIKE TO BE ABLE TO DIG INTO, AND I THINK IT IS FAR

1 AND WITHIN THE BOUNDS OF REASON, IS HIS OPINIONS EARLIER ON
2 WHEN THERE WAS DISCRIMINATORY PRICING ALLEGED IN NEVADA, UNDER
3 THE CALIFORNIA SYSTEM.

4 JUDGE CLIFTON: NOW, YOU HAVE JUST REFERRED TO THE PLANT
5 BLEND PRICE, WOULD YOU DEFINE THAT FOR US?

6 MS. HANCOCK: DID I SAY -- SAY PLANT BLEND? I'M SO SORRY,
7 MAYBE IT IS BECAUSE WE HAVEN'T HAD LUNCH, I DON'T KNOW. BUT
8 UNDER THE BLEND PRICE, UNDER THE PROPOSED FEDERAL ORDER SYSTEM
9 IS WHAT I WAS REFERRING TO. AND JUST FOR THE RECORD, IF I HAVE
10 SAID PLANT BLEND PRICE, I WAS REFERRING TO THE BLEND PRICE
11 OVERALL. I, FOR SOME REASON, GOT THAT STUCK IN MY HEAD.

12 JUDGE CLIFTON: MR. VLAHOS?

13 MR. VLAHOS: I'M JUST GOING TO STAND ON MY OBJECTION THAT
14 IT IS IRRELEVANT WHAT A WITNESS THINKS IS THE RESULT OF A COURT
15 DECISION, THAT THE COURT DECISION ITSELF IS THE ONLY RELEVANT
16 EVIDENCE.

17 JUDGE CLIFTON: OF COURSE WHEN I'M INVOLVED IN A DECISION I
18 NEVER THINK THAT, BUT --

19 MS. HANCOCK: AND I DON'T DISAGREE FOR THE LEGAL EFFECTS OF
20 THAT DECISION, THAT'S NOT AT ALL MY POINT. MY POINT WAS
21 REALLY, I THOUGHT WE WERE GOING TO BE ABLE TO ACCOMPLISH IT IN
22 A MATTER OF TWO TO FIVE QUESTIONS, TO GET HIS UNDERSTANDING AS
23 A PARTY TO THAT ACTION, ESPECIALLY AS A PERSON WHO IS
24 TESTIFYING IN THIS HEARING TODAY.

25 JUDGE CLIFTON: OKAY. LET'S SEE FIVE MORE QUESTIONS. IT

1 IS 1:12, ARE YOU AVAILABLE AFTER LUNCH?

2 MR. OLSEN: YES, I AM.

3 JUDGE CLIFTON: ALL RIGHT. SHALL WE TAKE AN HOUR AND
4 FIFTEEN MINUTES? ALL RIGHT.

5 SO, PLEASE BE BACK AND READY TO GO AT 2:30.

6 (WHEREUPON, A BREAK WAS TAKEN.)

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1 TUESDAY, SEPTEMBER 29, 2105 - - AFTERNOON SESSION

2 JUDGE CLIFTON: BACK ON THE RECORD AT 2:33.

3 MS. HANCOCK?

4 BY MS. HANCOCK:

5 Q. GOOD AFTERNOON, AGAIN. NICOLE HANCOCK.

6 I WANT TO START, KIND OF BACK UP AGAIN AND CLARIFY THE
7 TERMS THAT I WAS USING.

8 PLANT BLEND IS WHAT YOU CALLED THE MILK PAYMENTS THAT
9 YOU RECEIVED BEFORE 1997. IS THAT FAIR?

10 A. I USUALLY SAID POINT OF PLANT RECEIPT.

11 Q. SO YOU USUALLY SAID WHAT?

12 A. POINT OF PLANT RECEIPT.

13 Q. OKAY. HAS IT BEEN REFERRED TO AS PLANT BLEND ALSO?

14 A. YOU CAN SAY THAT IN THAT SENSE.

15 Q. AND THEN BLEND PRICE IS THE PRICE THAT WOULD BE PAID IF
16 THERE'S A FEDERAL ORDER IMPLEMENTED AS THE COOPERATIVES HAVE
17 PROPOSED IT. IS THAT FAIR?

18 A. THAT'S A GOOD UNDERSTANDING, I THINK.

19 Q. I APOLOGIZE FOR THE CONFUSION EARLIER. I HAVE HAD
20 LUNCH NOW SO HOPEFULLY I KEEP IT STRAIGHT.

21 OKAY. SO IN CALIFORNIA, OR IN PRODUCING BEFORE 1997
22 AND BEFORE THE CHANGE, BEFORE THE CDFA CHANGED THE REGULATIONS
23 IN 1997, YOU RECEIVED THE PLANT BLEND OR THE POINT OF PLANT
24 RECEIPT AS YOU REFERRED TO IT?

25 A. YES.

1 Q. OKAY. AND DID YOU VIEW THAT PLANT BLEND, OR THE POINT
2 OF PLANT RECEIPT, AS COMPENSATION FOR NOT OWNING QUOTA PRIOR TO
3 1997?

4 A. I NEVER THOUGHT OF IT IN THOSE TERMS.

5 Q. OKAY. AFTER THE REGULATIONS WERE CHANGED IN 1997 BY
6 THE CDFA, DID THAT HAVE AN IMPACT ON THE AMOUNT OF MONEY THAT
7 YOU WERE RECEIVING FOR YOUR MILK?

8 A. YES.

9 Q. OKAY. AND THEN DID YOU DO AN ECONOMIC ANALYSIS OF
10 WHETHER OR NOT YOU WERE GOING TO CONTINUE TO DELIVER MILK INTO
11 CALIFORNIA BECAUSE OF THOSE CHANGES?

12 A. YES.

13 Q. AND IT CALLED INTO QUESTION WHETHER OR NOT YOU WERE
14 WILLING TO DELIVER OR WERE ABLE FINANCIALLY TO DELIVER YOUR
15 MILK INTO CALIFORNIA. ISN'T THAT TRUE?

16 A. NO, IT WAS STILL OUR BEST OPTION.

17 Q. IT WAS NOT AS GOOD OF AN OPTION AS IT HAD BEEN PRIOR TO
18 THE CHANGES, THOUGH, IS THAT FAIR TO SAY?

19 A. THAT'S FAIR.

20 Q. OKAY. AND YOU CONDUCTED THE ANALYSIS, THE FINANCIAL
21 ECONOMIC ANALYSIS THOUGH, TO DETERMINE IF YOU COULD FINANCIALLY
22 CONTINUE TO AFFORD TO SHIP YOUR MILK INTO CALIFORNIA?

23 A. YES.

24 Q. AND FROM THAT ECONOMIC ANALYSIS, THAT WAS ONE OF THE
25 REASONS WHY YOU DECIDED TO FILE OR JOIN THE LAWSUIT THAT

1 CHALLENGED THE IMPACT OF THE CHANGES OF THOSE REGULATIONS THAT
2 CDFA IMPLEMENTED. IS THAT FAIR?

3 A. CORRECT.

4 Q. AND IT WAS, WHAT YOU ALLEGED IN THAT LAWSUIT WAS IT HAD
5 A DISCRIMINATORY EFFECT ON YOU AS A PRODUCER FOR BEING
6 OUT-OF-STATE?

7 A. OKAY. THAT'S -- I THINK, I'M NOT A LAWYER. I'M NOT
8 GOING TO DISCLAIM ANYTHING I MIGHT SAY HERE, THAT IF I GET THE
9 FACTS WRONG, AND I MISUNDERSTAND WHAT THE FACTS WERE OF THE
10 CASE, BUT I THINK IN GENERAL I AGREE WITH THAT STATEMENT.

11 Q. AND I AM NOT ASKING FOR A LEGAL CONCLUSION. I'M JUST
12 ASKING FOR WHAT YOU UNDERSTAND FROM THAT LAWSUIT BACK AT THE
13 TIME THAT YOU FILED.

14 A. UH-HUH.

15 Q. IS THAT A YES, YOU UNDERSTAND THAT THAT'S WHAT WE'RE
16 TALKING ABOUT?

17 A. I UNDERSTAND THAT'S WHAT YOU ARE ASKING.

18 Q. OKAY. SO BASED ON THAT UNDERSTANDING, DID YOU, AS A
19 PARTY TO THAT LAWSUIT, JOIN THAT LAWSUIT BECAUSE YOU BELIEVED
20 THAT THE REGULATORY CHANGES HAD A DISCRIMINATORY EFFECT ON YOU
21 AS AN OUT-OF-STATE PRODUCER?

22 A. AT THE TIME, YES.

23 Q. OKAY. AND DO YOU HAVE A DIFFERENT OPINION ABOUT THAT
24 NOW?

25 A. I HAVEN'T THOUGHT ABOUT IT.

1 Q. YOU JUST SAID AT THE TIME, SO I'M JUST TRYING TO
2 CLARIFY.

3 A. OH, WELL, I MEAN, THAT WAS THEN, THIS IS NOW. SO I
4 JUST HAVEN'T THOUGHT ABOUT IT.

5 Q. DO YOU REMEMBER WHAT YEAR YOU FILED THAT LAWSUIT?

6 A. I BELIEVE IN '97.

7 Q. OKAY. AND THEN AFTER YOU FILED THAT LAWSUIT, IT MADE
8 ITS WAY THROUGH THE COURT SYSTEM BUT ULTIMATELY ENDED UP WITH
9 THE SUPREME COURT; IS THAT RIGHT?

10 A. YES.

11 Q. OKAY. AND IS IT YOUR UNDERSTANDING THAT THE SUPREME
12 COURT AND THEN THE LATER ON THE DISTRICT COURT RULED THAT THERE
13 WAS A DISCRIMINATORY EFFECT ON YOU AS AN OUT-OF-STATE PRODUCER
14 WITH THE CHANGES OF THOSE REGULATIONS?

15 MR. VLAHOS: OBJECTION, YOUR HONOR. JOHN VLAHOS. WHAT IS
16 RELEVANT IS WHAT THE -- I'M GOING TO DISAGREE WITH HER
17 CHARACTERIZATION OF THE POSITION, BUT ACTUALLY WHAT IS RELEVANT
18 IS WHAT THE COURT'S ACTUALLY DID, NOT WITH WHAT WITNESS
19 UNDERSTANDS THAT THEY DID.

20 JUDGE CLIFTON: I HAVE TO AGREE WITH YOU, MR. VLAHOS. DO
21 YOU WANT TO REWORD YOUR QUESTION IN ANY WAY, MS. HANCOCK?

22 MS. HANCOCK: WELL, YOUR HONOR, I DID ASK HIM WHAT HIS
23 UNDERSTANDING WAS, AND I'M TRYING TO BUILD TO THE OPINION THAT
24 HE'S GIVING TODAY. SO I'M NOT ASKING HIM FOR THE LEGAL
25 CONCLUSION, WHAT I'M ASKING HIM IS WHAT HE UNDERSTOOD WAS THE

1 IMPACT OF THAT RULING ON HIS BUSINESS.

2 JUDGE CLIFTON: THAT'S A QUESTION I'LL ALLOW HIM TO ANSWER.
3 WHAT DO YOU BELIEVE WAS THE IMPACT ON YOUR BUSINESS OF THE
4 RULING OF THE COURTS?

5 MR. OLSEN: I THINK IT TOOK SEVEN YEARS, AND THE NET IMPACT
6 IN '04 WAS POSITIVE AFTER THE CONCLUSION OF ALL THE LAWSUITS
7 AND THE SETTLEMENT.

8 BY MS. HANCOCK:

9 Q. AND WHEN YOU SAY POSITIVE, IS IT A FAIR
10 CHARACTERIZATION THEN TO SAY THAT BEFORE THE CDFA CHANGED THE
11 REGULATIONS IN CALIFORNIA, YOU RECEIVED THE PLANT BLEND, AND
12 THEN AFTER IT WORKED ITS WAY THROUGH THE COURT SYSTEM, YOU THEN
13 AGAIN RECEIVED THE PLANT BLEND PRICE?

14 JUDGE CLIFTON: DO YOU WANT TO USE HIS TERMINOLOGY RATHER
15 THAN THAT? DO YOU WANT TO USE?

16 MS. HANCOCK: SURE. THE POINT OF PLANT RECEIPT.

17 JUDGE CLIFTON: OKAY.

18 MR. OLSEN: OKAY. ASK THE QUESTION AGAIN, PLEASE.

19 BY MS. HANCOCK:

20 Q. IS IT YOUR UNDERSTANDING, THEN, THAT BEFORE YOU
21 RECEIVED THE POINT OF PLANT RECEIPT BEFORE 1997; IS THAT RIGHT?

22 A. YES.

23 Q. AND THEN AFTER ALL THE COURT MATTERS SHOOK OUT, THE NET
24 EFFECT WAS THAT YOU AGAIN RECEIVED THE POINT OF PLANT RECEIPT?

25 A. YES.

1 Q. I HAVE NO FURTHER QUESTIONS. THANK YOU.

2 JUDGE CLIFTON: THANK YOU, MS. HANCOCK. WHO WOULD NEXT
3 LIKE TO QUESTION MR. OLSEN?

4 MR. VETNE: MR. OLSEN, JOHN VETNE.

5 CROSS-EXAMINATION

6 BY MR. VETNE:

7 Q. I JUST FORGOT ONE OR TWO QUESTIONS.

8 MODEL DAIRY IN RENO, IS THAT AN INDEPENDENT PROCESSING
9 FACILITY OR IS IT OWNED BY A LARGER COMPANY?

10 A. IT'S OWNED BY KING FOODS.

11 Q. AND THAT OWNERSHIP CHANGED AT SOME POINT DURING THIS
12 WHOLE PROCESS ALSO? DID IT USED TO BE INDEPENDENT?

13 A. IT WAS INDEPENDENT AND I'VE FORGOTTEN WHAT YEAR IT WAS
14 SOLD, BUT IT'S BEEN SOME TIME. I THINK A GOOD 15 YEARS.

15 Q. THAT'S ALL. THANK YOU.

16 JUDGE CLIFTON: THANK YOU, MR. VETNE. DOES ANYONE ELSE
17 HAVE QUESTIONS FOR MR. OLSEN?

18 MR. VANDENHEUVEL: THANK YOU. ROB VANDENHEUVEL, I THINK I
19 SPELLED IT EARLIER -- I KNOW I SPELLED IT EARLIER.

20 CROSS-EXAMINATION

21 BY MR. VANDENHEUVEL:

22 Q. MR. OLSEN, I JUST WANTED TO CLARIFY SOMETHING FOR THE
23 RECORD THAT WAS PART OF YOUR EXCHANGE WITH MS. HANCOCK A LITTLE
24 BIT EARLIER.

25 THERE WAS A DISCUSSION ABOUT THE DIFFERENCE BETWEEN

1 YOUR PAY PRICE OF A, OF A PLANT BLEND, VERSUS BEING SUBJECT TO
2 THE POOLING REGULATIONS IN CALIFORNIA AND RECEIVING THE MARKET
3 WIDE OR POOL BLEND. DURING THAT DISCUSSION IT WAS ASSUMED, AND
4 MY INTERPRETATION, THAT IN THE QUESTION THAT IT WAS ASSUMED
5 THAT THE MARKET WIDE BLEND IN CALIFORNIA WOULD BE LOWER THAN
6 YOUR PLANT BLEND THAT YOU ARE CURRENTLY RECEIVING AS PART OF
7 YOUR TRANSACTION THAT YOU SELL MILK. WAS THAT YOUR
8 UNDERSTANDING OF THAT QUESTION AS WELL?

9 A. NO.

10 Q. OKAY. WOULD -- WOULD YOU AGREE WITH THE STATEMENT THAT
11 UNDER A CALIFORNIA FEDERAL MILK MARKETING ORDER SIMILAR TO
12 PROPOSAL NUMBER 1 THAT'S BEEN LAID OUT BY THE COOPERATIVES,
13 THAT THE POOLED REVENUES UNDER THAT SYSTEM WOULD BE HIGHER THAN
14 THEY ARE UNDER THE CURRENT POOLING REGULATIONS OPERATED BY THE
15 STATE?

16 A. SO MAYBE IF A POINT OF CLARIFICATION, IF WE'RE TAKING
17 AND COMPARING OVER BASE TO THE PROPOSED FEDERAL ORDER POOL?

18 Q. CORRECT.

19 A. IT WOULD BE HIGHER.

20 Q. AND THAT WOULD BE DUE TO VARIOUS FEATURES OF THE NEW
21 PROGRAM BEING NATIONAL CLASSIFIED PRICES, REGULATING
22 TRANSACTIONS THAT ARE CURRENTLY INTERSTATE COMMERCE AND NOT
23 REGULATED, BUT WOULD BE REGULATED UNDER THE FEDERAL MILK
24 MARKETING ORDER, THOSE TYPES OF THINGS WOULD RESULT, THE NET
25 RESULT WOULD BE ADDITIONAL REVENUE INTO THE CALIFORNIA MARKET

1 WIDE POOL UNDER FEDERAL ORDER VERSUS THE CURRENT STATE ORDER?

2 A. YES.

3 Q. AND SO WOULD YOU AGREE THAT IT WOULD BE VERY DIFFICULT
4 TO ASSESS WHETHER YOU WOULD BE BETTER OR WORSE OFF UNDER A
5 CALIFORNIA FEDERAL ORDER THAN RIGHT NOW, SINCE WE DON'T REALLY
6 KNOW WHAT THAT CALIFORNIA FEDERAL ORDER NONQUOTA END PRICE WILL
7 BE, BECAUSE THERE IS A LOT OF VARIABLES THAT WILL GO INTO THAT?

8 A. WELL, WE'RE HERE TO TALK ABOUT IT.

9 Q. NO, WE'RE HERE TO TALK ABOUT IT, BUT I THINK YOU WERE
10 ASKED EARLIER IN THE LINE OF QUESTIONING, WHETHER YOU WOULD,
11 THE QUESTION IS, WOULD YOUR PAY PRICE BE LOWER UNDER A
12 CALIFORNIA FEDERAL ORDER AS OUTLINED IN PROPOSAL NUMBER 1, AND
13 -- AND I THINK THE LINE OF QUESTIONING WENT SOMETHING ALONG THE
14 LINES OF, ARE YOU DOING THAT BECAUSE OF THE GREATER GOOD OF
15 BEING ON THE DFA BOARD, AND THERE WAS THAT EXCHANGE, BUT
16 WOULDN'T IT BE FAIR TO SAY THAT WE DON'T REALLY KNOW HOW YOUR
17 CURRENT PAY PRICE WILL COMPARE TO A -- YOU GETTING THE MARKET
18 WIDE BLEND, BECAUSE WE DON'T KNOW WHAT THAT MARKET WIDE BLEND
19 WILL BE?

20 A. WE DON'T KNOW WHAT THE PROPOSED ORDER IS GOING TO LOOK
21 LIKE. BASED ON PROPOSAL 1, THOUGH, WHICH WAS MY FRAME OF
22 REFERENCE, THAT'S WHAT I WAS REFERRING TO.

23 Q. WELL, EVEN WITH PROPOSAL 1, WOULDN'T YOU AGREE THAT THE
24 ANALYSIS THAT'S BEEN DONE, THAT'S WHAT THE IMPACT WOULD BE IS
25 FORWARD LOOKING, AND WE DON'T REALLY KNOW EXACTLY WHAT THAT

1 FINAL NUMBER, HOW MUCH HIGHER IT WILL BE THAN THE CURRENT POOL
2 PRICE?

3 A. WELL, NONE OF US KNOWS WHAT THE FUTURE HOLDS, BUT IF
4 YOU DO THE LOOK BACK.

5 Q. SO IT IS ENTIRELY POSSIBLE THAT THE NONQUOTA BLEND
6 PRICE UNDER PROPOSAL NUMBER 1, IF IN PLACE, COULD BE HIGHER OR
7 LOWER THAN WHAT YOUR DAIRY CURRENTLY RECEIVES FOR ITS MILK, WE
8 JUST DON'T KNOW BECAUSE THERE'S A LOT OF NEW FEATURES IN THE
9 FEDERAL ORDER THAT ARE NOT IN PLACE TODAY IN THE CALIFORNIA
10 STATE ORDER?

11 A. IT'S IMPOSSIBLE TO KNOW UNTIL THESE PROCEEDINGS ARE
12 DONE AND SOME FINALITY IS PUT TO THIS.

13 Q. I AGREE. I'M NOT TRYING TO TRAP YOU, I THINK IT WAS
14 UNFAIR TO ASK YOU WHETHER YOU WOULD BE BETTER OR WORSE OFF AS
15 YOUR OWN HILLSIDE DAIRY UNDER CALIFORNIA FEDERAL ORDER, AND IT
16 WAS ASSUMED IN MY INTERPRETATION OF THE QUESTIONS AND THE
17 EXCHANGE, THAT IT WAS JUST ASSUMED THAT YOU WOULD BE WORSE OFF
18 AND THAT YOU WERE MAKING A DECISION TESTIFYING WHEN YOU
19 ACTUALLY THOUGHT YOU WOULD BE WORSE OFF, WHEREAS IT SOUNDS LIKE
20 IN THIS QUESTION AND ANSWER, THAT WE DON'T KNOW WHETHER YOU
21 WOULD BE WORSE OFF OR BETTER OFF, YOU SEE VALUE IN MOVING IN
22 THIS DIRECTION FROM A REGULATORY STANDPOINT, NOTWITHSTANDING
23 WHETHER YOU ARE WORSE OFF OR BETTER OFF, SINCE WE DON'T KNOW
24 THAT?

25 A. WELL, I CAN TELL YOU THIS, IF I WAS GOING TO BE NET

1 WORSE OFF, I'M NOT GOING TO BE IN FAVOR OF DOING IT. WHY
2 SHOULD I WANT TO CHANGE? BUT I'M HERE TODAY, BECAUSE BASED ON
3 OUR COOPERATIVES ANALYSIS OF THIS, AND THE INTRANSIGENCE OF THE
4 CDFA, THAT WE THINK THIS IS A BETTER WAY TO GO. AND IF WE
5 DIDN'T THINK THAT, I WOULDN'T BE HERE. SO THERE'S ALWAYS A
6 SUPPOSITION THAT WE COULD BE WRONG, AND THAT'S WHAT YOU ARE
7 TRYING TO SAY, I THINK.

8 Q. NO, WHAT I'M SAYING IS YOU VERY WELL COULD BE BETTER
9 OFF, AND I DON'T THINK THAT WAS FULLY CAPTURED IN THE EARLIER
10 QUESTIONS. BUT I AGREE, I THINK YOU VERY WELL COULD BE BETTER
11 OFF PARTICIPATING IN THE CALIFORNIA FEDERAL ORDER AS OPPOSED TO
12 AN UNREGULATED TRANSACTION THAT YOU CURRENTLY OPERATE IN.
13 THANK YOU VERY MUCH.

14 MR. SCHIEK: MR. OLSEN, BILL SCHIEK WITH THE DAIRY
15 INSTITUTE. I JUST WANT TO FOLLOW UP ON ONE COMMENT.

16 CROSS-EXAMINATION

17 BY MR. SCHIEK:

18 Q. I THINK I HEARD YOU SAY THE INTRANSIGENCE OF CDFA. DID
19 YOU SAY THAT?

20 A. I BELIEVE SO.

21 Q. WHAT DO YOU MEAN BY THAT?

22 A. UM, I MEAN, THERE'S SO MANY DIFFERENT THINGS THERE THAT
23 WE COULD LOOK AT, I'M JUST GOING TO LEAVE THAT STATEMENT AS IT
24 IS.

25 Q. YOU WERE AWARE THAT THERE WERE OTHER OPINIONS OTHER

1 THAN THE OPINIONS OF PRODUCERS, PUT ON THE HEARING RECORD AT
2 CDFA?

3 A. YES.

4 JUDGE CLIFTON: ARE THERE ANY OTHER QUESTIONS FOR
5 MR. OLSEN? MR. OLSEN, THANK YOU. YOU HAVE BEEN A TROOPER. I
6 APPRECIATE YOUR TESTIMONY VERY MUCH.

7 MR. OLSEN: I HOPE I DIDN'T CAUSE ANY TROUBLE.

8 JUDGE CLIFTON: NO, YOU DIDN'T CAUSE TROUBLE, AND SO FAR,
9 YOU ARE THE ONLY POINT OF VIEW FROM SOMEONE WHO CREATES MILK
10 SOMEPLACE OTHER THAN CALIFORNIA, AND THEN SHIPS TO CALIFORNIA,
11 SO WE REALLY APPRECIATE YOUR TESTIMONY.

12 MR. OLSEN: THANK YOU.

13 JUDGE CLIFTON: ALL RIGHT. MR. BESHORE, DO YOU HAVE A
14 SUGGESTION AS TO WHAT WE DO NEXT?

15 MR. BESHORE: MARVIN BESHORE. I DO HAVE A SUGGESTION. THE
16 REPRESENTATIVES OF THE CALIFORNIA DAIRY CAMPAIGN, I UNDERSTAND,
17 ARE HERE, AND ARE PREPARED TO TESTIFY. AND I THINK IF WE WOULD
18 YIELD TO THEIR TESTIMONY AT THIS TIME.

19 JUDGE CLIFTON: EXCELLENT. IF THERE'S MORE THAN ONE OF
20 YOU, WHY DON'T YOU COME FORWARD AS A GROUP, AND EACH OF YOU
21 IDENTIFY YOURSELF, AND THEN WE'LL DETERMINE, YOU CAN DETERMINE
22 WHO WILL TAKE THE WITNESS CHAIR FIRST. SO YOU CAN COME TO THE
23 PODIUM TO SAY YOUR NAME AND SPELL IT, IF THERE'S MORE THAN ONE
24 OF YOU.

25 MS. MCBRIDE: MY NAME IS LYNN MC BRIDE, L-Y-N-N-E,

1 M-C B-R-I-D-E, AND I CURRENTLY SERVE AS EXECUTIVE DIRECTOR OF
2 THE CALIFORNIA DAIRY CAMPAIGN.

3 JUDGE CLIFTON: OKAY.

4 MR. MAGNESON: MY NAME IS SCOTT MAGNESON, S-C-O-T-T,
5 M-A-G-N-E-S-O-N AND I'M ALSO ON THE BOARD OF CALIFORNIA DAIRY
6 CAMPAIGN AND AN ORGANIC DAIRY PRODUCER.

7 JUDGE CLIFTON: MR. MAGNESON, AFTER M-A-G-N WHAT'S THE NEXT
8 LETTER?

9 MR. MAGNESON: E.

10 JUDGE CLIFTON: E.

11 MR. MAGNESON: S-O-N.

12 JUDGE CLIFTON: OKAY. THANK YOU.

13 MR. CONTENTE: JOAQUIN CONTENTE, J-O-A-Q-U-I-N,
14 C-O-N-T-E-N-T-E. I ALSO SERVE ON THE CALIFORNIA DAIRY CAMPAIGN
15 BOARD, AND I'M A DAIRY FARMER FROM HANFORD, CALIFORNIA.

16 JUDGE CLIFTON: NOW, HAVE YOU DECIDED AMONG YOU ARE WHO
17 WILL TESTIFY FIRST?

18 MS. MCBRIDE: I'M PLANNING TO TESTIFY FIRST.

19 JUDGE CLIFTON: YOU MAY TAKE THE WITNESS STAND. AND
20 GENTLEMEN, YOU MAY REMAIN HERE IN FRONT, IF YOU WOULD LIKE,
21 THERE ARE TWO CHAIRS RIGHT THERE. IF YOU PREFER TO GO TO THE
22 BACK CAN AGAIN, YOU MAY.

23 MS. MCBRIDE: AND I HAVE HANDED COPIES TO STAFF, THERE'S
24 ADDITIONALS, SHOULD I --

25 JUDGE CLIFTON: YES. AND YOU CAN HAVE THE GENTLEMEN HELP

1 YOU DISTRIBUTE. I WANT ONE COPY BROUGHT TO ME, I WANT ONE COPY
2 BROUGHT TO THE COURT REPORTER, AND IF YOU HAVE ALREADY GIVEN
3 THREE TO USDA AGRICULTURAL MARKETING SERVICE, THAT'S GOOD. AND
4 THEN IF YOU CAN DISTRIBUTE THROUGHOUT THE ROOM AS FAR AS THEY
5 GO. AND WE WON'T BEGIN YOUR TESTIMONY UNTIL PEOPLE HAVE A
6 CHANCE TO HAVE A COPY. AND WHAT NUMBER WILL THIS EXHIBIT BE?

7 MS. FRISIUS: 27.

8 JUDGE CLIFTON: THANK YOU. 27. IF YOU WANT A COPY AND
9 DON'T HAVE ONE RAISE YOUR HAND. SIX. IS THERE SOMEONE WHO CAN
10 MAKE A FEW EXTRA COPIES? THANK YOU. SO YOU WILL NEED ONE TO
11 WORK FROM.

12 MS. MCBRIDE: I HAVE SOME EXTRAS. THERE'S JUST ONE
13 CORRECTION IN IT, IN THE VERSION.

14 JUDGE CLIFTON: ALL RIGHT. DON'T MAKE COPIES YET, ARE YOU
15 SAYING THIS WOULD BE BETTER TO COPY FROM?

16 MS. MCBRIDE: NO, I'M JUST SAYING THIS HAS ONE ERROR IN IT.

17 JUDGE CLIFTON: ALL RIGHT. SO GO AHEAD WITH THE COPIES,
18 THANKS.

19 DID SOMEONE ALERT MR. ENGLISH TO THE STAGE OF THE
20 PROCEEDING WE'RE IN? THANKS. RAISE YOUR RIGHT HAND, PLEASE,
21 IF YOU WOULD LIKE A COPY.

22 VERY GOOD. ALL RIGHT. I'M GOING TO SWEAR YOU IN IN A
23 SEATED POSITION. WOULD YOU RAISE YOUR RIGHT HAND, PLEASE. DO
24 YOU SOLEMNLY SWEAR OR AFFIRM UNDER PENALTY OF PERJURY THAT THE
25 EVIDENCE YOU WILL PRESENT WILL BE THE TRUTH?

1 MS. MCBRIDE: I DO.

2 JUDGE CLIFTON: PLEASE STATE AND SPELL YOUR NAME.

3 MS. MCBRIDE: LYNNE MCBRIDE, L-Y-N-N-E, M-C B-R-I-D-E.

4 JUDGE CLIFTON: AND DO YOU HAVE A COPY IN FRONT OF YOU OF
5 YOUR STATEMENT, EXHIBIT 27?

6 MS. MCBRIDE: I DO.

7 JUDGE CLIFTON: ALL RIGHT. NOW, YOU ARE WELCOME TO JUST
8 TALK TO US, YOU ARE WELCOME TO READ IT INTO THE RECORD, YOU ARE
9 WELCOME TO GIVE US SOME BACKGROUND FIRST, HOWEVER YOU WISH TO
10 PROCEED IS FINE WITH ME.

11 MS. MCBRIDE: GREAT. I THINK I'M PLANNING TO READ IT INTO
12 THE RECORD, IF THAT WORKS.

13 MY NAME IS LYNNE MCBRIDE AND I CURRENTLY SERVE AS
14 EXECUTIVE DIRECTOR OF THE CALIFORNIA DAIRY CAMPAIGN, WHICH I'LL
15 REFER TO AS CDC. CDC IS A GRASSROOTS ORGANIZATION REPRESENT
16 DAIRY FARM FAMILIES THROUGHOUT CALIFORNIA, AND WE WERE
17 ESTABLISHED IN 1992. THE TESTIMONY I WILL PRESENT TODAY IS
18 BASED ON POSITIONS ADOPTED BY THE CDC BOARD OF DIRECTORS. CDC
19 IS A MEMBER ORGANIZATION OF THE CALIFORNIA FARMERS UNION,
20 ESTABLISHED HERE IN CALIFORNIA IN 1997, WHICH IS A STATE
21 CHAPTER OF THE NATIONAL FARMERS UNION.

22 I WOULD LIKE TO BEGIN BY THANKING THE UNITED STATES
23 DEPARTMENT OF AGRICULTURE FOR HOLDING THIS HEARING TO CONSIDER
24 PROPOSALS TO ESTABLISH A FEDERAL MILK MARKETING ORDER IN
25 CALIFORNIA. THE CALIFORNIA DAIRY CAMPAIGN STRONGLY SUPPORTS

1 THE FEDERAL ORDER PROPOSAL PUT FORWARD BY THE STATE'S MAJOR
2 DAIRY COOPERATIVES, INCLUDING CALIFORNIA DAIRIES, INC., DAIRY
3 FARMERS OF AMERICA, INC., AND LAND O'LAKES, INC. SINCE OUR
4 ORGANIZATION WAS FOUNDED, WE HAVE CALLED FOR CALIFORNIA TO JOIN
5 THE FEDERAL MILK MARKETING ORDER SYSTEM TO BRING OUR PRICES AND
6 THE PROCESS FOR DETERMINING PRICES, IN LINE WITH THE FEDERAL
7 ORDER SYSTEM. THE FAILURE OF OUR STATE SYSTEM TO ALIGN PRICES
8 PAID TO DAIRY PRODUCERS IN CALIFORNIA WITH PRICES PAID IN THE
9 FEDERAL ORDER SYSTEM, HAS COST DAIRY PRODUCERS IN OUR STATE
10 MORE THAN 1.5 BILLION SINCE 2010.

11 JUDGE CLIFTON: THAT'S BILLION DOLLARS?

12 MS. MCBRIDE: CORRECT.

13 OUR ORGANIZATION FIRMLY BELIEVES THAT THE ONLY WAY TO
14 RESTORE EQUITY TO DAIRY PRODUCER PRICING IN OUR STATE IS BY
15 JOINING THE FEDERAL MILK MARKETING ORDER SYSTEM. THE FEDERAL
16 ORDER PROPOSAL PUT FORWARD BY THE COOPERATIVES WILL
17 COMPREHENSIVELY ADDRESS OUR STATE'S UNIQUE MARKETING CONDITION,
18 ALIGN DAIRY PRODUCER PRICES HERE WITH PRICES PAID IN THE
19 FEDERAL ORDER SYSTEM, RESTORE ORDERLY MARKETING CONDITIONS AND
20 SUSTAIN DAIRIES ACROSS THE STATE. WE BELIEVE THAT ECONOMIC
21 CONDITIONS WARRANT ADOPTION OF THE COOPERATIVES' FEDERAL ORDER
22 PROPOSAL.

23 ACCORDING TO THE 2015 CALIFORNIA DEPARTMENT OF FOOD AND
24 AGRICULTURE (CDFA), "DAIRY STATISTICS AND TRENDS MID-YEAR
25 REVIEW," 1434 DAIRIES REMAIN IN OPERATION IN OUR STATE, A

1 DECREASE OF MORE THAN 600 DAIRIES OVER THE LAST TEN YEARS,
2 ACCORDING TO CDFA DATA. CALIFORNIA DAIRY PRODUCER PRICES
3 ROUTINELY RANK LAST IN THE NATION, AND DAIRY PRODUCER INCOME
4 CONTINUES TO BE WELL BELOW AVERAGE PRODUCTION COSTS.
5 STATEWIDE, THE AVERAGE COST TO PRODUCE MILK NOW TOTALS \$19.12
6 PER HUNDREDWEIGHT, ACCORDING TO THE LATEST "CDFA STATEWIDE COST
7 COMPARISON SUMMARY." THE LATEST DATA FROM THE "CALIFORNIA
8 DAIRY REVIEW" INDICATED THAT THE OVERBASE PRICE TOTALED \$14.32
9 IN JULY, WELL BELOW AVERAGE PRODUCTION COSTS RESULTING IN
10 MOUNTING LOSSES FOR DAIRY PRODUCERS ACROSS THE STATE.

11 ALTHOUGH DAIRY PRODUCER PRICES DID IMPROVE IN 2014,
12 PRICES HAVE REMAINED WELL BELOW PRODUCTION COST THROUGHOUT 2015
13 AND ARE LIKELY TO REMAIN SO IN THE COMING MONTHS. IT IS
14 IMPORTANT TO RECOGNIZE THAT ALTHOUGH PRICES DID IMPROVE LAST
15 YEAR, HIGHER PRICES DID NOT LAST LONG ENOUGH TO MAKE UP FOR THE
16 TREMENDOUS LOSSES THAT DAIRY PRODUCERS HAVE INCURRED IN RECENT
17 YEARS.

18 THROUGHOUT 2015, DAIRY PRODUCER INCOME HAS FAILED TO
19 COVER AVERAGE PRODUCTION COST. COMBINED WITH THE GREAT
20 UNCERTAINTY ABOUT WATER AND FEED AVAILABILITY TO THE ONGOING
21 HISTORIC DROUGHT, DAIRY FARMERS IN CALIFORNIA TODAY FACE
22 UNPRECEDENTED ECONOMIC CHALLENGES.

23 DAIRY FARMERS ARE PRICE TAKERS, NOT PRICE SETTERS, AND
24 THEY ARE NOT ABLE TO PASS ON ADDITIONAL COSTS, WHICH MAKES
25 EQUITABLE PRICING REGULATIONS ALL THE MORE IMPORTANT IN OUR

1 STATE. DAIRY PRODUCERS IN CALIFORNIA SIMPLY CANNOT AFFORD TO
2 BE PAID SOME OF THE LOWEST MAILBOX PRICES IN THE NATION, DUE TO
3 THE FAILURE OF OUR STATE ORDER TO PAY DAIRY PRODUCERS PRICES
4 THAT ARE REASONABLE COMPARED TO OTHER STATES. JOINING THE
5 FEDERAL ORDER WILL END THIS LONGSTANDING INEQUITY AND WE
6 SUPPORT THE COOPERATIVES FEDERAL ORDER PROPOSAL TO ESTABLISH A
7 FEDERAL ORDER IN OUR STATE.

8 WE CONTINUE TO SEE A DECLINE IN THE NUMBER OF DAIRIES.
9 WE BELIEVE A SIGNIFICANT REASON FOR THE DECLINE IN THE NUMBER
10 OF DAIRIES IN CALIFORNIA IS LARGELY DUE TO THE FACT THAT DAIRY
11 PRODUCERS IN OUR STATE ARE PAID SIGNIFICANTLY LESS THAN DAIRY
12 PRODUCERS IN THE FEDERAL MILK MARKETING ORDER SYSTEM. A NUMBER
13 OF OUR DAIRY PRODUCER MEMBERS HAVE CLOSED THEIR DAIRIES IN
14 RECENT YEARS AND SOME HAVE CHOSEN TO MOVE THEIR DAIRY
15 OPERATIONS TO OTHER STATES.

16 IT IS IMPORTANT TO RECOGNIZE THE FACTORS THAT
17 CONTRIBUTED TO THE DECISION BY THESE DAIRY PRODUCERS TO CLOSE
18 THEIR DAIRIES, AND HOW IT RELATES TO THE FAILURE OF OUR
19 CALIFORNIA STATE ORDER, TO ESTABLISH MINIMUM PRICING FORMULAS
20 THAT ARE EQUITABLE COMPARED TO PRICING FORMULAS IN THE FEDERAL
21 ORDER SYSTEM.

22 WE HAVE SEEN MANY OF OUR DAIRY PRODUCER MEMBERS CLOSE
23 DOWN THEIR OPERATIONS BECAUSE THEY DID NOT SEE A FUTURE FOR
24 THEMSELVES HERE IN CALIFORNIA, LARGELY DUE TO THE FACT THAT
25 DAIRY PRODUCER PRICES ARE SOME OF THE LOWEST IN THE NATION.

1 DAIRY OPERATIONS OF VARIOUS SIZES HAVE CLOSED OR MOVED TO OTHER
2 STATES, BECAUSE IT JUST DIDN'T MAKE SENSE TO REMAIN IN
3 OPERATION HERE, GIVEN THE ECONOMIC HARDSHIP THEY ENDURED IN OUR
4 STATE. WE CONTINUE TO SEE ADDITIONAL COWS SOLD BECAUSE THE
5 ECONOMIC PRESSURE TO STAY IN BUSINESS IS SIMPLY TOO GREAT. ONE
6 LONGSTANDING MEMBER OF OUR BOARD OF DIRECTORS UNDERSTOOD THE
7 IMPORTANCE OF CALIFORNIA JOINING THE FEDERAL ORDER SYSTEM, BUT
8 HE SIMPLY COULDN'T AFFORD TO WAIT FOR CONDITIONS TO IMPROVE.
9 HE MOVED HIS DAIRY OPERATION TO A FEDERAL ORDER STATE AND IS
10 NOW BEING PAID CONSIDERABLY HIGHER PRICES FOR THE MILK HE
11 PRODUCES.

12 WE SIMPLY WOULD NOT CONTINUE TO SEE SO MANY OF THESE
13 DAIRIES GO OUT OF BUSINESS IF OUR CALIFORNIA PRICING SYSTEM
14 HAD PAID DAIRY PRODUCERS AN EQUITABLE PRICE. IT IS WELL
15 DOCUMENTED THAT MILK PRODUCTION HAS BEEN ON THE DECLINE EACH
16 MONTH OF THIS YEAR AND THIS TREND IS LIKELY TO CONTINUE.

17 MILK PRODUCTION FIGURES IN JULY CONFIRMED THAT MILK
18 PRODUCTION DECREASED BY 3.3 PERCENT DURING THAT MONTH,
19 ACCORDING TO CDFA'S "CALIFORNIA DAIRY REVIEW." MANY CONTINUE
20 TO QUESTION THE FUTURE FOR DAIRIES IN CALIFORNIA, UNLESS
21 CONDITIONS IMPROVE, AND ADOPTION OF THE COOPERATIVES PROPOSAL
22 TO ESTABLISH A FEDERAL MILK MARKETING ORDER WOULD IMPROVE
23 CONDITIONS HERE CONSIDERABLY.

24 WE BELIEVE THE CALIFORNIA STATE ORDER FAILS TO PAY
25 DAIRY PRODUCERS PRICES THAT ARE EQUITABLE COMPARED TO PRICES

1 PAID IN THE FEDERAL ORDER SYSTEM. WE HAVE LONG HELD THAT THE
2 CALIFORNIA STATE ORDER DOES NOT GIVE ENOUGH CONSIDERATION TO
3 DAIRY PRODUCERS. WE HAVE PARTICIPATED IN NUMEROUS CALIFORNIA
4 DEPARTMENT OF FOOD AND AGRICULTURE HEARINGS TO CONSIDER CHANGES
5 TO THE PRICING FORMULA. HOWEVER, DUE TO THE FACT THAT THE
6 CALIFORNIA SYSTEM GIVES THE CDFA SECRETARY BROAD AUTHORITY TO
7 DETERMINE DAIRY PRICING POLICIES, DAIRY PRODUCER PRICES IN OUR
8 STATE ARE MISALIGNED WITH THE FEDERAL ORDER SYSTEM.

9 THE DISPARITY BETWEEN OUR 4B CHEESE PRICE AND THE
10 EQUIVALENT FEDERAL ORDER CLASS III PRICE IS A SIGNIFICANT
11 REASON FOR THE MISALIGNMENT IN PRICING, CONSIDERING THAT FROM
12 JANUARY THROUGH JUNE OF THIS YEAR, CHEESE PRODUCTION TOTALED,
13 45.5 PERCENT OF ALL MILK POOLED IN OUR STATE, ACCORDING TO THE
14 CDFA DATA. THE AVERAGE DIFFERENCE BETWEEN THE CALIFORNIA 4B
15 AND THE EQUIVALENT FEDERAL ORDER CLASS III PRICE, TOTALED \$1.89
16 PER HUNDREDWEIGHT ON AVERAGE FROM AUGUST 2012 TO TODAY.

17 WE REPEATEDLY TESTIFIED DURING CALIFORNIA DEPARTMENT OF
18 FOOD AND AGRICULTURE HEARINGS TO CONSIDER CHANGES TO THE
19 PRICING FORMULAS. DURING THE LAST HEARING, CDFA SECRETARY
20 KAREN ROSS, GRANTED A ONE-YEAR TEMPORARY INCREASE IN THE 4B
21 FORMULA THAT BROUGHT THE 4B PRICE CLOSER TO THE CLASS III
22 PRICE. WE WELCOMED THE PRICE INCREASE, WHICH WE CONSIDERED
23 LONG OVERDUE, BUT IT IS IMPORTANT TO RECOGNIZE THAT SECRETARY
24 ROSS DID NOT GRANT THE INCREASE TO BRING OUR DAIRY PRODUCER
25 PRICES IN CLOSER ALIGNMENT WITH FEDERAL MILK MARKETING ORDER

1 PRICES, SHE GRANTED THE TEMPORARY INCREASE TO PROVIDE
2 SHORT-TERM RELIEF TO DIARY PRODUCERS AND ADDRESS THE CHALLENGES
3 CAUSED BY THE STATEWIDE DROUGHT.

4 THE LATEST COST OF PRODUCTION DATA AVAILABLE FROM CDFA
5 IS THE FIRST QUARTER OF 2015, WHICH REPORTS THE COST TO PRODUCE
6 MILK IN THE STATE TOTALED \$19.12 PER HUNDREDWEIGHT. AGAIN, THE
7 CALIFORNIA MAILBOX PRICE FOR MAY WAS \$14.72 PER HUNDREDWEIGHT,
8 INDICATING THAT INCOME THAT MONTH, WAS NEARLY 25 PERCENT BELOW
9 AVERAGE PRODUCTION COST. SINCE THEN, PRICES PAID TO PRODUCERS
10 HAVE CONTINUED TO REMAIN SUBSTANTIALLY BELOW PRODUCTION COST.

11 THE FACT THAT OUR STATE SYSTEM UNDERPAYS DAIRY
12 PRODUCERS COMPARED TO OTHER STATES, HAS CAUSED CALIFORNIA DAIRY
13 FARMERS TO BE PAID ON AVERAGE MORE THAN A DOLLAR PER
14 HUNDREDWEIGHT LESS THAN DAIRY FARMERS IN THE FEDERAL MILK
15 MARKETING ORDER SYSTEM, LEADING TO MORE THAN \$1.2 MILLION LOSS
16 IN THE INCOME FOR THE AVERAGE SIZED DAIRY SINCE JANUARY 2011.
17 HAD OUR STATE SYSTEM PAID CALIFORNIA DAIRY PRODUCER PRICES THAT
18 WERE IN LINE WITH PRICES PAID IN OTHER STATES, THE LOSSES DAIRY
19 SUFFERED WOULD NOT HAVE BEEN AS GREAT AND MORE CALIFORNIA
20 DAIRIES WOULD BE IN OPERATION TODAY. THE CLOSURE OF DAIRIES
21 CAUSES IRREPARABLE HARM TO THE LOCAL AND REGIONAL ECONOMY AND
22 THE SOCIAL FABRIC OF THE AFFECTED COMMUNITIES, ESPECIALLY GIVEN
23 THAT MANY OF THESE DAIRIES HAVE BEEN IN OPERATION FOR
24 GENERATIONS.

25 WE, ALONG WITH OTHER DAIRY PRODUCER ORGANIZATIONS, HAVE

1 CALLED FOR AN END TO THIS PRICE DISPARITY. HOWEVER, UP UNTIL
2 NOW, THE CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE HAS
3 FAILED TO RESTORE EQUITY TO OUR DAIRY PRICING SYSTEM. JOINING
4 THE FEDERAL ORDER THROUGH THE ADOPTION OF THE COOPERATIVES
5 FEDERAL ORDER PROPOSAL, WE SEE IS THE ONLY VIABLE WAY TO
6 RESTORE EQUITY TO OUR DAIRY PRICING SYSTEM.

7 DESPITE THE CHALLENGES FACED BY CALIFORNIA DAIRY
8 PRODUCERS, CALIFORNIA CONTINUES TO BE THE NATION'S LEADING MILK
9 PRODUCING STATE, YET DAIRY PRODUCERS ARE NOT ABLE TO FIND
10 MARKETS IF THEY WANT TO CHANGE TO A NEW BUYER. DUE TO THE
11 CONSOLIDATION AND CONCENTRATION THAT EXISTS AND THE LACK OF
12 COMPETITION IN THE MARKETPLACE, THE MINIMUM PRICES ARE MORE
13 CRITICAL THAN IN OTHER PARTS OF THE COUNTRY WHERE MORE BUYERS
14 OF MILK EXIST. MINIMUM PRICES ARE MORE IMPORTANT THAN IN ANY
15 OTHER TIME IN OUR STATE'S HISTORY BECAUSE OF THE NUMBER OF
16 DAIRIES THAT HAVE EXITED AND THOSE THAT ARE LIKELY TO EXIT
17 UNLESS OUR STATE PRICES ARE BROUGHT IN ALIGN WITH PRICES PAID
18 IN OTHER STATES.

19 THE UNPRECEDENTED STATEWIDE DROUGHT CONTINUES TO PUT
20 ADDITIONAL STRESS ON CALIFORNIA DAIRY PRODUCERS, DUE TO A
21 DECREASE IN WATER AVAILABILITY THAT IS DECREASING THE ACREAGE
22 PLANTED FOR FORAGE CROPS. A CALIFORNIA MILK ADVISORY BOARD
23 REPORT ON THE DAIRY INDUSTRY STATES, "THE ECONOMIC HEALTH OF
24 THE CALIFORNIA DAIRY INDUSTRY DEPENDS CRUCIALLY ON A HEALTHY
25 LOCAL FORAGE INDUSTRY TO SUPPLY SILAGE, HAY AND OTHER FORAGES

1 THAT ARE TOO BULKY TO ECONOMICALLY HAUL LONG DISTANCES." IT
2 GOES ON TO EXPLAIN THAT CALIFORNIA DAIRY -- "CALIFORNIA DAIRY
3 FARMS USE MAINLY CALIFORNIA-PRODUCED FORAGE FEEDS AND GRAINS
4 AND HIGH-PROTEIN FEEDS SHIPPED INTO THE STATE FROM ELSEWHERE."
5 DAIRY PRODUCERS IN OUR STATE ARE GOING TO CONTINUE BE PAYING
6 FOR FORAGES THIS YEAR AND YEARS TO COME, MAKING IT ALL THE MORE
7 CRITICAL THAT MINIMUM PRICES IN OUR STATE ARE COMPARABLE TO
8 OTHER STATES.

9 IN ADDITION, THE NEW DAIRY MARGIN INSURANCE PROGRAM
10 ESTABLISHED IN THE LAST FARM BILL, IS BASED ON THE "ALL MILK"
11 PRICE, WHICH IS SIGNIFICANTLY HIGHER THAN A CALIFORNIA MAILBOX
12 PRICE. DURING THE SIGN UP PERIOD FOR THE DAIRY MARGIN
13 PROTECTION PROGRAM LAST FALL, INFORMATION CIRCULATED BY UC
14 DAVIS ESTIMATED THAT THE CALIFORNIA MAILBOX PRICE WAS
15 APPROACHING \$2.00 A HUNDREDWEIGHT LOWER THAN THE "ALL MILK"
16 PRICE USED IN THE NEW PROGRAM. NOW, UNDER THE NEW FARM BILL,
17 DAIRY PRODUCERS IN CALIFORNIA ARE AT A GREATER DISADVANTAGE DUE
18 TO THE FACT THAT PRICES IN OUR STATE ARE SIGNIFICANTLY BELOW
19 PRICES PAID IN OTHER STATES, RESULTING IN FAR LESS OF AN
20 EFFECTIVE SAFETY NET FOR DAIRY PRODUCERS HERE WHEN MARGINS
21 DECLINE. ALSO, THE FACT THAT DAIRY PRODUCERS IN CALIFORNIA ARE
22 PAID SIGNIFICANTLY BELOW PRICES IN THE REST OF THE COUNTRY,
23 MAKES IT MORE DIFFICULT FOR THEM TO PARTICIPATE IN RISK
24 MANAGEMENT PROGRAMS THAT DAIRY FARMERS IN OTHER STATES EMPLOY.

25 DAIRY OPERATIONS CANNOT CONTINUE TO SUSTAIN CHRONIC

1 LOSSES WHILE THERE IS CONSIDERABLE PROFITABILITY EXPERIENCED
2 FURTHER UP THE FOOD CHAIN. MINIMUM PRICES ARE PUT IN PLACE TO
3 ENSURE THAT DAIRY FARMERS ARE ABLE TO SHARE IN SOME MINIMUM
4 LEVEL OF PROFITABILITY. JOINING THE FEDERAL ORDER SYSTEM WILL
5 ESTABLISH EQUITABLE MINIMUM PRICES, IMPROVE THE OUTLOOK FOR
6 DAIRIES ACROSS THE STATE, AND ENABLE THE NEXT GENERATION OF
7 DAIRY PRODUCERS TO HAVE A BRIGHTER FUTURE THAN THE ONE THAT
8 EXISTS TODAY.

9 I JUST WANT TO CONCLUDE BY STATING THAT THE CALIFORNIA
10 DAIRY CAMPAIGN STRONGLY SUPPORTS THE COOPERATIVES PROPOSAL THAT
11 THEY HAVE PUT FORWARD, BECAUSE WE THINK EFFECTIVELY ADDRESSES
12 KEY ISSUES IMPORTANT TO THE DAIRY PRODUCES WE REPRESENT. THE
13 MAJOR ISSUES THAT WE CONSIDER PARAMOUNT TO A SUCCESSFUL FEDERAL
14 ORDER INCLUDE: END-PRODUCT PRICING FORMULAS CURRENTLY USED IN
15 OTHER FEDERAL ORDERS, THE CONTINUATION OF THE STATE QUOTA
16 SYSTEM, EFFECTIVE MILK POOLING REGULATION, SIMILAR TREATMENT OF
17 OUT-OF-STATE MILK, AND PRODUCER-HANDLER PROVISIONS, AS UNDER
18 OTHER FEDERAL ORDERS, FORTIFICATION STANDARDS, AND OTHER
19 ISSUES.

20 OUR ORGANIZATION STRONGLY BELIEVES THAT DAIRY PRODUCERS
21 SHOULD BE PAID UNIFORM PRICES FOR MANUFACTURING MILK, AND THE
22 COOPERATIVES PROPOSAL WOULD ENSURE THIS PRICING STANDARD. OUR
23 DAIRY PRODUCER MEMBERS SUPPORT THE CONTINUATION OF THE STATE
24 QUOTA PROGRAM, AND THE COOPERATIVES PROPOSAL WOULD ACHIEVE THIS
25 IMPORTANT GOAL AND ENSURE THE INVESTMENTS MADE BY DAIRY

1 PRODUCERS IN THE QUOTA PROGRAM REMAIN INTACT. WE STRONGLY
2 SUPPORT A PASSAGE OF THE CALIFORNIA FEDERAL MILK MARKETING
3 ORDER ACT TO ENABLE CALIFORNIA TO RETAIN ITS QUOTA PROGRAM
4 UNDER THE FEDERAL ORDER SYSTEM. THE PROPOSAL PUT FORWARD BY
5 THE COOPERATIVES WOULD MAKE CERTAIN THAT THE QUOTA PROGRAM
6 WOULD CONTINUE TO FUNCTION AS IT HAS, AND WILL BE ADMINISTERED
7 BY THE CALIFORNIA DEPARTMENT OF FOOD AND AGRICULTURE. GIVEN
8 THE SIGNIFICANT VALUE OF THE QUOTA PROGRAM, THE INVESTMENTS
9 THAT DAIRY PRODUCERS HAVE MADE IN THIS PROGRAM, WE BELIEVE THAT
10 IT'S CRITICAL THAT IT CONTINUE UNDER THE FEDERAL ORDER SYSTEM,
11 AND THE COOPERATIVES PROPOSAL WILL ENSURE THE VALUE OF THE
12 QUOTA PROGRAM IS MAINTAINED.

13 ONE KEY CHARACTERISTIC OF THE CALIFORNIA MARKET IS THE
14 AMOUNT OF MANUFACTURED MILK PRODUCED IN CALIFORNIA. THE
15 POOLING PROVISIONS IN THE COOPERATIVES PROPOSAL ARE ESSENTIAL
16 TO ESTABLISH AND MAINTAIN ORDERLY MARKETING CONDITIONS IN A
17 CALIFORNIA FEDERAL MILK MARKETING ORDER. WE CONSIDER THE
18 FEDERAL ORDER PROPOSAL PUT FORWARD BY THE COOPERATIVES TO
19 EFFECTIVELY ADDRESS THE DISTINCT MILK UTILIZATION IN THE
20 CALIFORNIA MILK MARKET, WHILE AT THE SAME TIME INTEGRATING THE
21 CALIFORNIA FEDERAL ORDER WITH THE FEDERAL MILK MARKETING ORDER
22 SYSTEM AS A WHOLE.

23 WE SUPPORT THE PROVISIONS IN THE COOPERATIVES PROPOSAL
24 THAT WILL ADOPT A FEDERAL MILK MARKETING ORDER DEFINITIONS AND
25 REGULATIONS FOR PRODUCER-HANDLERS; SIMILAR TREATMENT OF

1 OUT-OF-STATE MILK AS UNDER FEDERAL ORDERS; ALLOWANCES FOR FLUID
2 MILK FORTIFICATION, AMONG OTHER ASPECTS OF THEIR PROPOSAL.

3 IN CONCLUSION, FOR FAR TOO LONG, CALIFORNIA DAIRY
4 PRODUCERS HAVE HAD TO ENDURE DISORDERLY MARKETING CONDITIONS
5 DUE TO THE FACT THAT PRICES PAID TO DAIRY PRODUCERS IN OUR
6 STATE, WERE NOT EQUITABLE COMPARED TO PRICES PAID IN THE
7 FEDERAL ORDER SYSTEM. WE URGE THE ADOPTION OF THE COOPERATIVES
8 ORDER PROPOSAL, BECAUSE IT WOULD ESTABLISH ORDERLY MARKETING
9 CONDITIONS FOR CALIFORNIA DAIRY PRODUCER.

10 WE THANK THE UNITED STATES DEPARTMENT OF AGRICULTURE
11 FOR THE OPPORTUNITY TO PRESENT OUR TESTIMONY TODAY.

12 JUDGE CLIFTON: MS. MCBRIDE, DO YOU WISH TO ADD ANYTHING
13 BEFORE I INVITE QUESTIONS?

14 MS. MCBRIDE: NOT AT THIS POINT.

15 JUDGE CLIFTON: ALL RIGHT. THEN, WHO WILL BE THE FIRST TO
16 QUESTION MS. MCBRIDE?

17 MR. BESHORE: MARVIN BESHORE.

18 DIRECT EXAMINATION

19 BY MR. BESHORE:

20 Q. GOOD AFTERNOON, MS. MCBRIDE. THANK YOU FOR YOUR
21 TESTIMONY TODAY, FOR COMING HERE, AND YOUR SUPPORT OF THE
22 COOPERATIVES PROPOSAL. JUST A COUPLE OF QUESTIONS ON YOUR
23 STATEMENT.

24 ON THE FIRST PAGE YOU INDICATE, THIRD FULL PARAGRAPH,
25 SINCE YOUR ORGANIZATION WAS FOUNDED, YOU HAVE CALLED FOR

1 CALIFORNIA TO JOIN THE FEDERAL MILK MARKETING ORDER SYSTEM. I
2 MAY HAVE MISSED IT, BUT WHEN WAS THE CALIFORNIA DAIRY CAMPAIGN
3 FOUNDED?

4 A. IN 1992.

5 Q. OKAY. AND YOU HAVE ADVOCATED FOR THIS HEARING TODAY
6 SINCE THAT TIME, THEN, YOUR ORGANIZATION HAS?

7 A. CORRECT.

8 Q. IS THAT CORRECT?

9 A. AND MANY IN THE ROOM HAVE BEEN CALLING FOR THIS FOR
10 DECADES.

11 Q. NOT JUST THE CALIFORNIA DAIRY CAMPAIGN, BUT OTHER FOLKS
12 AS WELL?

13 A. SOME OF OUR MEMBERS HERE AS WELL, WHO ARE PRESENT.

14 Q. YES. YES. THANK YOU. OKAY. ON PAGE 3 YOU REFER, IN
15 THE SECOND TO THE LAST PARAGRAPH AT THE BOTTOM, TO COST OF
16 PRODUCTION DATA IN THE FIRST QUARTER OF 2015. COST PRODUCTION
17 DATA AVAILABLE FROM CDFA. I THINK THIS MIGHT BE THE FIRST TIME
18 THAT DATA SERIES HAS BEEN TALKED ABOUT IN THIS HEARING.

19 CAN YOU CAN YOU TELL US A LITTLE BIT ABOUT WHAT YOU
20 KNOW ABOUT HOW THAT DATA IS PREPARED AND IS THAT PUBLISHED BY
21 CDFA?

22 A. YES, IT IS. AND WE HAVE A WITNESS, SCOTT MAGNESON, WHO
23 WILL BE FOLLOWING ME, WHO HAS GREAT EXPERTISE IN THIS REPORT,
24 BECAUSE EACH WEEK WE TRACK THIS NUMBER FOR OUR MEMBERS SO THAT
25 THEY UNDERSTAND WHAT THE AVERAGE COST DAIRY PRODUCERS ACROSS

1 THE STATE ARE INCURRING TO PRODUCE MILK IN THE STATE. AND THE
2 DEPARTMENT OF FOOD AND AGRICULTURE IS CHARGED WITH GOING OUT
3 AND SURVEYING DAIRY PRODUCERS THROUGHOUT THE STATE OF
4 CALIFORNIA TO DETERMINE THE PRICES, THE COST THAT THEY ARE
5 INCURRING FOR PRODUCING MILK THROUGHOUT CALIFORNIA. SO WE FIND
6 THOSE NUMBERS TO BE VERY MEANINGFUL AS A GAUGE TO DETERMINE THE
7 HEALTH OF THE CALIFORNIA DAIRY INDUSTRY AT ANY GIVEN TIME, AND
8 WE FIND IT THROUGHOUT 2015 TO BE VERY CONCERNING WHEN YOU
9 COMPARE THIS COST OF PRODUCTION FIGURE, YOU KNOW, OVER \$19 PER
10 HUNDREDWEIGHT, AND THEN THE OTHER, BE IT THE MAILBOX PRICES AS
11 I MENTIONED HERE, \$14.72 HUNDREDWEIGHT, REALLY GIVES AN
12 INDICATION OF THE FACT THAT DAIRY PRODUCERS IN OUR STATE ARE
13 STRUGGLING SIGNIFICANTLY.

14 Q. SO THAT DATA THAT HAVE -- WE'LL AWAIT MR. MAGNESON'S
15 FURTHER DISCUSSION, BUT IF I UNDERSTAND YOU CORRECTLY, THAT
16 DATA IS COLLECTED, AND HAS BEEN COLLECTED SYSTEMATICALLY, FOR
17 YEARS BY CDFA?

18 A. YES.

19 Q. AND PUBLISHED? OKAY.

20 A. AND EACH DAIRY -- WE HAVE A NUMBER OF DAIRY PRODUCERS
21 WHO PARTICIPATE IN THAT COST SURVEY AND THEY ARE VERY PROUD TO
22 DO THAT, BECAUSE THEY THINK THAT INFORMATION IS REALLY
23 IMPORTANT TO GET OUT THERE ABOUT THE COST THAT THEY'RE
24 INCURRING TO PRODUCE HIGH QUALITY MILK THAT THEY PRODUCE AT
25 THEIR OPERATIONS.

1 Q. THANK YOU. THEN JUST ONE OTHER QUESTION. ON THE FINAL
2 PAGE, IT MAYBE OTHER PAGES, YOU REFER TO THE IMPORTANCE OF THE
3 QUOTA PROGRAM TO CALIFORNIA DAIRY PRODUCERS. CAN YOU JUST
4 ELABORATE ON THAT OR MAYBE THE PRODUCERS CAN WHEN THEY TESTIFY
5 A LITTLE BIT. I MEAN, IS THE VALUE OF QUOTA, TO YOUR
6 KNOWLEDGE, A SIGNIFICANT ASSET ON THE BALANCE SHEETS OF MANY
7 DAIRY FARMERS IN CALIFORNIA?

8 A. YES. IT CERTAINLY IS DEFINITELY AN IMPORTANT ASSET FOR
9 DAIRY PRODUCERS. AND ALL ALONG, AS WE HAVE TALKED ABOUT
10 JOINING THE FEDERAL MILK MARKETING ORDER SYSTEM, WE THINK THE
11 CONTINUATION OF THE STATE QUOTA PROGRAM IS CRITICAL BECAUSE
12 AGAIN, BECAUSE OF THOSE INVESTMENTS THAT HAVE BEEN MADE BY OUR
13 DAIRY PRODUCER MEMBERS OVER MANY YEARS IN OUR STATE QUOTA
14 SYSTEM.

15 Q. EARLIER IN THIS HEARING AN ECONOMIST FROM THE USDA AMS
16 IN WASHINGTON TESTIFIED ABOUT THE ECONOMIC IMPACT ANALYSIS
17 WHICH USDA PERFORMED ON THE PROPOSALS IN THE HEARING. AND SHE,
18 IN THAT ECONOMIC IMPACT ANALYSIS, THEY PROJECTED THAT AFTER A,
19 AFTER THREE DECISION POINTS, PERHAPS FOUR OR FIVE MONTHS INTO A
20 FEDERAL ORDER UNDER DAIRY INSTITUTE'S PROPOSAL, THE VALUE OF
21 QUOTA WOULD ESSENTIALLY, QUOTA PROGRAM, WOULD ESSENTIALLY END.
22 I DON'T THINK YOU WERE HERE DURING THAT TESTIMONY, BUT IT'S
23 WRITTEN UP.

24 A. I WAS LISTENING.

25 Q. OH, GOOD. GOOD. SO DO YOU HAVE, FROM, YOU KNOW, YOUR

1 KNOWLEDGE OF DAIRY PRODUCERS IN CALIFORNIA, DO YOU HAVE ANY
2 THOUGHTS ON WHAT THAT WOULD MEAN TO DAIRY PRODUCERS IN
3 CALIFORNIA IF, IN FACT, THE DAIRY INSTITUTE PROPOSAL WAS
4 ADOPTED AND A QUOTA PROGRAM HAD ITS DEMISE IN THAT FASHION?

5 A. YES. YOU KNOW, IT WOULD CERTAINLY BE CONCERNING TO OUR
6 MEMBERS WHO HAVE INVESTED IN QUOTA OVER THE YEARS, KNOWING THAT
7 THE PROPOSAL THAT THEY ARE PUTTING FORWARD WOULD LEAD TO THE,
8 YOU KNOW, CERTAIN ELIMINATION OF THAT IMPORTANT PROGRAM. SO I
9 WOULD SEE THAT AS, YOU KNOW, BEING A MAJOR, ANOTHER MAJOR
10 REASON WHY WE PROPOSE THE DAIRY INSTITUTE'S PROPOSAL THAT THEY
11 PUT FORWARD.

12 Q. THANK YOU VERY MUCH. THANK YOU FOR YOUR TESTIMONY.

13 JUDGE CLIFTON: WHO NEXT WILL ASK QUESTIONS OF MS. MCBRIDE?
14 YOU ARE THE LUCKIEST WITNESS TODAY. THANK YOU SO MUCH. YOU
15 MAY STEP DOWN.

16 AND THE NEXT WITNESS MAY COME FORWARD.

17 MR. BESHORE: HAS EXHIBIT 27 BEEN RECEIVED.

18 JUDGE CLIFTON: THANK YOU, MR. BESHORE, NO, IT HAS NOT. IS
19 THERE ANY OBJECTION OF THE ADMISSION INTO EVIDENCE OF EXHIBIT
20 NUMBER 27? THERE IS NONE. EXHIBIT 27 IS ADMITTED INTO
21 EVIDENCE.

22 (THEREAFTER, EXHIBIT 27 WAS
23 RECEIVED INTO EVIDENCE.)

24 JUDGE CLIFTON: I WOULD LIKE TO MARK THIS BEFORE I MAKE THE
25 COPIES. SHALL I MARK MR. MAGNESON'S STATEMENT AS EXHIBIT 28?

1 I'M MARKING IT AS EXHIBIT 28, AND WOULD A VOLUNTEER COME
2 FORWARD AND MAKE COPIES FOR ME?

3 (THEREAFTER, EXHIBIT 28 WAS MARKED
4 FOR IDENTIFICATION.)

5 JUDGE CLIFTON: ALL RIGHT. AND WE'LL TAKE JUST A MINUTE.
6 IF YOU HAVE A COPY, YOU ARE WELCOME TO BEGIN TO READ IT. WE'LL
7 WAIT JUST A MINUTE UNTIL EVERYONE HAS THOSE BEFORE WE GO
8 FORWARD WITH TESTIMONY.

9 ALL RIGHT. I THANK OUR VOLUNTEERS FOR HELPING MAKE THE
10 COPIES. IS THERE ANYONE ELSE WHO NEEDS ONE? IF YOU WOULD
11 RAISE YOUR RIGHT HAND IF YOU NEED A COPY. IT APPEARS WE HAVE
12 GOTTEN THEM ALL DISTRIBUTED. IT IS NOW ABOUT 3:29.

13 MR. MAGNESON, I'M GOING TO SWEAR YOU IN IN A SEATED
14 POSITION. WOULD YOU RIGHT HAND, PLEASE. DO YOU SOLEMNLY SWEAR
15 OR AFFIRM THAT THE EVIDENCE YOU WILL PRESENT WILL BE THE TRUTH?

16 MR. MAGNESON: I DO.

17 JUDGE CLIFTON: THANK YOU. PLEASE BEGIN BY STATING AND
18 SPELLING YOUR NAME.

19 MR. MAGNESON: SCOTT MAGNESON, S-C-O-T-T, M-A-G-N-E-S-O-N.

20 JUDGE CLIFTON: AND YOU'RE WELCOME TO GIVE US A LITTLE
21 BACKGROUND BEFORE YOU GET INTO THE STATEMENT IF YOU WOULD LIKE,
22 INTRODUCE YOURSELF BY TELLING US WHAT YOU DO AND HOW YOU GOT
23 INTO THIS BUSINESS, HOWEVER YOU WOULD LIKE TO PROCEED.

24 MR. MAGNESON: I THINK I'LL JUST READ IT.

25 MY NAME IS SCOTT MAGNESON AND I'M A DAIRY PRODUCER FROM

1 BALLICO, CALIFORNIA, WHERE I OWN AND OPERATE A 650 COW ORGANIC
2 DAIRY OPERATION. I CURRENTLY SERVE ON THE BOARD OF CALIFORNIA
3 DAIRY CAMPAIGN AND THE CALIFORNIA FARMERS UNION. THE
4 CALIFORNIA DAIRY CAMPAIGN IS A GRASSROOTS ORGANIZATION OF DAIRY
5 PRODUCERS AND A MEMBER ORGANIZATION IN CALIFORNIA FARMERS
6 UNION, A STATE CHAPTER OF THE NATIONAL FARMERS UNION.

7 I GREATLY APPRECIATE THE OPPORTUNITY TO TESTIFY HERE
8 TODAY IN STRONG SUPPORT OF THE FEDERAL ORDER PROPOSAL PUT
9 FORWARD BY THE STATE'S COOPERATIVES, INCLUDING CALIFORNIA
10 DAIRIES, DAIRY FARMERS OF AMERICA, AND LAND O'LAKES. IT IS MY
11 HOPE THIS PROPOSAL WILL PROVIDE DAIRY PRODUCERS IN OUR STATE
12 MILK PRICES THAT ARE IN LINE WITH THOSE PAID TO DAIRY PRODUCERS
13 THROUGHOUT THE FEDERAL ORDER SYSTEM. ONE IMPORTANT ASPECT OF
14 THEIR PROPOSAL IS THAT IT WILL MAINTAIN OUR STATE QUOTA SYSTEM,
15 WHICH DAIRY PRODUCERS HAVE INVESTED IN OVER MANY YEARS.

16 MANY DAIRIES HAVE GONE OUT OF OPERATION IN CALIFORNIA
17 DUE TO THE FAILURE OF OUR STATE SYSTEM TO CALCULATE PRICES THAT
18 ARE FAIR COMPARED TO OTHER STATES. BASED ON CDFA'S 2015 FIRST
19 QUARTER COST OF PRODUCTION FEEDBACK SHEETS FOR THE NORTH
20 VALLEY, THERE ARE 90 PERCENT OF THE DAIRIES ON THE STUDY HAVE A
21 NEGATIVE NET INCOME. CALIFORNIA DISCOUNT HAS COST THE
22 AVERAGE-SIZE DAIRY PRODUCER IN OUR STATE MORE THAN \$1.2 MILLION
23 JUST SINCE JANUARY OF 2011. THE GAP BETWEEN OUR PRICES AND THE
24 FEDERAL ORDER PRICES HAVE BEEN A SIGNIFICANT REASON FOR THE
25 CLOSURE OF MANY DAIRIES ACROSS OUR STATE. MANY OF THE DAIRY

1 PRODUCERS WHO REMAIN, QUESTION WHETHER THEY WILL CONTINUE IN
2 PART BECAUSE OF THE PRICE DISPARITY. PRICE DISPARITY HAS ALSO
3 CREATED AN UNFAIR HARDSHIP WHEN IT COMES TO THE NEWLY ADOPTED
4 SAFETY NET OR THE MARGIN PROTECTION PROGRAM. PRODUCERS IN
5 CALIFORNIA, BECAUSE OF OUR LOWER PRICES, MUST PURCHASE A COSTLY
6 HIGHER LEVEL OF COVERAGE, IN ORDER TO RECEIVE THE SAME BENEFIT
7 AS DAIRIES IN THE FEDERAL ORDERS. THE FACT THAT MILK PRICING
8 IS DIFFERENT HERE, MAKES IT DIFFICULT FOR DAIRY PRODUCERS TO
9 IMPLEMENT RISK MANAGEMENT STRATEGIES.

10 I, AND MANY OTHER DAIRY PRODUCERS IN OUR STATE, HAVE
11 LONG UNDERSTOOD THAT WE ARE AT GREAT DISADVANTAGE COMPARED TO
12 DAIRY PRODUCERS IN THE REST OF THE COUNTRY DUE TO OUR STATE'S
13 MARKETING SYSTEM. OUR CURRENT SYSTEM DOES ALLOW FOR MORE
14 HEARINGS, BUT FREQUENTLY THE RESULTS HAVE NOT BENEFITED DAIRY
15 PRODUCERS. IN CONTRAST, THE FEDERAL MILK MARKETING ORDER
16 SYSTEM ENCOMPASSES A COMPREHENSIVE AND TRANSPARENT HEARING
17 PROCESS, WHICH IS, IN FACT, BASED IN MAXIMIZING DAIRY PRODUCERS
18 PARTICIPATION. WE WELCOME THIS HEARING PROCESS, AND I THANK
19 USDA FOR MOVING FORWARD TO CONSIDER A FEDERAL ORDER FOR
20 CALIFORNIA. I LOOK FORWARD TO THE ADOPTION OF THE COOPERATIVES
21 PROPOSAL. THANK YOU.

22 JUDGE CLIFTON: MR. MAGNESON, IS THERE ANYTHING YOU WANT TO
23 ADD TO THE WRITTEN STATEMENT YOU JUST READ, BEFORE I INVITE
24 OTHERS TO QUESTION YOU?

25 MR. MAGNESON: IT WAS BROUGHT UP ABOUT THE CALIFORNIA COST

1 OF PRODUCTION STUDY. THE STATE HAS A DEPARTMENT THAT ACTUALLY
2 SURVEYS AROUND ROUGHLY TEN PERCENT OF THE PRODUCERS IN THE
3 STATE COLLECTING THE COST. THEY PUBLISH THOSE ON A QUARTERLY
4 BASIS. SO THAT'S WHERE I GOT THE INFORMATION ABOUT THE NUMBER
5 OF PRODUCERS THAT WERE, HAD NEGATIVE INCOMES, AND THAT'S ON
6 THEIR WEBSITE.

7 JUDGE CLIFTON: IS IT A DIFFERENT TEN PERCENT EACH
8 QUARTERLY PUBLICATION OR DO THEY GO BACK TO THE SAME PEOPLE
9 OVER AND OVER?

10 MR. MAGNESON: GENERALLY IT IS THE SAME PEOPLE. YOU CAN,
11 SOME PEOPLE DROP OUT, OF COURSE, DON'T WANT TO DO THE STUDY OR
12 GO OUT OF BUSINESS, THEN THEY TRY TO GET MORE PEOPLE TO REPLACE
13 THEM, BUT GENERALLY IT'S THE SAME PEOPLE.

14 JUDGE CLIFTON: AND YOU MENTIONED SOMETHING ABOUT THE
15 NORTHERN VALLEY. WHAT WERE YOU SPEAKING OF?

16 MR. MAGNESON: THEY BREAK THE COST OF PRODUCTION DATA INTO
17 DIFFERENT CATEGORIES. THERE'S A NORTHERN CALIFORNIA, NORTH
18 VALLEY, SOUTH VALLEY AND THE SOUTHERN CALIFORNIA NOW. SO, THEN
19 THEY COMBINE THEM FOR THE COST COMPARISON ON A STATE BASIS.

20 JUDGE CLIFTON: RIGHT NOW AS WE ARE SITTING HERE IN CLOVIS,
21 WE'RE IN THE VALLEY; IS THAT CORRECT?

22 MR. MAGNESON: YEAH, THE NORTH VALLEY WOULD BE LIKE NORTH
23 OF FRESNO, NORTH OF HERE WOULD BE CONSIDERED THE NORTH VALLEY,
24 AND FRESNO SOUTH WOULD BE SOUTH VALLEY.

25 JUDGE CLIFTON: AND AT THE HEADING OF YOUR STATEMENT YOU

1 HAVE A DIFFERENT NAME IN CALIFORNIA OTHER THAN BALLICO. CAN
2 YOU TELL ME ABOUT THAT PLACE? IF YOU WOULD STATE IT AND SPELL
3 IT?

4 MR. MAGNESON: I ACTUALLY LIVE IN CRESSEY, C-R-E-S-S-E-Y.
5 THE DAIRY IS ACTUALLY BETWEEN THE TWO LITTLE TOWNS, AND SO THE
6 DAIRY IS IN BALLICO AND I'M IN CRESSEY.

7 JUDGE CLIFTON: ALL RIGHT. WHO WOULD LIKE TO ASK QUESTIONS
8 FIRST OF MR. MAGNESON?

9 MR. BESHORE: MARVIN BESHORE.

10 DIRECT EXAMINATION

11 BY MR. BESHORE:

12 Q. GOOD AFTERNOON, MR. MAGNESON. THANK YOU FOR YOUR
13 TESTIMONY. JUST A COUPLE OF QUESTIONS ABOUT THE CALIFORNIA
14 CDFA PUBLISHED COST INFORMATION THAT YOU TESTIFIED TO. WHEN
15 YOU SAY THEY SURVEY ABOUT TEN PERCENT OF THE STATE, WHAT DO YOU
16 MEAN BY SURVEY? WHAT'S ACTUALLY INVOLVED IN THAT PROCESS?

17 A. THEY COME OUT TO THE DAIRY AND REVIEW ALL OF YOUR COSTS
18 ASSOCIATED WITH THE DAIRY ENTERPRISE. SO THEY WILL LOOK AT
19 YOUR FEED TAGS, HOW MUCH YOU ARE PAYING FOR FEED, WHAT YOUR
20 OTHER EXPENSES ARE. THEY DO IT AS AN ENTERPRISE SO YOUR HEIFER
21 RAISING OPERATION WOULDN'T BE THE COST ASSOCIATED WITH THE,
22 INCLUDED. ANY FEED THAT YOU RAISE WOULD BE CONSIDERED WHAT THE
23 MARKET PRICE IS IF YOU HAD TO GO OUT AND BUY IT, SO THEY DON'T
24 LOOK AT THE COST OF GROWING YOUR CROPS.

25 Q. OKAY. BUT SURVEY, IT IS NOT JUST A SITUATION WHERE

1 THEY SEND OUT A QUESTIONNAIRE AND FARMERS MAIL IT IN?

2 A. NO, THEY ACTUALLY COME OUT TO YOUR DAIRY AND REVIEW ALL
3 OF YOUR FINANCIAL INFORMATION.

4 Q. OKAY. SO THE EMPLOYEES OF THE CALIFORNIA DEPARTMENT OF
5 FOOD AND AGRICULTURE WHO ARE RESPONSIBLE FOR PUTTING THE DATA
6 TOGETHER, ACTUALLY PHYSICALLY COME OUT AND, IN ESSENCE --

7 A. YES.

8 Q. -- AUDIT THE BOOKS AND RECORDS TO COME UP WITH THE --
9 WITH THE FINANCIAL DATA FOR THE PUBLISHED COST OF PRODUCTION?

10 A. THAT'S CORRECT.

11 Q. NOW, LET ME, YOU HAVE, IN EXHIBIT 28 THERE ARE THREE
12 PAGES OF CHARTS AND TAPE.

13 JUDGE CLIFTON: NOW, DID YOU SAY EXHIBIT 28? BECAUSE I
14 MARKED HIS STATEMENT AS EXHIBIT 28.

15 MR. BESHORE: OKAY. THE 28 THAT WAS PASSED OUT TO ME HAD
16 FOUR PAGES, AND IT HAD, IT HAD THE STATEMENT, AND THEN A BAR
17 GRAPH, A LINE GRAPH, AND A SPREADSHEET TABLE.

18 JUDGE CLIFTON: NOW, IS THAT YOUR ONLY COPY?

19 MR. MAGNESON: NO, I HAVE OTHERS. I WASN'T GOING TO
20 INCLUDE THOSE, BUT IT IS ALL RIGHT.

21 JUDGE CLIFTON: SOMEHOW -- OH, LOOK, YOU HAVE COLORED ONES.
22 YOU ONLY HAVE BLACK AND WHITE, WOULD YOU LIKE ONE OF HERS?

23 MR. MAGNESON: NO, I HAVE SOME AT HOME.

24 JUDGE CLIFTON: ARE THEY CONFIDENTIAL OR CAN WE HAVE THEM?

25 MR. MAGNESON: NO, THEY ARE NOT CONFIDENTIAL, I JUST DIDN'T

1 KNOW WHETHER I NEEDED THIS.

2 JUDGE CLIFTON: OH, WE LOVE THINGS LIKE THIS.

3 MR. MAGNESON: IT'S JUST THE CHARTS THAT I DID ON MY OWN.

4 JUDGE CLIFTON: WELL, YOU KNOW, MR. MAGNESON AND I WERE
5 SITTING UP HERE, AND WE WERE HEARING THE STAPLER BACK THERE AT
6 THE COPY MACHINE, AND WE FIGURED YOU WERE WORKING ON SOMETHING
7 ELSE OTHER THAN HIS STATEMENT, WHICH WE KNEW TO BE A ONE-PAGE
8 DOCUMENT.

9 MR. MAGNESON: OKAY.

10 MR. BESHORE: WELL, IF YOU DIDN'T INTEND TO SUBMIT THESE, I
11 WASN'T TRYING -- I MISUNDERSTOOD.

12 MR. MAGNESON: WELL, THEY ARE OUT THERE, SO IF YOU HAVE, IF
13 YOU WANTED SOME CLARIFICATION, I WOULD BE GLAD TO ANSWER YOUR
14 QUESTIONS ABOUT IT.

15 BY MR. BESHORE:

16 Q. LET ME ASK YOU ABOUT THE FIRST ONE. NORTH VALLEY, COST
17 SURVEY, PERCENT OF DAIRIES WITH A NET LOSS. IT SAYS AT THE
18 BOTTOM, SOURCE, CDFA COST OF PRODUCTION FEEDBACK, INCLUDES
19 ORGANIC HERDS. SO IS THAT A CDFA DATA SET?

20 A. YES. WELL, THEY DON'T PUBLISH THE NET INCOMES TO THE
21 PUBLIC, BUT IT IS A CALCULATION THAT YOU CAN RUN FROM THE
22 INFORMATION THEY PROVIDE --

23 Q. OKAY.

24 A. -- ON THE FEEDBACK SHEETS.

25 Q. AND YOU DID THAT?

1 A. YES.

2 Q. THE INFORMATION THAT -- YOU TOOK PUBLISHED CDFA
3 INFORMATION AND --

4 A. DID SOME MATH.

5 Q. DID SOME MATH. OKAY. AND, FOR INSTANCE, CURRENTLY IN
6 THE NORTH VALLEY SUBSET, YOU ARE SHOWING IN EXCESS OF 80 CLOSE
7 TO 90 PERCENT?

8 A. 90 PERCENT.

9 Q. RUNNING AT LESS THAN THE COST OF PRODUCTION?

10 A. YES.

11 Q. OKAY. NOW, THE SECOND GRAPH CONFUSED ME, AND THAT'S
12 WHY I WANTED TO ASK YOU A QUESTION ABOUT IT. IT SAYS CA
13 OVERBASE - FO, DO YOU MEAN FEDERAL ORDER OR WHAT DOES FO MEAN?

14 A. THAT WAS A FEDERAL ORDER.

15 Q. OKAY. FEDERAL ORDER ALL MILK, SO I'M NOT FAMILIAR WITH
16 THAT TERMINOLOGY. WHAT PRICE DID YOU MEAN THERE?

17 A. WELL, THERE'S AN ALL MILK PRICE THAT'S PUBLISHED, THEN
18 THEY USE THAT IN THE --

19 Q. OKAY. SO THIS WAS -- THIS WAS A SUBTRACTION OF THE
20 PUBLISHED, THE USDA ALL MILK PRICE FOR CALIFORNIA?

21 A. NOT FOR CALIFORNIA, FOR THE U.S.

22 Q. OH, THE U.S., OKAY. SO THIS WAS -- THIS WAS DONE TO
23 ILLUSTRATE THE ISSUES WITH THE MARGIN PROTECTION PROGRAM?

24 A. YES, AND THE DISPARITY BETWEEN THE TWO PRICING SERIES.

25 Q. OKAY. SO IT IS UNITED STATES ALL MILK PRICE, AND WHICH

1 IS USED IN THE MARGIN PROTECTION PROGRAM?

2 A. YES.

3 Q. AND THE CALIFORNIA OVERBASE PRICE?

4 A. YES, IT REPRESENTS A BLEND PRICE FOR MOST OF THE
5 PRODUCERS IN CALIFORNIA.

6 Q. BLEND PRICE ON ALL MILK THAT IS NOT SUBJECT TO QUOTA?

7 A. YES.

8 Q. BASE QUOTA. OKAY.

9 JUDGE CLIFTON: MR. MAGNESON, WOULD YOU SCOOT YOUR CHAIR A
10 LITTLE CLOSER, I THINK THAT WILL BE WITH THE RIGHT DISTANCE.
11 BECAUSE YOU ARE TALL YOU MAY HAVE TO POINT UP THE MICROPHONE,
12 JUST UPWARD, IF YOU CAN.

13 NOW, MR. BESHORE MAY HAVE GRASPED IMMEDIATELY HOW TO
14 WORK THESE TWO AXIS, I NEED HELP. SO IF YOU WOULD GO TO MOST
15 RECENT DOT ON YOUR GRAPH, YOUR SECOND GRAPH, THAT SHOWS JULY
16 2015, AND WHAT DOES THAT POINT SHOW ME?

17 MR. MAGNESON: IT'S THE -- IT'S THE AMOUNT OF DOLLARS PER
18 HUNDREDWEIGHT THAT CALIFORNIA'S OVERBASE PRICE IS BELOW THE
19 NATIONAL ALL MILK PRICE. SO IT'S ROUGHLY \$2.40 OR SOMETHING
20 LIKE THAT IN JULY.

21 JUDGE CLIFTON: THANK YOU. THAT'S VERY HELPFUL.

22 BY MR. BESHORE:

23 Q. OKAY. SO THE SPREADSHEET PART OF THE TABLE ON THE
24 THIRD PAGE, I THINK YOU MIGHT HAVE TESTIFIED ABOUT THIS, WHAT
25 DO YOU CONSIDER THE AVERAGE HERD SIZE IN CALIFORNIA?

1 A. PROBABLY LIKE 1200 MORE THAN --

2 Q. YOU USED A THOUSAND?

3 A. I USED A THOUSAND, YES, WITH A HERD AVERAGE OF 20,000
4 POUNDS A UNIT.

5 Q. OKAY. SO ON THIS TABLE YOU ATTEMPTED TO USE, WHAT,
6 UTILIZATION FIGURES FROM CALIFORNIA CDFA POOL, AND THEN YOU
7 APPLIED SOME FEDERAL ORDER CLASS PRICES TO THOSE TO GENERATE
8 THESE NUMBERS?

9 A. YES.

10 Q. TO TRY TO GET -- SO SOME OF THOSE YOU HAD TO REALLY
11 ESTIMATE BECAUSE YOU DON'T HAVE, LIKE A SINGLE CLASS 1 PRICE
12 FOR FEDERAL ORDER CLASS I PRICE IN CALIFORNIA?

13 A. NO, I THINK I USED LIKE A \$1.70.

14 Q. OKAY.

15 A. CAP.

16 Q. THANK YOU. THANK YOU, MR. MAGNESON, I DON'T HAVE ANY
17 OTHER QUESTIONS.

18 JUDGE CLIFTON: YOU SEE, MR. BESHORE GRASPS INSTANTLY WHAT
19 YOU ARE PORTRAYING HERE. ME, NOT SO MUCH. SO WHAT DID YOU
20 JUST TELL HIM ABOUT USING THE \$1.74 DID YOU SAY?

21 MR. MAGNESON: WELL, THERE'S A CLASS I BASE PRICE, AND THEN
22 DIFFERENT REGIONS OF THE COUNTRY HAVE DIFFERENTIAL CLASS I
23 DIFFERENTIAL.

24 JUDGE CLIFTON: YES.

25 MR. MAGNESON: SO I USED THE CLASS I BASE PRICE, PLUS \$1.70

1 TO USE FOR WHEN I'M CALCULATING THE UTILIZATION ON DIFFERENT
2 CLASSES, I WOULD USE THAT MILK PRICE. I USED THAT MILK PRICE
3 FOR THE CLASS I PORTION OF THE UTILIZATION.

4 JUDGE CLIFTON: AND SO IF WE LOOK AT THE BOTTOM OF THAT
5 GRAPH, AND I'M LOOKING AT 2014, DECEMBER, TELL ME AS I READ
6 ALONG THAT LINE, WHAT THE SIGNIFICANCE OF THESE NUMBERS IS.

7 MR. MAGNESON: THE \$1.80 WAS PER HUNDREDWEIGHT PRICE FOR
8 DECEMBER THAT WAS \$1.80 PER HUNDREDWEIGHT LOWER THAN WHAT THE
9 FEDERAL ORDER LOWER. THE CALIFORNIA BLEND PRICE IS THAT MUCH
10 LOWER THAN WHAT A FEDERAL ORDER BLEND PRICE WOULD HAVE BEEN
11 USING THE FEDERAL ORDER CLASS PRICES AND CALIFORNIA'S
12 UTILIZATION. SO WHAT I WAS TRYING TO SEE IS WHAT THE COST IS
13 TO CALIFORNIA DAIRY PRODUCERS BECAUSE OF OUR LOWER CALIFORNIA
14 CLASS PRICES.

15 SO I DID A MONTHLY CALCULATION, AND THEN SUMMARIZED ON
16 ANNUAL BASIS, AND THEN THOSE ARE TOTALED UP AT THE BOTTOM FOR A
17 TOTAL COST OVER THAT PERIOD. ONE OF THEM WAS FROM 2009, ONE
18 WAS FROM 2011, AND THEN BELOW THAT IS LOOKING AT IT WITH
19 DIFFERENT HERD SIZES. SO IT BASICALLY SHOWS THE COST TO THE
20 PRODUCERS FOR, BECAUSE OF OUR LOWER CALIFORNIA CLASS PRICES IS
21 WHAT ITS TRYING TO SUMMARIZE.

22 JUDGE CLIFTON: ALL RIGHT. AND SO BASICALLY YOU HAVE HERE,
23 WHEN YOU STARTED FROM JANUARY OF 2009, YOU'RE INCLUDING ONE,
24 TWO, THREE, FOUR, FIVE, SIX YEARS WORTH OF DATA; IS THAT RIGHT?
25 IN THESE, IN YOUR LITTLE CHART AT THE BOTTOM?

1 MR. MAGNESON: YES.

2 JUDGE CLIFTON: ALL RIGHT. BUT WHEN YOU RUN IT FROM
3 JANUARY OF 2011, YOU HAVE FOUR YEARS OF DATA THAT YOU ARE
4 SHOWING.

5 MR. MAGNESON: YES.

6 JUDGE CLIFTON: ALL RIGHT. AND WHAT IS THE SIGNIFICANCE IN
7 WHETHER YOU GO CLEAR BACK TO JANUARY OF 2009 AND TELL US THE
8 AVERAGE OVER SIX YEARS, OR WHETHER YOU BEGIN IN JANUARY OF
9 2011?

10 MR. MAGNESON: JUST CURIOSITY, I GUESS. I JUST WANTED TO
11 SEE, YOU KNOW, IF THERE WAS MUCH, THAT MUCH OF A DIFFERENCE
12 GOING BACK FURTHER OR LOOKING AT IT FOR A SHORTER PERIOD OF
13 TIME.

14 JUDGE CLIFTON: ALL RIGHT. IT APPEARS WHEN YOU INCLUDE
15 THOSE TWO YEARS, 2009 AND 2010, THAT THINGS ARE WORSE; IS THAT
16 RIGHT?

17 MR. MAGNESON: YEAH, WE -- 2009 AND 2010 -- AND 2010 --
18 WERE WORSE, YEAH. IF YOU LOOK AT THE AVERAGE PER
19 HUNDREDWEIGHT, THERE'S \$1.26 GOING BACK TO '09.

20 JUDGE CLIFTON: WELL, I'M SO GLAD THAT SOMEBODY BY ACCIDENT
21 MADE THESE COPIES FOR US.

22 WHO NEXT WILL ASK MR. MAGNESON QUESTIONS? DR. SCHIEK?

23 MR. SCHIEK: GOOD AFTERNOON. WILLIAM SCHIEK WITH THE DAIRY
24 INSTITUTE.

25 /////

1 CROSS-EXAMINATION

2 BY MR. SCHIEK:

3 Q. MR. MAGNESON, I JUST WANT TO MAKE SURE I UNDERSTAND THE
4 DATA THAT ARE IN THESE GRAPHS, AND SO I JUST HAD A COUPLE OF
5 QUESTIONS.

6 WITH THE FIRST GRAPH, WHICH IS "THE NORTH VALLEY COST
7 SURVEY - PERCENT OF DAIRIES WITH A NET LOSS" AND YOU SAID THE
8 SOURCE WAS THE CDFA COST OF PRODUCTION FEEDBACKS; IS THAT
9 RIGHT?

10 A. YES.

11 Q. AND SO I PULLED THAT UP THERE. AM I RIGHT IN LOOKING
12 AT THE, LET'S SEE, NORTH VALLEY?

13 A. THERE'S A TOTAL COST COLUMN.

14 Q. OKAY. TOTAL COST. AND --

15 A. AND THEN THERE'S AN AVERAGE MILK PRICE OR GROSS MILK
16 PRICE.

17 Q. RIGHT.

18 A. SO --

19 Q. SO THE GROSS MILK PRICE IS GROSS MILK RECEIPTS?

20 A. YES.

21 Q. SO THAT WOULD NOT INCLUDE CATTLE SALES OR ANYTHING
22 ELSE, JUST PURE MILK, RIGHT? JUST THE MILK SIDE OF THE
23 BUSINESS?

24 A. YES.

25 Q. THERE ARE, I BELIEVE, 61; IS THAT RIGHT? NO?

1 A. YES. COULD BE. VARIES BETWEEN 60 AND 61 OR 59
2 PRODUCERS.

3 Q. 61. AND ACTUALLY, I'M NOT GETTING THE WHOLE PICTURE
4 HERE, BUT -- SO FOR THE FIRST QUARTER I DETECT A LOW COST OF
5 AROUND \$14.34, AND WELL -- LET'S SEE. 20, HIGH OF \$26.32 PER
6 HUNDREDWEIGHT. WOULD THAT BE AN ORGANIC THEORY, THAT \$26.32,
7 DO YOU THINK?

8 A. I HAVE TO ADMIT THAT.

9 Q. OKAY. OTHERWISE, THAT'S A REALLY WIDE RANGE OF COST?

10 A. YEAH. I THINK IF YOU LOOKED AT THEIR GROSS RECEIPTS
11 FOR THAT DAIRY, PROBABLY BE HIGHER, ALSO.

12 Q. RIGHT. AND DID YOU INCLUDE THAT IN DETERMINING WHETHER
13 THERE WAS A LOSS OR NOT?

14 A. YES, THAT'S PROBABLY THE ONLY REASON IT IS NOT A
15 HUNDRED PERCENT.

16 Q. OKAY. GOING BACK TO YOUR TABLE ON THE LAST PAGE, WHICH
17 IS THE LOSSES. "LOSSES BASED ON CALIFORNIA'S CLASS UTILIZATION
18 AND FEDERAL ORDER CLASS PRICES."

19 A. UH-HUH.

20 Q. I'M TRYING TO -- IS THIS TIED IN WITH THE COST DATA OR
21 IS THIS JUST A DIFFERENCE IN PRICES EXPRESSED OVER TIME?

22 A. THOSE ARE JUST DIFFERENCE IN PRICES.

23 Q. OKAY. AND TO JUDGE CLIFFTON'S POINT ABOUT THE TWO
24 DIFFERENT PERIODS YOU HAVE GOT AT THE BOTTOM THERE, ONE BEING
25 LARGER THAN THE OTHER, IS THAT, AM I RIGHT, THAT'S JUST BECAUSE

1 YOU ARE SUMMING, YOU HAVE GOT DIFFERENCES IN PRICES OVER THE
2 WHOLE PERIOD WHERE THERE'S A GAP THERE. YOU ARE JUST SUMMONING
3 A LONGER PERIOD WITH GAPS, RIGHT? LONGER PERIOD, LOWER PRICES,
4 AND THAT'S WHY THAT NUMBER, THAT SECOND NUMBER IS BIGGER?
5 BECAUSE IT ALMOST LOOKS LIKE THE PRICES --

6 A. WELL, I THINK THAT WHEN I WAS EXPLAINING TO HER THE
7 DIFFERENCE, I THINK I HAD IT BACKWARDS, BECAUSE I THINK THE '09
8 AND '10, THE TWO YEARS THAT WERE LEFT OFF, ACTUALLY, THE
9 MARGINS ARE NARROWER ON THOSE YEARS AND THAT'S WHY THE
10 DIFFERENCE IS LESS THAN WHEN COMPARED TO BACK JUST TO 2011.

11 Q. OKAY. LOOKING AT THE TOTAL COST ON THE FEEDBACK
12 REPORTS AGAIN, THERE'S A LOT OF -- THERE'S NUMBERS, LIKE I
13 SAID, \$14.32 WAS THE LOWEST, AND 26 SOMETHING WAS THE HIGHEST,
14 BUT THERE'S SOME THE 16, 17, 18, 19 RANGE. ARE THOSE
15 CONVENTIONAL DAIRIES? THOSE ARE CONVENTIONAL DAIRIES?

16 A. YES.

17 Q. WHY WOULD THERE BE SUCH A BIG DIFFERENCE IN COST
18 BETWEEN \$14.32, FOR EXAMPLE, AND \$19, THAT'S ABOUT, LET'S SAY
19 IT IS \$19.32, THAT WOULD BE ABOUT \$5 A HUNDREDWEIGHT?

20 A. I WOULD HAVE TO LOOK AT --

21 Q. OKAY.

22 A. -- THE INDIVIDUAL HERDS TO SEE. IT COULD BE MILK
23 PRODUCTION, IT COULD BE THE PRICE OF THEIR FEED CONTRACT THAT
24 MIGHT BE DIFFERENT, DIFFERENT TIME PERIODS. SO --

25 Q. ALL RIGHT.

1 A. COMPONENTS MIGHT BE DIFFERENT, YOU KNOW.

2 Q. MY LAST QUESTION IS JUST, WHEN YOU WERE LOOKING AT THE,
3 IN BOTH CASES THE OVERBASE PRICE AND THE FEDERAL ORDER IN THE
4 GRAPH WHERE YOU ARE LOOKING AT THE DIFFERENCE BETWEEN THE
5 CALIFORNIA OVERBASE AND THE U.S. ALL MILK PRICE, AND THEN THE
6 ONE WHERE YOU HAVE GOT THE DIFFERENCE BETWEEN THE FEDERAL ORDER
7 CLASS PRICE AND THE CALIFORNIA OVERBASE PRICE? CDFA ALSO
8 PUBLISHES A STATEWIDE BLEND. DID YOU CONSIDER LOOKING AT THAT
9 PRICE DIFFERENCE, AS WELL AS THE OVERBASE? I'M JUST ASKING
10 BECAUSE IT SEEMS LIKE, SEEMS LIKE THE BLEND WOULD BE MORE OF AN
11 APPLES TO APPLES COMPARISON?

12 A. YES, IT MIGHT BE. IF THERE IS, YOU KNOW, EITHER
13 SERIES, I GUESS, WOULD PROBABLY GIVE BASICALLY THE SAME
14 RESULTS, THERE MIGHT BE A LITTLE DIFFERENCE, BUT IT'S -- I
15 THINK THAT THE OVERBASE PRICE REPRESENTS THE MAJORITY OF THE
16 MILK IN THE STATE.

17 Q. OKAY.

18 A. PROBABLY.

19 Q. SO I'M JUST LOOKING AT A COUPLE OF NUMBERS HERE, JUST
20 FOR COMPARISON. AND I CAN -- I CAN PROVIDE THIS, IF YOU WANT.
21 BUT THIS IS DATA FOR 2012, FOR EXAMPLE. AND THE STATEWIDE
22 OVERBASE IS \$17.27 PER HUNDREDWEIGHT FOR DECEMBER, AND THE
23 STATEWIDE BLEND IS \$18.65, SO IT IS OVER A DOLLAR MORE IN TERMS
24 OF REVENUE.

25 A. LIKE I SAID, I THINK PROBABLY 75 OR 80 PERCENT OF THE

1 MILK IN THE STATE IS GETTING OVERBASE, SO I THINK THE MAJORITY
2 OF THE PRODUCERS AND THE MAJORITY OF THE MILK IS RECEIVING LESS
3 THAN THE BLEND.

4 Q. OKAY?

5 A. I MEAN, THERE'S JUST, YOU KNOW, THE QUOTA REPRESENTS
6 SUCH A SMALL PART OF THE NUMBER OF PRODUCERS THAT WOULD GO INTO
7 A STATEWIDE BLEND VERSUS AN OVERBASE PRICE.

8 Q. BUT WOULDN'T THE BLEND BE WEIGHTED BY THE FACT THAT
9 THERE'S LESS QUOTA, TOO?

10 A. I'M LOOKING AT THE NUMBER OF PRODUCERS THAT ARE
11 AFFECTED, YOU KNOW.

12 Q. OKAY. THANK YOU.

13 JUDGE CLIFTON: DO YOU WANT TO WALK ME THROUGH THAT AS TO
14 WHY, GIVEN THE QUOTA, WHY IT IS THAT THE MAJORITY OF THE
15 PRODUCERS AND THE MAJORITY OF THE MILK ARE GETTING THE
16 OVERBASE, NOT THE BLEND?

17 MR. MAGNESON: WELL, JUST, THERE'S A -- THERE'S JUST A
18 FIXED AMOUNT OF QUOTA AVAILABLE FOR PRODUCERS, AND IT'S
19 DISTRIBUTED TO VERY FEW PRODUCERS, SO -- AND AS THE MILK
20 PRODUCTION HAS GROWN IN THE STATE OVER THE YEARS, AND QUOTA, NO
21 NEW QUOTA HAS BEEN DIVVIED OUT OR GIVEN OUT, THE MAJORITY OF
22 THE PRODUCERS IN THE STATE NOW HAVE VERY LITTLE QUOTA, AND VERY
23 LITTLE BIT OF MILK IS ACTUALLY COVERED BY QUOTA. MOST
24 PRODUCERS GET AN OVERBASE PRICE.

25 JUDGE CLIFTON: THANK YOU. WHO ELSE WOULD LIKE TO QUESTION

1 MR. MAGNESON?

2 MR. ENGLISH: CHIP ENGLISH FOR THE DAIRY INSTITUTE OF
3 CALIFORNIA. THANK YOU, MR. MAGNESON.

4 CROSS-EXAMINATION

5 BY MR. ENGLISH:

6 Q. SO YOU HAVE INDICATED IN A COUPLE OF QUESTIONS AND
7 ANSWERS TO MR. SCHIEK ABOUT ORGANIC, AND I THINK YOU IMPLIED
8 THIS, BUT LET'S GET IT CLEAR. YOU, YOURSELF, ARE AN ORGANIC
9 OPERATION, CORRECT?

10 A. YES.

11 Q. AND THE PAY PRICE YOU RECEIVE FOR ORGANIC MILK IS
12 SIGNIFICANTLY HIGHER THAN CONVENTIONAL MILK, CORRECT?

13 A. IT IS NOW, TODAY.

14 Q. IT IS TODAY.

15 A. YEAH. LAST YEAR IT WASN'T.

16 Q. WELL, LAST YEAR WE HAD RATHER HIGH CONVENTIONAL PRICES,
17 CORRECT? BUT YOU STILL RECEIVED MORE LAST YEAR THAN
18 CONVENTIONAL MILK?

19 A. YES, A LITTLE BIT.

20 Q. OKAY. THAT'S ALL I HAVE.

21 JUDGE CLIFTON: WHO ELSE HAS QUESTIONS FOR MR. MAGNESON?

22 MR. RICHMOND: BILL RICHMOND, USDA. THANK YOU,
23 MR. MAGNESON, FOR YOUR TESTIMONY.

24 CROSS-EXAMINATION

25 BY MR. RICHMOND:

1 Q. DO YOU BELONG TO A COOPERATIVE?

2 A. NO, I DON'T.

3 Q. YOU DO NOT. THAT'S ALL WE HAVE. WE APPRECIATE IT VERY
4 MUCH. THANK YOU.

5 A. INDEPENDENT.

6 JUDGE CLIFTON: ARE THERE ANY OTHER QUESTIONS OF
7 MR. MAGNESON? IS THERE ANYTHING YOU WANTED TO ADD,
8 MR. MAGNESON?

9 MR. MAGNESON: I WISH I DIDN'T PUT THOSE GRAPHS IN THERE.

10 JUDGE CLIFTON: I'M GLAD YOU DID. THANK YOU VERY MUCH.

11 MR. CONTENTE, YOU MAY BE SEATED. I'LL SWEAR YOU IN IN
12 A SEATED POSITION. WOULD YOU RAISE YOUR RIGHT HAND, PLEASE.
13 DO YOU SOLEMNLY SWEAR OR AFFIRM UNDER PENALTY OF PERJURY, THAT
14 THE EVIDENCE YOU WILL PRESENT WILL BE THE TRUTH?

15 MR. CONTENTE: I DO.

16 JUDGE CLIFTON: OKAY. THANK YOU. PLEASE STATE AND SPELL
17 YOUR NAME.

18 MR. CONTENTE: JOAQUIN CONTENTE, J-O-A-Q-U-I-N,
19 C-O-N-T-E-N-T-E.

20 MY PRESENTATION TODAY SHOULD BE FAIRLY BRIEF COMPARED
21 TO THE PREVIOUS TWO.

22 I WOULD LIKE TO, FIRST OF ALL, JUST STATE THAT I'M A
23 DAIRYMAN OUT OF HANFORD, CALIFORNIA. I HAVE GOT MY SON AND MY
24 DAUGHTER THERE THAT ARE THERE WITH ME ON THE DAIRY. MY BROTHER
25 THAT WAS A PARTNER, PASSED AWAY DUE TO AN ACCIDENT A LITTLE

1 OVER THREE YEARS AGO AND I SURE DO MISS HIM, ESPECIALLY AT 53
2 YEARS OLD WHEN HE PASSED AWAY.

3 I WOULD LIKE TO THANK USDA, FIRST OF ALL, FOR ALL OF
4 THE HARD WORK THAT THEY ARE DOING TO HAVE THIS PROCEDURE AND
5 THIS PROCESS GO ON. I THINK IT IS VERY IMPORTANT.

6 I APPRECIATE ALL THE WORK THAT THE COOPS, THE THREE
7 MAJOR COOPS, THEIR PROPOSAL THAT THEY PUT OUT. I THINK IT'S
8 BEEN LONG FORTHCOMING BY THE DAIRY PRODUCER HERE IN THE STATE.
9 OUR ORGANIZATION HAS ADVOCATED THIS PROCESS MANY, MANY YEARS
10 AGO. SO I DO APPRECIATE ALL THE HARD WORK THAT'S BEEN GOING
11 ON.

12 IN FACT, MY TALK TODAY IS GOING TO BE THE DISCUSSION ON
13 MAKING THIS PROCESS -- EXCUSE ME -- MAKING THIS PROCESS
14 WORTHWHILE FOR HAPPENING. I HAVE HAPPENED TO TRAVEL TO A
15 COUPLE OF DIFFERENT THIRD WORLD COUNTRIES, INDIA AND SOUTH
16 AFRICA ON SOME DAIRY MEETINGS THAT WE USED TO HAVE, SOME WORLD
17 DAIRY MEETINGS, I PARTICIPATED IN THOSE, AND SO I GOT A
18 FIRSTHAND LOOK OF WHAT IT'S LIKE TO BE IN THOSE COUNTRIES. AND
19 WE TRAVELLED OUT TO THE COUNTRYSIDE TO GET A, TO SEE WHAT THE
20 REAL THING LOOKS LIKE OUT THERE, BECAUSE YOU HEAR ABOUT THESE
21 THIRD WORLD COUNTRIES AND THEIR CONDITIONS AND SO ON.

22 WE ARE VERY, VERY FORTUNATE TO BE LIVING IN THIS
23 COUNTRY. MY MOM AND MY DAD ARE BOTH IMMIGRANTS FROM, EVEN
24 THOUGH MY MOM WAS BORN HERE, BUT SHE WAS SIX YEARS OLD WHEN SHE
25 WENT BACK TO THE AZURE ISLANDS.

1 MY DAD WAS NOT BORN HERE, BUT HE IMMIGRATED HERE LATER
2 ON. HIS FIRST TRIP WAS TO BRAZIL WITH HIS BROTHER AND THEY HAD
3 A CASH-AND-CARRY DAIRY BUSINESS IN BRAZIL. HE WAS THERE FOR
4 TEN YEARS, HE WASN'T MARRIED AT THE TIME, BUT HE, WHAT HE SAW
5 WAS HAPPENING IN BRAZIL WAS THE ECONOMIC CLIMATE WAS SOMETHING
6 THAT HE DIDN'T THINK WAS VERY GOOD FOR THE FUTURE. HE WAS
7 STILL A YOUNG MAN AT THE TIME. SO HE DECIDED AFTER TEN YEARS
8 OF THE VERY VOLATILE MARKET IN BRAZIL TO GO BACK TO THE AZURE
9 ISLANDS AND HE MARRIED MY MOM, AND THEN HE EMIGRATED TO THE
10 UNITED STATES TO CALIFORNIA TO BE WITH THE BROTHER THAT WAS
11 THERE, THAT HAD EMIGRATED IN 1920 WHEN HE WAS 20 YEARS OLD
12 BECAUSE HE WAS BORN -- THAT WAS MY UNCLE -- HE WAS BORN NOT YET
13 THE TURN OF THE LAST CENTURY.

14 AND SO MY UNCLE STARTED HIS FIRST DAIRY DOWN IN
15 LOS ANGELES IN THAT AREA IN THE LATE, IN THE MIDDLE 20'S,
16 AROUND 1926. AND THAT DAIRY DIDN'T LAST TOO LONG DUE TO
17 HOOF-IN-MOUTH DISEASE THAT TOOK THOSE COWS OUT, SO HE HAD TO GO
18 BACK TO MILKING COWS BY HAND, BY THE WAY, BACK IN THOSE DAYS,
19 FOR ANOTHER TWO YEARS, AND THEN HE MANAGED TO SAVE ENOUGH MONEY
20 TO START ANOTHER DAIRY THAT HE STARTED DOWN IN THE VALLEY IN
21 THE HANFORD-LEMOORE AREA.

22 AND THIN IN 1950, WHEN MY DAD RETURNED BACK TO THE
23 AZURES AND MARRIED MY MOM, THEN HE CAME TO THE LEMOORE AREA,
24 AND THERE WERE PARTNERS, SEVERAL DIFFERENT PARTNERS WITH MY
25 UNCLE AT THAT TIME, SO THIS IS A DAIRY THAT WAS STARTED IN 1928

1 THAT I HAVE TODAY.

2 THE POINT I'M TRYING TO MAKE HERE IS THAT OUR BUSINESS
3 IS MORE THAN JUST NUTS AND BOLTS, IT'S PEOPLE AND THEIR LIVES.
4 AND YOU ARE TALKING ABOUT PEOPLE THAT PUT EVERYTHING AT STAKE
5 TO LEAVE WHERE THEY WERE, TO GO OUT AND START A NEW LIFE WITH A
6 THIRD GRADE EDUCATION. BOTH MY DAD AND MY -- AND MY UNCLE,
7 THAT WAS BASICALLY EDUCATION THAT THEY WOULD RECEIVE BACK IN
8 THOSE DAYS IN THOSE ISLANDS.

9 NOW, THESE PEOPLE WORKED EXTREMELY, EXTREMELY HARD TO
10 MAKE END'S MEET AND TO GET WHERE THEY GOT. WHEN I GRADUATED
11 HIGH SCHOOL IN THE LATE '60'S, I HAD TO MAKE A DECISION,
12 BECAUSE MY DAD DIDN'T GET MARRIED UNTIL HE WAS LATE, HE WAS
13 ABOUT 40-YEARS OLD, MY UNCLE WAS ALREADY 18 YEARS OLDER THAN
14 THAT, AND THESE OLD GUYS HAD THESE FACILITY GOING, SMALL DAIRY,
15 180 COWS, 22 ACRES. AND I HAD RECEIVED A SCHOLARSHIP BUT -- TO
16 GO TO FRESNO STATE -- BUT TO DO THAT AT THIS POINT IN LIFE WITH
17 THE SMALL DAIRY, THEY WERE NOT GOING TO BE ABLE TO HOLD ONTO
18 IT. SO I MADE THE DECISION TO STAY ON THE DAIRY AND DO MY BEST
19 AND HELP THEM OUT. AND IT WAS A LITTLE BIT ROCKY AT FIRST WHEN
20 YOU ARE THE YOUNG KID COMING IN, AND THE OLDEST PARTNER THAT'S
21 IN THE DAIRY THERE, MY UNCLE, WAS 50 YEARS OLDER THAN I WAS,
22 AND SO THIS YOUNG KID DOESN'T KNOW NOTHING. AND SO WE HAD TO
23 KNOCK OUR HEADS A FEW TIMES AND GO BACK AND FORTH, AND I WENT
24 AHEAD AND IMPLEMENTED SOME EFFICIENCY PROCEDURES, AND CHANGES
25 IN FEEDS AND THINGS LIKE THAT, AND WE WENT FROM A SMALL 180-COW

1 DAIRY, AND THE 22 ACRES TO -- TODAY IT'S NOT A VERY LARGE
2 DAIRY, IT IS NOT EVEN AVERAGE, IT IS ONLY ABOUT 750 COWS THAT
3 WE'RE MILKING THERE, WE HAVE GOT ABOUT 500 ACRES OF GROUND, AND
4 WE RAISE MOST OF OUR OWN FEEDS.

5 NOW, THE POINT I'M TRYING TO MAKE HERE IS NOT ABOUT ME
6 OR WHAT HAPPENED TO ME, BUT THE ABILITY FOR US TO BE HERE
7 TODAY. NOW, I TESTIFIED AT A USITC HEARING ONE TIME, AND I HAD
8 A GENTLEMAN FROM A LARGE CORPORATION THAT TESTIFIED AHEAD OF
9 ME, SAYING THAT THE REASON FOR PROSPERITY WAS THAT THESE TRADE
10 DEALS, THESE FREE TRADE DEALS, WERE GOING TO MAKE PEOPLE
11 PROSPEROUS. NOW, AFTER VISITING, AFTER VISITING THE THIRD
12 WORLD COUNTRIES, WHAT WAS MISSING IN THOSE COUNTRIES THAT
13 CAUSED THOSE PEOPLE NOT TO BE PROSPEROUS WAS THE RESOURCES,
14 SOUTH AFRICAN DIAMONDS, COAL, IRON ORE, LOTS OF FISHING, LOTS
15 OF LAND, LOTS OF SUN. NO, IT WASN'T THAT. IN INDIA, SAME.
16 SAME THING YOU COULD SAY ABOUT INDIA, LOTS OF RESOURCES THERE.
17 BUT ONE THING WAS MISSING IN THESE COUNTRIES THAT LACKED FOR
18 PEOPLE TO BE PROSPEROUS. AND ALL YOU GOT TO DO IS IDENTIFY THE
19 COUNTRIES OF THE WORLD THAT ARE PROSPEROUS, AND THEY ALL HAVE
20 THIS, IT'S CALLED DEMOCRACY. IT'S CALLED THE ABILITY FOR
21 PEOPLE TO EMPOWER THEMSELVES, TO GET A PIECE OF THE DREAM.

22 WHAT THIS HEARING THAT'S GOING ON HERE TODAY, IT'S A
23 VERY LONG PROCESS, IT'S A VERY THOROUGH PROCESS, IT'S NOT EASY,
24 BUT IT'S WHAT -- IT'S WHAT HELPS PRODUCERS TO BE ABLE TO GET A
25 PIECE OF THAT DREAM.

1 AND SO AT THE END OF THE DAY -- AND I DON'T KNOW WHEN
2 THAT DAY IS GOING TO BE FOR THESE HEARINGS HERE IN CALIFORNIA,
3 BUT SOUNDS LIKE IT IS GOING TO BE SEVERAL MONTHS -- AT THE END
4 OF THE DAY, THERE'S GOING TO BE PROBABLY SOME PROCESS THAT'S
5 GOING TO HELP PROCEDURES. AND IT'S NOT GOING TO BE THE TOTAL
6 ANSWER, IT'S JUST GOING TO BE A SMALL PIECE OF WHAT NEEDS TO BE
7 DONE.

8 JUST TO GIVE YOU A GLIMPSE OF WHAT'S HAPPENED IN MY
9 AREA, IN HANFORD, CALIFORNIA, FIVE MILES FROM WHERE MY DAIRY IS
10 WE HAVE LOST ALREADY OVER 16 DAIRY FARMS THAT ARE GONE FOREVER.
11 WE HAVE HAD SOME VERY GOOD TOP REGISTERED HERDS SOLD OUT. WE
12 HAVE HAD SOME GOOD OPERATORS THAT DECIDED TO THROW IN THE
13 CHIPS, WHY FIGHT THE FIGHT WHEN YOU CAN PLANT TREES AND KICK
14 BACK, AND GET \$4 TO \$5 A POUND FOR YOUR NUTS. BY THE WAY, THE
15 REASON THOSE NUTS ARE SO HIGH IS BECAUSE THERE IS A LOT OF
16 BUYERS, IT IS NOT A CONCENTRATED MARKET LIKE OURS IS. A LOT OF
17 INDEPENDENT BUYERS OUT THERE. IN THE ALMOND INDUSTRY, THERE'S
18 OVER A HUNDRED INDEPENDENT BUYERS OUT THERE, KNOCKING ON YOUR
19 DOOR TO BUY YOUR ALMONDS. NOT SO MUCH IN THE WALNUTS, BECAUSE
20 THE WALNUTS HAS BEEN AN OLDER INDUSTRY THAT'S BEEN AROUND IN
21 OUR AREA FOR AWHILE SO IT'S A LITTLE MORE CONCENTRATED. THAT'S
22 ONE OF THE REASONS THAT THE ALMONDS ARE SO MUCH BETTER. IT'S A
23 NEWER INDUSTRY, YOUNGER INDUSTRY.

24 SO THIS COMING FRIDAY, WHICH IS A COUPLE DAYS AWAY, ONE
25 OF MY CLOSEST NEIGHBORS TO ME HE'S BEEN IN BUSINESS, HIS FAMILY

1 HAS BEEN IN BUSINESS A LITTLE BIT LONGER THAN HISTORY THAT I
2 HAVE -- IN FACT, IN 1964, WHEN I WAS 14-YEARS OLD, THEY HELPED
3 US MOVE FROM A RENTED FACILITY THAT WE HAD TO THE FACILITY THAT
4 WE ARE ON NOW, WITH THEIR 16-FOOT, '50 CHEVY FLATBED PANEL
5 TRUCK, THAT OUR SMALL HERD THAT WE HAD, HE HELPED US MOVE, HIS
6 GRANDFATHER, TO THE DAIRY. THEY ARE GOING TO BE SELLING THEIR
7 750 COW HERD, DOWN THE ROAD A MILE FROM ME. THERE'S ONLY GOING
8 TO BE ONE DAIRY THAT'S PROBABLY WITHIN A MILE, NEXT DAIRY IS
9 PROBABLY ABOUT TWO MILES AWAY. AND WE HAVE ALREADY LOST, LIKE
10 I SAID, OVER 16 WITHIN FIVE-MILE RADIUS.

11 THE LANDSCAPE OF THE DAIRY INDUSTRY IN CALIFORNIA IS
12 SHRINKING, NOT SO MUCH IN COWS, EVEN THOUGH WE ARE LOSING A LOT
13 OF CATTLE, I GO TO THE LOCAL CATTLE SALE OVER IN THE STOCKYARD,
14 IT'S A MAJOR CATTLE SALE FOR DAIRY COWS IN THE NATION. AND
15 OVER 50 PERCENT, BETWEEN 50 PERCENT AND TWO-THIRDS OF THE COWS,
16 THE HEIFERS, EXCUSE ME, OF THE HEIFER SALE THAT THEY HAVE EVERY
17 FIRST WEDNESDAY OF THE MONTH, OVER 50 PERCENT, TWO-THIRDS, ARE
18 LEAVING THE STATE. THOSE COWS ARE NOT GOING TO BE HERE. THOSE
19 HEIFERS ARE NOT GOING TO BE HERE. AND WE HAVE SEEN A REDUCTION
20 IN OUR MILK PRODUCTION IN THIS STATE. THERE'S A REASON FOR
21 THAT.

22 AND MY PROJECTIONS FOR THE FUTURE, IT'S ONLY
23 PROJECTIONS, THEY DON'T MEAN NOTHING, BUT I WOULD SAY THAT IN
24 THE FUTURE YOU ARE GOING TO SEE MILK PRICES IN CALIFORNIA EQUAL
25 TO WISCONSIN OR HIGHER. IT'S THE ONLY WAY YOU ARE GOING TO

1 HAVE MILK IN CALIFORNIA IN THE FUTURE. IT MAY TAKE A FEW
2 YEARS, BUT WITH WHAT WE'RE SEEING IN THE NUTS, EVERY LITTLE
3 PIECE OF GROUND, TWO ACRES, FIVE ACRES, IT DOESN'T MATTER,
4 DAIRIES THAT SELL OUT, GROUND UP, TREES ARE IN BEFORE YOU KNOW
5 IT, ALMONDS ARE IN PRODUCTION IN THREE YEARS. IT'S CRAZY. NOT
6 TO MENTION THE WATER CRISIS. TREMENDOUS AMOUNT OF DRILLING
7 GOING ON OUT THERE, AND SOME SHORTAGES IN CERTAIN PARTS OF THE
8 STATE. NOT SO MUCH IN OUR AREA, JUST A LOT OF DRILLING IN OUR
9 AREA, VERY EXPENSIVE DRILLING, BUT IF YOU GOT NUTS YOU CAN
10 AFFORD IT. AND SO THE TREND IS THAT YOU ARE GOING TO SEE FEWER
11 DAIRIES, LARGER DAIRIES, AND IT'S GOING TO BE -- IT'S GOING TO
12 BE A DIFFERENT LANDSCAPE.

13 AND THE POINT I'M TRYING TO MAKE IS THAT THIS PROCESS
14 IS A WAY TO HELP ENSURE FOR PROSPERITY FOR DAIRY FARMERS. AND
15 I THANK USDA AND THE JUDGE FOR ALL THE WORK SHE'S DOING, AND
16 THE COOPS FOR PUTTING THE PROPOSAL FORWARD TO HAVE CALIFORNIA
17 GET IN THE FEDERAL ORDER. LIKE I SAID, IT'S ONLY A SMALL FIX,
18 BUT IT IS A FIX. AND I THANK YOU.

19 JUDGE CLIFTON: MR. CONTENTE, YOU ARE QUITE ELOQUENT AND
20 YOU HAVE HAD A RICH EXPERIENCE. THANK YOU FOR YOUR TESTIMONY.

21 WHO WOULD LIKE TO ASK THE FIRST QUESTIONS OF
22 MR. CONTENTE?

23 WHAT, IS IT ALREADY 5:00? IT IS ONLY 4:13, FOLKS. SEE
24 WHAT HAPPENS WHEN YOU DON'T HAVE CHARTS. ARE THERE ANY
25 QUESTIONS FOR MR. CONTENTE? THERE ARE NONE. MR. CONTENTE, YOU

1 MAY STEP DOWN. THANK YOU SO MUCH.

2 MR. CONTENTE: THANK YOU.

3 JUDGE CLIFTON: MR. BESHORE?

4 MR. BESHORE: I DO HAVE ONE OTHER PRODUCER, I DON'T KNOW IF
5 YOU WANT TO TAKE A STRETCH BREAK OR NOT BEFORE WE'RE IN THE
6 HOME STRETCH HERE THIS AFTERNOON, BUT THERE IS ANOTHER PRODUCER
7 TO TESTIFY AT THIS TIME.

8 JUDGE CLIFTON: ALL RIGHT. NOW, WOULD YOU NAME THAT
9 PRODUCER IF YOU CAN, MR. BESHORE?

10 MR. BESHORE: MR. MACHADO.

11 JUDGE CLIFTON: IS THERE ANYONE ELSE HERE IN ADDITION TO
12 HIM WHO WANTED TO TESTIFY TODAY? ALL RIGHT.

13 WHY DON'T WE TAKE A TEN-MINUTE BREAK -- OH, MR. HILL?

14 MR. HILL: BRIAN HILL. I'M NOT SURE IF EXHIBIT NUMBER 28
15 WAS ENTERED INTO THE RECORD.

16 JUDGE CLIFTON: I THINK NOT. THANK YOU.

17 IS THERE ANY OBJECTION TO THE ADMISSION INTO EVIDENCE
18 OF MR. MAGNESON'S STATEMENT AND CHARTS, THAT'S EXHIBIT 28?
19 THERE IS NONE. EXHIBIT 28 IS ADMITTED INTO EVIDENCE. ALL
20 RIGHT.

21 (THEREAFTER, EXHIBIT 28 WAS RECEIVED
22 INTO EVIDENCE.)

23 JUDGE CLIFTON: LET'S TAKE A TEN-MINUTE BREAK. PLEASE BE
24 BACK AND READY TO GO AT 4:25.

25 (WHEREUPON, A BREAK WAS TAKEN.)

1 JUDGE CLIFTON: BACK ON THE RECORD AT 4:27 AND I'LL SWEAR
2 YOU IN IN A SEATED POSITION. WOULD YOU RAISE YOUR RIGHT HAND
3 PLEASE? DO YOU SOLEMNLY SWEAR OR AFFIRM UNDER PENALTY OF
4 PERJURY THAT THE EVIDENCE YOU WILL PRESENT WILL BE THE TRUTH?

5 MR. MACHADO: I DO.

6 JUDGE CLIFTON: THANK YOU. YOU MAY HAVE TO SCOOT THE CHAIR
7 CLOSER. THANK YOU. IF YOU WOULD STATE AND SPELL YOUR NAME?

8 MR. MACHADO: JOE MACHADO. J-O-E, M-A-C-H-A-D-O.

9 JUDGE CLIFTON: AND YOU PRONOUNCE THAT MACHADO?

10 MR. MACHADO: MACHADO.

11 JUDGE CLIFTON: THANK YOU. MR. BESHORE, YOU MAY PROCEED.

12 MR. BESHORE: THANK YOU. MARVIN BESHORE.

13 DIRECT EXAMINATION

14 BY MR. BESHORE:

15 Q. MR. MACHADO -- I'LL TRY TO GET THAT RIGHT -- CAN YOU
16 TELL US WHERE DO YOU -- WHAT DO YOU DO FOR BUSINESS? WHAT'S
17 YOUR BUSINESS ADDRESS?

18 A. I'M CURRENTLY OCCUPATION IS AN OWNER OF A DAIRY FARM,
19 AND IN PARTNERSHIP WITH TWO OTHER BROTHERS.

20 Q. AND WHERE IS YOUR DAIRY?

21 A. WE ARE LOCATED APPROXIMATELY 45 MILES SOUTH OF HERE IN
22 HANFORD, CALIFORNIA.

23 Q. AND TELL US A LITTLE BIT ABOUT YOUR DAIRY, THE NUMBER
24 OF COWS --

25 A. MY DAIRY --

1 Q. -- YOU KNOW, FARM ACREAGE?

2 A. YEAH, MY DAIRY CONSISTS OF ABOUT 1100 COWS AND
3 APPROXIMATELY 700 ACRES, IN WHICH WE FARM CORN, COTTON,
4 SORGHUM, ALFALFA, RYE GRASS AND BEANS.

5 Q. HOW LONG HAVE YOU AND YOUR BROTHERS BEEN IN PARTNERSHIP
6 IN THE DAIRY?

7 A. SINCE 1994.

8 Q. AND HOW LONG HAVE YOU BEEN DAIRY? SAME PERIOD OF TIME?

9 A. WELL, TO GO BACK TO THE BEGINNING, MY PARENTS EMIGRATED
10 FROM THE AZURE ISLANDS WHICH IS -- NOT TRIBUTARY -- THEY
11 BELONGED TO PORTUGAL.

12 IN 1966, I, MYSELF, EMIGRATED WITH MY PARENTS, I WAS
13 FIVE YEARS OLD IN 1966, WHICH ROUGHLY MAKES ME 54 YEARS OLD.
14 MY MIDDLE BROTHER, HE WAS 22 DAYS OLD, AND THEN MY YOUNGER
15 BROTHER WAS BORN HERE IN PORTERVILLE, CALIFORNIA.

16 Q. OKAY. AND HOW DO YOU MARKET MILK FROM YOUR FARM?

17 A. WE MARKET THROUGH OUR COOP.

18 Q. WHAT'S YOUR COOP?

19 A. LAND O'LAKES, INC.

20 Q. SO DO YOU HAVE SOME TESTIMONY YOU WANTED TO PROVIDE TO
21 THE HEARING HERE TODAY?

22 A. YEAH, I WOULD LIKE TO MAKE SOME COMMENTS AND --

23 Q. PLEASE DO SO.

24 A. -- AND DO SOME OBSERVATIONS OF OUR INDUSTRY.

25 I ALSO BELONG TO THE -- OUR, WHICH WE CONSIDER A

1 GRASSROOTS ORGANIZATION, CDC, I'M ACTUALLY ON THE BOARD, AND I
2 DO A LITTLE BIT OF LEADERSHIP IN OUR COOP, I'M AN ELECTED
3 LEADER, NOT ON THE CORPORATE BOARD SIDE, BUT I AM THE, WHAT YOU
4 WOULD CALL A LEADERSHIP COUNCIL. I'M ELECTED. I REPRESENT
5 ABOUT 42 DAIRYMEN IN MY DAIRY UNIT, WHICH CONSISTS OF 190, I
6 BELIEVE AROUND 190 DAIRIES HERE IN CALIFORNIA, SO I REPRESENT
7 42 OF THOSE DAIRYMEN.

8 A LITTLE BACKGROUND. MY DAD, LIKE I STATED IN --
9 JOAQUIN, I KIND OF GOT MISTY-EYED WHEN MR. CONTENTE, JOAQUIN
10 CONTENT, BECAUSE, YOU KNOW, OUR SITUATION KIND OF MIRRORS THEIR
11 SITUATION. MY DAD, HE WAS, HIS OCCUPATION BACK IN THE AZURE
12 ISLANDS, HE TRANSPORTED CATTLE. THERE WAS A CATTLE EXPORT.
13 HIS WHOLE, HIS WHOLE DUTIES WERE TO LOAD CATTLE, MAKE SURE THAT
14 THEY GOT FROM THE ISLANDS TO THE MAINLAND. MAKE SURE THEY WERE
15 FED, MAKE SURE THEY ARRIVED AT THEIR DESTINATION, HEALTHY.

16 NOW, WE HAD RELATIVES, WHICH WAS A SECOND COUSIN, AND
17 BACK IN 1966, YOU CAME WHEN YOU APPLIED FOR IMMIGRATION IT WAS
18 A GREEN CARD, YOU HAD TO HAVE A SPONSOR, YOU KNOW, YOU COME TO
19 THIS COUNTRY, SOMEONE HAD TO SPONSOR YOU TO SAY, WELL, YOU ARE
20 GOING TO BE A, YOU KNOW, WHAT'S THE WORD I'M LOOKING FOR, YOU
21 ARE GOING TO BENEFIT, YOU KNOW, BEING A CITIZEN. ANYWAY, SO MY
22 DAD HAD THIS SECOND COUSIN THAT WAS IN THE DAIRY BUSINESS. SO
23 MY DAD WENT TO WORK FROM ABOUT 1966 TO ABOUT 1970. AND MY
24 DAD'S ONE GOAL TO COME TO THIS COUNTRY WAS NOT TO FAIL. HE
25 SAID, HE INSTILLED THAT, BEING HONEST -- EXCUSE ME -- HE

1 INSTILLED THAT IN US AT A YOUNG AGE. IF YOU ARE WILLING TO
2 WORK HARD, FAILURE IS NOT AN OPTION. AND THAT WAS INSTILLED IN
3 US. MY DAD WAS VERY OLD SCHOOL.

4 WE STARTED WORKING ON THE DAIRY AT A VERY YOUNG AGE. I
5 MEAN, LOOKING BACK AT IT NOW MAYBE HE BROKE A FEW CHILD LABOR
6 LAWS, I DON'T KNOW, BUT THAT'S IN THE PAST. BUT, YOU KNOW, WE
7 WERE REQUIRED TO WORK BECAUSE WE WERE NOT GOING TO FAIL. AND
8 HE WAS A NUMBER -- HE HAD IT A LITTLE BIT BETTER THAN JOAQUIN'S
9 PARENTS, HE HAD A 6TH GRADE EDUCATION, SPOKE VERY LITTLE
10 ENGLISH FOR ALL THOSE YEARS THAT HE WAS HERE IN THE STATES, BUT
11 HE WAS A NUMBER SAVANT. THE MAN NEVER TOUCHED A CALCULATOR,
12 NEVER PUNCHED A CALCULATOR BUTTON. HE WOULD GET A PIECE OF
13 PAPER, PENCIL OR PEN, HE CALCULATED MILK PRICES, HE CALCULATED
14 FEED, HE CALCULATED EVERYTHING. SO OVER THE YEARS, WE NEVER
15 HIRED AN ACCOUNTANT. WE HIRED AN ACCOUNTANT TO DO OUR BUSINESS
16 INCOME TAXES. EVERYTHING ELSE, MY DAD DID IT OFF THE TOP OF
17 HIS HEAD.

18 I UNFORTUNATELY DID NOT INHERIT THAT TALENT. I LOST MY
19 DAD IN 2009, WHICH WE CONSIDERED IT DARK TIMES IN THE DAIRY
20 INDUSTRY HERE IN THE STATE. AND BEFORE, YOU KNOW, OUR
21 CALIFORNIA PRICING SYSTEM SERVED US WELL. WE HAD MAJOR
22 EXPANSION HERE IN LATE '80'S, EARLY '90'S. IN CASE IN POINT,
23 THE DAIRY FACILITY I BOUGHT IN 1994, I HAD NO NEIGHBORS. THERE
24 WAS ONE NEIGHBOR MAYBE A MILE TO THE NORTH, AND THE SURROUNDING
25 AREAS THERE WAS JUST OPEN FARMLAND. WE WERE CONSIDERED THE

1 BOONIES. AND IN THE NEXT MAYBE FIVE TO SEVEN YEARS, FROM '94
2 ON, IN A TWO-MILE RADIUS THERE WAS THIRTEEN DAIRIES BUILT IN
3 THAT TIMEFRAME. THESE WERE TRANSPLANTS FROM SOUTHERN
4 CALIFORNIA. THEY CAME UP WITH, YOU KNOW, BOATLOADS OF MONEY
5 FROM REAL ESTATE THAT, OR REAL ESTATE INVESTMENTS BOUGHT FOR
6 DEVELOPMENT, HOUSING DEVELOPMENTS. THEY RELATIVELY MILKED 300,
7 400 COWS DOWN DOWN IN MILK SHED.

8 NOW THEY HAD -- YOU KNOW, MY NEIGHBOR, JUST USE AS AN
9 EXAMPLE -- THEY MILKED 400 COWS DOWN IN ESCONDIDO. THEY SOLD A
10 PRIME PIECE OF PROPERTY, ALL OF A SUDDEN THEY HAVE \$8 MILLION
11 IN THEIR HAND. SO UNCLE SAM COMES KNOCKING. WHAT DID THEY DO?
12 THEY COME UP, THEY BUY, YOU KNOW, BIG LARGE SWABS OF FARMLAND.
13 THEY BUILT FACILITIES TO EXPEDITE THAT MONEY SO UNCLE SAM STAYS
14 OUT OF THEIR POCKET. SO YOU HAVE A SITUATION WHERE YOU'RE
15 MILKING 300, 400 COWS, YOU WANT TO EXCHANGE THAT MONEY, AND ALL
16 OF A SUDDEN YOU ARE MILKING 4,000 OR 5,000 COWS. THAT'S HOW WE
17 BECAME TO THE BIG DAIRIES HERE IN THE SOUTHERN SAN JOAQUIN
18 VALLEY. THE POINT I'M TRYING TO MAKE IS, THAT WAS A TIME THAT
19 I DON'T THINK WE'LL EVER SEE AGAIN.

20 SO WE HAVE THAT, WE HAD THAT BIG MILK PRODUCTION, BIG
21 FACILITIES, WE WERE VERY EFFICIENT. WE COULD MAKE MILK CHEAPER
22 THAN ANYBODY IN THE NATION, AND WE WERE PROUD OF IT. IN 1996,
23 IF I'M STANDING CORRECT, CALIFORNIA, OUR ORGANIZATION, YOU
24 KNOW, WE WERE BEATING THE DRUM. IN THAT '96 FARM BILL WE
25 ACTUALLY WROTE SOME LANGUAGE. I WASN'T PART OF THE

1 ORGANIZATION THEN, THAT WOULD ALLOW US TO COME INTO THE FEDERAL
2 ORDER IN THAT FARM BILL, AND WE WEREN'T REALLY INTERESTED. IT
3 JUST DIDN'T SERVE US, BECAUSE OUR SYSTEM WASN'T EXACTLY, YOU
4 KNOW. AT THAT TIME, IN THAT SITUATION, THOSE MARKET
5 CONDITIONS, YOU KNOW, WE HAD THE HIGHS, WE HAD THE LOWS, WE HAD
6 THE DISPARAGES, BUT WE RECOVERED.

7 AFTER 2009, AFTER -- WHICH WAS MAYBE A BLESSING THAT MY
8 DAD PASSED AWAY, BECAUSE TRYING TO CRUNCH NUMBERS TODAY, I
9 THINK THE MAN WOULD GO STIR CRAZY. THERE'S NO WAY HE COULD
10 FIGURE OUT, YOU KNOW, THE BUSINESS CLIMATE THAT WE'RE IN.

11 MY SITUATION, THOUGH, WE HEARD -- WE HEARD THAT THE
12 STATE, FROM MR. MAGNESON AND WE HEARD FROM LYNN MCBRIDE, THAT
13 THE COST OF PRODUCTION IS 19, AROUND \$19, THAT'S WHAT THEY
14 ESTIMATED FOR THE FIRST QUARTER OF '15. EVERYBODY'S DIFFERENT.
15 I CAN'T SAY THAT'S A DEFINITIVE NUMBER. FOR ME PERSONALLY, WE
16 JUST CRUNCHED THE NUMBERS THE OTHER DAY, AND WE SAW OUR MAILBOX
17 PRICE AND WE WENT BACK AND CRUNCHED THE NUMBERS OF OUR INPUT
18 COSTS, AND WHAT OUR FEED COSTS, AND WHAT FEED WE HAD IN THE
19 INVENTORY, AND IT WOULD TAKE \$17.30 FOR ME TO BREAK EVEN. MY
20 MAILBOX PRICE WAS \$14.30 THAT I GOT FROM MY OUT-OF-POCKET
21 SETTLEMENT. SO I'M \$3 IN THE HOLE. THIS HAS BEEN BASICALLY
22 THE TREND FOR ALL OF 2014.

23 SO, YOU KNOW, THERE IS A LOT OF HIRED GUNS HERE IN THE
24 ROOM, AND I DON'T THINK ANYBODY HERE IS WORKING PRO BONO, IF
25 I'M STANDING CORRECT, RIGHT? WELL, I HAVE BEEN -- I FEEL I

1 HAVE BEEN WORKING PRO BONO FOR MOST OF THE YEAR BECAUSE MY
2 COSTS OF PRODUCTION HAVE NOT BEEN MET.

3 YOU KNOW, AND IN LOOKING AT THE DAIRY TRENDS, YES,
4 THERE IS A LOT OF TREES GOING IN, BUT IS THE FEDERAL ORDER
5 GOING TO CURE OUR AILS? NO. BUT WE -- AND I'M NOT HERE TO
6 BASH THE STATE. THE STATE HAS A BIG RESPONSIBILITY IN US
7 JOINING THE FEDERAL ORDER, BECAUSE THEY ARE GOING TO BE THE
8 ADMINISTRATORS OF THE QUOTA SYSTEM, AND WE NEED TO COOPERATE
9 WITH THE STATE. AND I'M NOT HERE TO BASH THEM. BUT OUR AXE UP
10 THERE DID HAVE THE DISCRETION TO FIX THE PROBLEM, AND SHE WAS,
11 YOU KNOW, FOR WHATEVER REASON, SHE UNDECIDEDLY DIDN'T ACT. I
12 DON'T KNOW IF IT WAS PRESSURE FROM THE PROCESSOR, I WAS NOT
13 INVOLVED SOME OF THE HEARINGS. I ATTENDED HEARINGS, I DID NOT
14 TESTIFY. BUT SHE SEEMED JUST TO NOT HAVE THE WILLINGNESS. AND
15 I DON'T KNOW IF THE PRESSURE WAS GOING TO THE FEDERAL ORDER AND
16 THE MARKET CONDITIONS, YOU KNOW, IT'S JUST THE BIG DISPARAGING
17 IN THE PRICES. YOU JUST CAN'T IGNORE IT. SHE GRANTED US THAT
18 LITTLE WHEY FACTOR WHERE WE GOT A LITTLE BIT OF RELIEF, WHICH
19 IS ONLY A TEMPORARY FIX, YOU KNOW, THAT WILL GO AWAY IN A YEAR.

20 YOU KNOW, WE CANNOT MAKE MILK CHEAP AS ANYBODY ELSE.
21 THAT ADVANTAGE HAS LEFT THE STATION. YOU KNOW, '09, THE
22 ETHANOL ISSUE, WHERE 40 PERCENT I THINK, I'M NOT, I'LL GO ON A
23 DISCLAIMER, I'M NOT AN ECONOMIST, I'M NO EXPERT IN THE FIELD,
24 THIS IS WHAT I HEAR OUT IN THE FIELD, THIS IS WHAT I HEAR FROM
25 GRAIN COMPANIES AND MY TRAVELS BACK TO THE MIDWEST. 40 PERCENT

1 OF OUR CORN CROP GO TO ETHANOL AND IT WAS DIVERTED INTO
2 RENEWABLE FUELS. THAT -- THAT HURT US. WE'RE AT A
3 DISADVANTAGE WHEN YOU WANT TO BRING GRAINS OUT FROM THE
4 MIDWEST. WE TYPICALLY DO NOT GROW GRAINS, WHICH IS PART OF THE
5 CATTLE FEED HERE THAT WE DO FEED IN OUR RATIONS. AND I GOT A
6 QUOTE THIS MORNING THAT IS COSTS ABOUT \$30 DISADVANTAGE HAULING
7 A TON, HAULING CORN FROM THE MIDWEST OUT HERE TO THE WEST
8 COAST. EARLIER IN THE YEAR, I WAS QUOTED, THERE WAS A QUOTE OF
9 ABOUT \$38. THEY WERE HAVING SHORTAGES. YOU KNOW, THIS BIG OIL
10 BOON IN THE DAKOTAS, A LOT OF THE RAIL COMPANIES WERE -- WERE
11 DIVERTING A LOT OF THEIR TRAIN SETS, IT WAS MORE PROFITABLE FOR
12 THEM TO HAUL OIL THAN IT WAS TO HAUL GRAIN, SO THEY KIND OF,
13 YOU KNOW, UPPED THEIR PRICE.

14 COTTONSEED. KINGS COUNTY IS WHERE I'M FROM, WHICH IS
15 ADJACENT TO TULARE COUNTY, WHICH IS THE NUMBER ONE AG COUNTY
16 AND THE NUMBER ONE DAIRY COUNTY IN THE NATION. COTTON WAS
17 KING. WE WERE NUMBER ONE IN COTTON. THE NUMBER ONE CASH CROP
18 WAS COTTON.

19 I DON'T KNOW IF YOU EVER HEARD OF THE BIG FARMING
20 MAGNET, BOSWELL, SAWYER, THOSE WERE BIG, BIG FARMING OPERATIONS
21 IN KINGS COUNTY. THEY GREW SOME OF THE BEST COTTON AND SOME OF
22 THE, YOU KNOW 50,000 PLUS ACRES OF COTTON ACREAGE.

23 MILK IS NUMBER ONE IN KINGS COUNTY NOW. COTTON IS NOT
24 EVEN ON THE RADAR ANYMORE. WE PROBABLY LOST 80, 85 PERCENT OF
25 OUR COTTON. COTTONSEED WAS ANOTHER COMMODITY THAT WE FED OUR

1 CATTLE THAT WAS AVAILABLE TO US. CALIFORNIA, IT WAS HOMEGROWN,
2 IT WASN'T VERY, WE DIDN'T HAVE TO TRANSPORT IT VERY FAR.

3 MOST OF OUR SEED NOW COMES OUT OF TEXAS, LOUISIANA,
4 ARKANSAS, MAYBE MISSISSIPPI. THOSE GENERAL AREAS ARE SUPPLYING
5 COTTONSEED. WELL, IT COST \$40 A TON TO BRING COTTONSEED IN
6 FROM TEXAS, AND I THINK I GOT A QUOTE, I ASKED SOMEWHERE THIS
7 MORNING, IT IS ABOUT \$60 FROM ARKANSAS AND MISSISSIPPI. SO
8 RIGHT THERE, WE HAVE TO IMPORT A LOT OF FEEDS. WE DON'T HAVE
9 THE LUXURY.

10 ACREAGE IS SHRINKING, OF COURSE. YOU KNOW, HAVING THE
11 LOWEST MILK PRICE, HIGHEST LAND VALUES, I BOUGHT, I HAVE BEEN
12 BLESSED ENOUGH TO WHERE MY DAD SAVED ENOUGH, AND WE PUT A
13 LITTLE BIT AWAY.

14 WHEN THERE WAS OPPORTUNITY TO BUY PROPERTY, I BOUGHT,
15 FOR MY INITIAL FACILITY I BOUGHT PROPERTY THREE DIFFERENT
16 TIMES. I BOUGHT FIRST, GET TO THE QUOTA SYSTEM. I HAD, I WAS
17 A HOLDER, I HAD A VERY LARGE STAKE OF QUOTA BACK IN 1996. WE
18 HAD THE OPTION TO KEEP QUOTA OR GO AND PULL A REAL ESTATE LOAN,
19 OR TRY TO GO THROUGH A LENDER TO BUY A PIECE OF PROPERTY. WE
20 HAD JUST BOUGHT A NEW FACILITY, WE WERE VERY SHORT ON EQUITY.
21 QUOTA HELPED US IMMENSELY BACK THEN. WE SOLD THE QUOTA, IT WAS
22 ONE OF THE HIGHEST SELLERS. BACK THEN, QUOTA REALLY HAD A HIGH
23 VALUE. WE PAID FOR THAT FIRST PIECE OF PROPERTY WITH A QUOTA.
24 AND I FEEL THAT IT IS VERY IMPORTANT THAT WE PROTECT, EVEN
25 THOUGH I DON'T OWN ONE SINGLE POUND OF QUOTA, I AM VERY MUCH IN

1 FAVOR OF RETAINING OUR QUOTA SYSTEM HERE IN THE COUNTY. FOR
2 THOSE, I HAVE BENEFITTED GREATLY. I WOULD BE A HYPOCRITE TO
3 SAY, "YEAH, QUOTA IS NO BIG DEAL." PEOPLE THAT DON'T LIKE
4 QUOTA IS PEOPLE THAT DON'T HAVE QUOTA, BASICALLY, YOU KNOW.
5 BASIC ASSUMPTION. I HAVE BENEFITTED, AND THOSE THAT HAVE THAT
6 ARE BENEFITTING AND THAT HAVE INVESTED CAPITAL, THEY CHOSE,
7 IT'S BEEN STATED IT'S OVER A BILLION PLUS ASSET, THAT HAS TO BE
8 PROTECTED.

9 YOU KNOW, AND IN DISCUSSIONS WITH OUR COOP, I DO THANK
10 THE THREE COOPS IMMENSELY. THEY SEEN THE WRITING ON THE WALL.
11 THIS HAS BEEN, FOR ME PERSONALLY, AND OUR COOP LEADERSHIP, THIS
12 HAS BEEN PROBABLY A THREE-YEAR PROCESS. EDUCATING -- WE'RE --
13 WE DO BUSINESS, LAND O'LAKES DOES BUSINESS, I BELIEVE, IN ALL
14 50 STATES. WE ARE A THREE-PRONG COMPANY. THERE'S DAIRIES
15 FOODS, WE DO SEED GROUNDING, AND WE ALSO DO LIVESTOCK FEED.

16 AND AT FIRST WHEN I -- I SIT ON THE POLICIES AND
17 RESOLUTIONS COMMITTEE, AND I, THREE YEARS AGO I WANTED A POLICY
18 OR A RESOLUTION STATING, FOR US CALIFORNIA DAIRYMEN TO NOT
19 STUDY, WHAT'S THE WORD I'M LOOKING FOR, KIND OF STUDY OR
20 INVESTIGATE HOW CALIFORNIA COULD JOIN THE FEDERAL ORDER. AND
21 IT -- IT TOOK THREE YEARS TO GET HERE WITH THE VERY MANY
22 DISCUSSIONS WITH OUR ECONOMIST AND OUR CEO, AND FRANKLY, OTHER
23 MEMBERS FROM ACROSS THE COUNTRY. THEY DIDN'T UNDERSTAND WHAT
24 IT WOULD MEAN. AND THEN, YOU KNOW, THE PERSPECTIVE I SEE, THE
25 THREE COOPS, THEY ARE IN THE SAME BOAT. THE DAIRY INSTITUTE,

1 ALL THE PLAYERS HERE, EVERYBODY IS ANGLING FOR IT, YOU KNOW,
2 FOR POSITION. EVERYBODY HAS A STAKE IN THERE. THE THREE
3 COOPS' PROPOSAL, IT'S A VERY DIFFERENT PROPOSAL, IT'S LIKE NO
4 OTHER PROPOSAL, WE ARE A UNIQUE REGION, BUT THEY WILL SUFFER
5 ECONOMICAL SETBACKS. THEY WILL HAVE TO PAY MORE FOR THE MILK,
6 TOO, NOT JUST THE DAIRY INSTITUTE, NOT JUST, YOU KNOW, PRIVATE
7 PEOPLE.

8 SO WHY WOULD THE THREE COOPS PUT A PROPOSAL FORWARD,
9 WHEN THEY ARE IN THE SAME BOAT THAT THEY WILL HAVE TO PAY MORE
10 FOR RAW PRODUCT. BECAUSE WE HAVE PROVEN TO THEM THAT THE DAIRY
11 INDUSTRY IN CALIFORNIA, YOU KNOW, WE'RE SUFFOCATING. IT'S --
12 WE'RE DYING A SLOW DEATH.

13 YOU KNOW, I MEAN, A LOT OF US THOUGHT THAT THIS DAY
14 WOULD NEVER COME. A FEDERAL ORDER, THERE'S NO WAY. THERE'S NO
15 WAY CALIFORNIA -- BECAUSE DAIRYMEN, I HAVE A FRIEND OF MINE
16 EVERY MORNING OR WE CAN, WHEN OUR MILK CHECKS ARRIVE, HE LOOKS
17 AT ME AND HE SAYS, "WE GOT TO BE THE STUPIDEST BREED. WHY ARE
18 WE HERE? WE ARE THE STUPIDEST BREAD TO TAKE A BASHING." AND
19 WE STILL, YOU KNOW, WE EXPECT A DIFFERENT, YOU KNOW, WHAT,
20 WHAT'S THE WHAT'S THE SAYING, WHAT'S THE -- I CAN'T EVEN THINK
21 NOW.

22 JUDGE CLIFTON: DEFINITION OF INSANITY?

23 MR. MACHADO: INSANITY. YES. WE ALL KNOW IT. BUT WE'RE
24 VERY RESILIENT. I HAD AN OPPORTUNITY TO GO TO COLLEGE. WHEN I
25 TURNED 18, I HAD BEEN WORKING ON THE DAIRY SINCE I WAS MAYBE 12

1 YEARS OLD. I TURNED 18, I GRADUATED. I HAD, I WOULDN'T SAY I
2 WAS BRILLIANT, BUT I HAD ENOUGH, ENOUGH EDUCATION TO GO TO
3 COLLEGE, AND YOU KNOW, ENOUGH, ENOUGH COMMON SENSE. MY DAD
4 GAVE ME AN ULTIMATUM. HE SAID, "YOU AND YOUR BROTHERS WANT TO
5 GO TO COLLEGE, THAT'S FINE. ME AND MOM HAVE ENOUGH TO LIVE ON.
6 WE'RE NOT GOING TO SUFFER IN THE DAIRY BUSINESS." HE GOES,
7 "GRANTED, WE'LL GIVE YOU THE OPPORTUNITY TO BE YOUR OWN BOSSES.
8 YOU'LL NEVER HAVE TO WORK FOR ANYBODY AGAIN."

9 AND LOOKING BACK, I DON'T THINK I WOULD. I DON'T
10 REGRET DOING THAT DECISION. BUT HIS GENERATION, THEY ARE A
11 DYING BREED. WE ARE THE NEXT GENERATION. I HAVE NO KIDS, SO
12 IT ENDS WITH ME. BUT IT'S JUST, FROM 2009 ON, I DON'T KNOW
13 WHAT IT IS. DAIRY IN CALIFORNIA IS JUST, IT'S JUST, YOU KNOW,
14 YOU GOT YOUR UPS AND DOWNS. YOU GO TO DISBURSALS. YOU SEE
15 FAMILIES THAT, GENERATIONS, AND -- AND IT'S HARD. IT'S HARD TO
16 SEE FAMILIES SEE THEIR LIVESTOCK BEING AUCTIONED OFF.
17 SOMETHING THAT THEY LIVE FOR. THEY LOVE TO. YOU KNOW, WE TAKE
18 PRIDE IN THE FEEDING THE WORLD. WE TAKE PRIDE IN PRODUCING ONE
19 OF THE PUREST, SAFEST COMMODITIES IN THE NATION.

20 MY DAIRY ITSELF, WE HAVE WON TOP COOP MILK QUALITY EVER
21 SINCE WE JOINED LAND O'LAKES, SINCE 1998 WHEN WE MERGED FROM
22 UCCA. I TAKE PRIDE IN PRODUCING A WHOLESOME PRODUCT. AND I'M
23 GOING TO CONTINUE PRODUCING A WHOLESOME PRODUCT.

24 WHAT WE'RE GOING TO GET OUT OF THE USDA, I'M SURE THEY
25 ARE GOING TO TAKE ALL THE FACTS AND ALL THE TESTIMONY INTO

1 CONSIDERATION. BUT IS IT GOING TO BE A FIX-ALL? WE ARE VERY
2 RESILIENT. ANY BIT OF CHANGE IN THE RIGHT DIRECTION IS BETTER
3 THAN WHAT WE'RE AT RIGHT NOW.

4 THANK YOU FOR GIVING ME THE OPPORTUNITY TO VENT AND THE
5 OPPORTUNITY TO SHARE. THAT CONCLUDES MY TESTIMONY.

6 JUDGE CLIFTON: THANK YOU, MR. MACHADO. THE TRANSCRIPT
7 WON'T SHOW HOW CLOSE YOU WERE TO TEARS.

8 WHO HAS QUESTIONS FOR MR. MACHADO? THANK YOU.

9 MR. MACHADO: THANK YOU FOR BELIEVING IN ME, YOUR HONOR.

10 JUDGE CLIFTON: THANK YOU, MR. MACHADO.

11 IT'S 4:48. HOW MUCH ECONOMIC DATA SHOULD WE RECEIVE
12 YET TONIGHT?

13 MR. ENGLISH: I PROPOSE WE START TOMORROW MORNING.

14 JUDGE CLIFTON: WE HAVE A PROPOSAL FROM MR. ENGLISH THAT WE
15 START TOMORROW MORNING. MR. VETNE?

16 MR. VLAHOS: WE CONCUR.

17 JUDGE CLIFTON: IS THERE ANYTHING, SHOULD WE TALK ABOUT
18 WHAT ELSE WE THINK WILL HAPPEN TOMORROW? SO WHO WOULD LIKE TO
19 GIVE US A PREVIEW FOR TOMORROW? MR. RICHMOND?

20 MR. RICHMOND: WILLIAM RICHMOND. WE WOULD REALLY
21 APPRECIATE, YOUR HONOR, IF WE COULD GET A WITNESS, A USDA
22 WITNESS, UP FIRST THING IN THE MORNING TO PRESENT A TABLE THAT
23 COMPARES PRODUCT CLASSIFICATION UNDER THE CALIFORNIA STATE
24 ORDER TO FEDERAL MILK MARKETING ORDERS. AND WE WOULD ALSO LIKE
25 TO RECALL ONE OF THE DAIRY INSTITUTE WITNESSES FOR JUST SOME

1 BRIEF CLARIFICATION ON A DATA REQUEST FROM LAST WEEK.

2 JUDGE CLIFTON: I'M SORRY, FOR A BRIEF WHAT?

3 MR. RICHMOND: WE JUST NEEDED SOME ADDITIONAL CLARIFICATION
4 REGARDING A DATA REQUEST THAT WAS SUBMITTED LAST WEEK.

5 JUDGE CLIFTON: ALL RIGHT. DO YOU WANT THAT NOW?

6 MR. RICHMOND: WE WOULD REFER TO HAVE IT ON THE RECORD. IT
7 IS REALLY UP TO THE DAIRY INSTITUTE AND YOUR HONOR.

8 JUDGE CLIFTON: WELL, I THINK, IF -- OH, IN THE MORNING
9 SAYS MR. ENGLISH.

10 MR. ENGLISH: IN THE MORNING.

11 JUDGE CLIFTON: IN THE MORNING? OKAY. SO IN THE MORNING,
12 YOU HAVE DATA, BUT YOU ALSO NEED CLARIFICATION ABOUT ADDITIONAL
13 DATA?

14 MR. RICHMOND: YES.

15 JUDGE CLIFTON: OKAY. ALL RIGHT. AND THEN OF COURSE
16 MR. HOLLON WOULD LOVE TO CONTINUE TO TESTIFY, OR IS HE GONE?

17 MR. BESHORE: HE WILL BE AVAILABLE.

18 JUDGE CLIFTON: AND IF WE HAVE MORE PEOPLE WHO WOULD LIKE
19 TO TESTIFY IN ADDITION, WE'LL, OF COURSE MAKE ROOM FOR THEM.

20 AND IS THERE ANY OTHER PREVIEW YOU WANT TO GIVE ME, MR.
21 BESHORE, OF ADDITIONAL THINGS TO COME?

22 MR. BESHORE: I EXPECT MR. HOLLON, ALONG WITH THESE OTHERS,
23 WILL LIKELY TAKE MOST, IF NOT ALL, OF THE DAY.

24 JUDGE CLIFTON: ALL RIGHT. SO MR. BESHORE SAYS MR. HOLLON,
25 ALONG WITH THESE OTHER HOUSEKEEPING THINGS, IS LIKELY TO TAKE

1 MOST OF THE DAY. SO THAT'S PROBABLY TRUE, PARTICULARLY IF WE
2 INTERRUPT HIM WITH OTHER WITNESSES.

3 ALL RIGHT, THEN. IT'S BEEN A --IT'S BEEN JUST A
4 WONDERFUL DAY.

5 MR. RICHMOND: I'M SORRY, YOUR HONOR, WE JUST HAVE ONE
6 ADDITIONAL HOUSEKEEPING ITEM.

7 JUDGE CLIFTON: CERTAINLY.

8 MR. RICHMOND: SO TOMORROW MORNING THE ROOM DIVIDER IS
9 GOING TO BE COMPLETELY CLOSED, SO WHEN YOU COME IN THE MORNING,
10 WE'RE GOING TO NEED YOU TO COME IN THE ONE OF THESE DOORS OVER
11 HERE ON THIS SIDE. WE'LL HAVE SOME SIGNS UP IN THE LOBBY, SO
12 FOLKS KNOW WHERE TO GO. WE'LL ALSO HAVE SOME PEOPLE POSTED
13 AROUND THE BUILDING IF WE SEE ANY WANDERERS.

14 JUDGE CLIFTON: WE ACTUALLY ENTER THIS ROOM FROM THE
15 OUTDOOR, OUTSIDE DOORS.

16 MR. RICHMOND: FROM EITHER THIS DOOR HERE --

17 JUDGE CLIFTON: THE DOOR NEAR THE COPY MACHINE OR THE DOOR
18 NEAR THE WITNESS STAND.

19 MR. RICHMOND: TO ACCESS THE REST ROOM YOU CAN GO EITHER TO
20 THAT ONE OR UNFORTUNATELY WE'RE GOING TO HAVE TO SEND YOU
21 OUTSIDE AND COME BACK IN.

22 JUDGE CLIFTON: ALL RIGHT. THAT WILL WORK. IT SURE BEATS
23 BREAKING DOWN THIS ROOM AND SETTING UP ANYTHING. AND THANK YOU
24 FOR THE HEAD'S UP.

25 MR. ENGLISH: WE'LL ALSO BE MONITORING TWO EXPECTED VOTES,

1 ONE IN THE SENATE AND ONE IN THE HOUSE.

2 JUDGE CLIFTON: WELL, IT SAID IT ALREADY DID ITS WORK.

3 MR. ENGLISH: WELL, THEY FAST-TRACKED IT, BUT THEY NEED A
4 FINAL APPROVAL. THERE'S NO REASON TO BELIEVE IT WON'T PASS,
5 BECAUSE IT ALREADY HAD A PROCEDURAL VOTE, BUT THERE IS A FINAL
6 VOTE. AND BECAUSE IT HADN'T BEEN VOTED ON YET, THE HOUSE HAS
7 TO DO A PROCEDURAL MOVE FOR THE HOUSE RULES COMMITTEE TO ALLOW
8 THEM TO HAVE TWO VOTES TOMORROW SO --

9 JUDGE CLIFTON: OH, I SEE. SO WHAT MR. ENGLISH IS TALKING
10 ABOUT, FOR THOSE OF YOU WHO CANNOT HEAR, IS HOPEFULLY A
11 CONTINUING RESOLUTION THAT WILL KEEP US FUNDED AND IT STILL
12 REQUIRES VOTES. ALL RIGHT.

13 THEN, I THANK YOU ALL FOR TODAY. TODAY WAS
14 EXCEPTIONALLY SPECIAL. WE NOW GO OFF RECORD AT 4:52.

15 (WHEREUPON, THE PROCEEDINGS WERE CONCLUDED FOR THE DAY.)

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COURT REPORTERS CERTIFICATE

STATE OF CALIFORNIA)
) SS.
COUNTY OF FRESNO)

I, MYRA A. PISH, hereby certify:

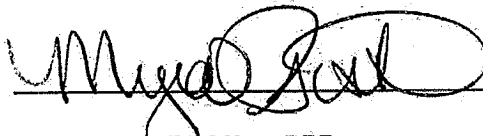
I am a duly qualified Certified Shorthand Reporter, in the State of California, holder of Certificate Number CSR 11613, issued by the Court Reporters Board of California and which is in full force and effect.

I am not financially interested in this action and am not a relative or employee of any attorney of the parties, or of any of the parties.

I am the reporter that stenographically recorded the testimony in the foregoing proceeding and the foregoing transcript is a true record of the testimony given.

DATED: October 11, 2015

FRESNO, CALIFORNIA

A handwritten signature in dark ink, appearing to read 'Myra A. Pish', written over a horizontal line.

MYRA A. PISH, CSR
Certificate No. 11613

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