

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

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

VOLUME VII

TRANSCRIPT OF PROCEEDINGS

September 30, 2015

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BEFORE THE SECRETARY OF AGRICULTURE

IN RE: ) [AO]  
 ) DOCKET NO. 15-0071  
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MILK IN CALIFORNIA )  
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BEFORE U.S. ADMINISTRATIVE LAW JUDGE  
JILL S. CLIFTON

WEDNESDAY, SEPTEMBER 30, 2015

9:01 A.M.

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

TRANSCRIPT OF PROCEEDINGS

VOLUME 7

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.  
 LAUREN BECKER, ESQ.

4

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

8

9 CALIFORNIA DAIRIES, LAW OFFICES OF MARVIN BESHORE  
 INC., DAIRY FARMERS BY: MARVIN BESHORE, ESQ.  
 OF AMERICA, INC., HANSON BRIDGETT, SAN FRANCISCO  
 10 LAND O'LAKES, INC.: BY: JOHN VLAHOS, ESQ.  
 MEGAN OLIVER THOMPSON, ESQ.

11 DENNIS SCHAD  
 ELVIN HOLLON  
 12 THOMAS WEGNER

13 DAIRY INSTITUTE OF DAVIS WRIGHT TREMAINE  
 CALIFORNIA: BY: CHIP ENGLISH, ESQ.  
 14 ASHLEY VULIN, ESQ.  
 WILLIAM SCHIEK  
 15 RACHEL KALDOR

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

17

18 DEAN FOODS COMPANY: ROB BLAUFUSS

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

20

21 CALIFORNIA PRODUCER STOEL RIVES  
 HANDLERS ASSOCIATION: BY: NICOLE HANCOCK, ESQ.  
 VICTOR LAI

22

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

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I N D E X - V O L U M E 7

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I N D E X - V O L U M E 7

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1 WEDNESDAY, SEPTEMBER 30, 2015 - - MORNING SESSION  
2 JUDGE CLIFTON: WE ARE BACK ON RECORD ON SEPTEMBER 30,  
3 2015. IT IS WEDNESDAY AND IT IS 9:01 IN THE MORNING. WE'RE IN  
4 CLOVIS, CALIFORNIA. WE'RE HERE IN A MILK HEARING. MY NAME IS  
5 JILL CLIFTON I'M THE UNITED STATES ADMINISTRATIVE LAW JUDGE WHO  
6 IS ASSIGNED TO TAKE IN EVIDENCE AT THIS HEARING. THERE ARE TWO  
7 KINDS OF EVIDENCE; TESTIMONY AND EXHIBITS.

8 TODAY IS DAY 7 OF THIS PROCEEDING. I WOULD LIKE THE  
9 TRANSCRIPT VOLUME FOR TODAY, THERE'S A DIFFERENT VOLUME FOR  
10 EACH DAY, TO HAVE PAGE NUMBERS IN SEQUENCE TO THOSE OF  
11 YESTERDAY.

12 THE DOCKET NUMBER IS, IN BRACKETS, [AO], DOCKET NUMBER  
13 15-0071. I'M JILL CLIFTON. I'M A UNITED STATES ADMINISTRATIVE  
14 LAW JUDGE. I AM AN EMPLOYEE OF THE UNITED STATES DEPARTMENT OF  
15 AGRICULTURE. AND I WOULD LIKE NOW TO TAKE APPEARANCES OF THOSE  
16 PARTICIPATING TODAY, BEGINNING, PLEASE, WITH OTHER EMPLOYEES OF  
17 THE UNITED STATES DEPARTMENT OF AGRICULTURE.

18 MS. MAY: GOOD MORNING, I'M LAUREL MAY WITH USDA AMS  
19 DAIRY PROGRAMS. LAUREL L-A-U-R-E-L, MAY M-A-Y.

20 MR. RICHMOND: GOOD MORNING, I'M WILLIAM RICHMOND,  
21 R-I-C-H-M-O-N-D, WITH USDA.

22 MS. FRISIUS: MEREDITH FRISIUS, M-E-R-E-D-I-T-H  
23 F-R-I-S-I-U-S, WITH USDA.

24 MR. NIERMAN: JASON NIERMAN, J-A-S-O-N, N-I-E-R-M-A-N,  
25 ASSISTANT MARKET ADMINISTRATOR FOR FEDERAL ROUTE 5. I'M HERE

1 ON DETAIL WITH AMS DAIRY PROGRAMS.

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

7 MR. CARMAN: GOOD MORNING, THE LAST DAY OF THE FISCAL YEAR.  
8 MY NAME IS CLIFFORD CARMAN, C-A-R-M-A-N, I'M ASSISTANT TO THE  
9 DEPUTY ADMINISTRATOR FOR DAIRY PROGRAMS, AGRICULTURAL MARKETING  
10 SERVICE, USDA.

11 MS. BECKER: GOOD MORNING, LAUREN BECKER, L-A-U-R-E-N  
12 B-E-C-K-E-R, OFFICE OF THE GENERAL COUNSEL.

13 MR. HILL: GOOD MORNING, LAST, BUT NOT LEAST -- BRIAN HILL,  
14 B-R-I-A-N, H-I-L-L WITH THE OFFICE OF GENERAL COUNSEL.

15 JUDGE CLIFTON: NOW, I WOULD LIKE THOSE WHO ARE ASSOCIATED  
16 WITH ONE OF THE PROPOSALS TO COME WITH THEIR ENTIRE TEAM AND  
17 INTRODUCE THEMSELVES.

18 MR. BESHORE: MARVIN BESHORE, M-A-R-V-I-N, B-E-S-H-O-R-E,  
19 COUNSEL FOR THE PROPONENTS OF PROPOSAL NUMBER 1, CDI, DFA, LOL.

20 MR. VLAHOS: JOHN VLAHOS, J-O-H-N, V AS IN VICTOR,  
21 L-A-H-O-S. HANSON BRIDGETT, B-R-I-D-G-E-T-T, CO-COUNSEL FOR  
22 THE PROPONENTS OF PROPOSAL NUMBER 1.

23 MS. OLIVER THOMPSON: GOOD MORNING, MEGAN OLIVER THOMPSON,  
24 ALSO WITH THE LAW OFFICES OF HANSON BRIDGETT, AND ALSO  
25 CO-COUNSEL FOR THE PROPONENTS OF PROPOSAL NUMBER 1.

1 MR. SCHAD: GOOD MORNING, DENNIS SCHAD, S-C-H-A-D, WITH  
2 LAND O'LAKES.

3 MR. HOLLON: GOOD MORNING, ELVIN HOLLON, E-L-V-I-N,  
4 H-O-L-L-O-N, ON BEHALF OF THE DAIRY FARMERS OF AMERICA, ONE OF  
5 THE PROPONENTS FOR PROPOSAL 1.

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

8 MR. ENGLISH: GOOD MORNING, MY NAME IS CHIP ENGLISH.  
9 C-H-I-P, E-N-G-L-I-S-H, FROM THE LAW FIRM OF DAVIS, WRIGHT,  
10 TREMAINE, ON BEHALF OF THE DAIRY INSTITUTE OF CALIFORNIA.

11 MS. VULIN: ASHLEY VULIN, A-S-H-L-E-Y, V, AS IN VICTOR,  
12 -U-L-I-N ALSO WITH DAVIS, WRIGHT TREAMINE, COUNSEL FOR THE  
13 DAIRY INSTITUTE OF CALIFORNIA.

14 MR. SCHIEK: GOOD MORNING, WILLIAM SCHIEK, S-C-H-I-E-K,  
15 ECONOMIST WITH DAIRY INSTITUTE.

16 MS. KALDOR: GOOD MORNING, RACHEL KALDOR, R-A-C-H-E-L,  
17 K-A-L-D-O-R, EXECUTIVE DIRECTOR OF DAIRY INSTITUTE.

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

20 MR. DEJONG: JAMES DEJONG, J-A-M-E-S, D-E-J-O-N-G, WITH  
21 HILMAR CHEESE, A DAIRY FARMER-OWNED MANUFACTURER OF CHEESE,  
22 WHEY, AND MILK POWDERS.

23 MS. TAYLOR: SUE TAYLOR -- STANDARD SPELLING -- WITH  
24 LEPRINO FOODS, L-E-P-R-I-N-O.

25 MR. VETNE: JOHN VETNE, V-E-T-N-E, REPRESENTATIVE FOR



1 HILMAR CHEESE COMPANY.

2 MS. HANCOCK: NICOLE HANCOCK WITH STOEL RIVES, N-I-C-O-L-E,  
3 H-A-N-C-O-C-K. AND STOEL RIVES IS S-T-O-E-L, R-I-V-E-S,  
4 REPRESENTING THE PRODUCER HANDLERS ASSOCIATION, AS WELL AS  
5 PONDEROSA DAIRY.

6 MR. LAI: GOOD MORNING, VICTOR LAI, LAST NAME IS SPELLED  
7 L-A-I, WITH PRODUCERS DAIRY FOODS AND PRODUCERS DAIRY FOODS IS  
8 A MEMBER OF THE PRODUCERS DAIRY HANDLERS ASSOCIATION.

9 JUDGE CLIFTON: I WOULD LIKE NOW TO TAKE APPEARANCES OF  
10 THOSE WHO ARE PARTICIPATING, WHETHER OR NOT THEY ARE ASSOCIATED  
11 WITH ANY PARTICULAR PROPOSAL.

12 MR. MILTNER: GOOD MORNING, IT'S RYAN MILTNER,  
13 M-I-L-T-N-E-R, WITH MILTNER LAW FIRM, ON BEHALF OF SELECT MILK  
14 PRODUCERS.

15 JUDGE CLIFTON: IS THERE ANYONE WHO HAS NOT YET COME  
16 FORWARD WHO EXPECTS TO TESTIFY?

17 ALL RIGHT. THAT IS, NOT YET. I WOULD LIKE NOW FOR  
18 THOSE WHO HAVE PRELIMINARY MATTERS TO ADDRESS, TO COME FORWARD.  
19 I WOULD LIKE TO START WITH THE USDA REPRESENTATIVES.

20 MS. MAY: LAUREL MAY. GOOD MORNING, AGAIN. NICE TO SEE  
21 ALL OF YOU HERE TODAY. I DON'T THINK WE HAVE ANYBODY IN HERE  
22 WHO HASN'T BEEN HERE, SO YOU HAVE HEARD THIS ROUTINE BEFORE,  
23 BUT I'LL GO THROUGH IT JUST TO REMIND YOU.

24 IF ANYBODY WOULD LIKE TO TESTIFY THAT ISN'T PART OF  
25 YOUR GROUP, THEY CAN CONTACT MEREDITH AND SHE'LL GET THEM ON

1 THE LIST. ANYBODY FROM THE AUDIENCE MAY QUESTION ANY OF THE  
2 WITNESSES. AND TO DO SO, YOU WOULD JUST COME TO THE  
3 MICROPHONE, AND JUDGE CLIFTON CAN ACKNOWLEDGE YOU.

4 WE ARE BROADCASTING VIA A LIVE AUDIO FEED, BUT WE ARE  
5 NOT RECORDING THIS SESSION OF THE HEARING. THE ACCESS FOR THAT  
6 IS WWW.TINYURL.COM/CAMILKHEARING -- I DON'T KNOW WHY I DON'T  
7 WRITE THAT DOWN.

8 THE COURT REPORTER IS REPORTING OFFICIAL TRANSCRIPTS,  
9 WHICH WILL BE AVAILABLE APPROXIMATELY TWO WEEKS AFTER THE END  
10 OF EACH HEARING WEEK.

11 THE EXHIBITS THAT ARE PRESENTED ARE NUMBERED IN ORDER  
12 OF PRESENTATION, AND COPIES OF THOSE WILL ALSO BE AVAILABLE, AS  
13 WILL ADDITIONAL COPIES OVER THERE ON THE SIDE DURING THE  
14 HEARING.

15 WE DO HAVE REFRESHMENTS IN THE BACK OF THE ROOM. I SEE  
16 THIS MORNING THEY CHANGED IT UP A LITTLE BIT, PLEASE HELP  
17 YOURSELF TO THAT.

18 AND BYWAY OF REMINDERS, WE WILL BE MOVING TO A  
19 DIFFERENT ROOM HERE IN THE BUILDING TOMORROW AND FRIDAY, AND  
20 IT'S GOING TO BE INDEPENDENCE A AND B, WHICH ARE TOWARD THE  
21 FRONT OF THE BUILDING OFF OF FOURTH STREET. SO WE WILL REMIND  
22 YOU AGAIN AT THE END OF THE DAY, BUT LOOK FOR OUR SIGN TOMORROW  
23 OVER THERE.

24 AND I BELIEVE -- OH, SO THEN -- LET'S SEE, YESTERDAY AT  
25 THE END OF THE DAY WE HAD MR. MACHADO ON THE STAND. I THINK

1 TODAY USDA WOULD LIKE TO BEGIN BY PRESENTING ITS CLASSIFICATION  
2 COMPARISON CHART THAT WE PREPARED, AND THEN WE ALSO NEED TO GET  
3 SOME CLARIFICATION ON A DATA REQUEST THAT MS. TAYLOR HAD MADE  
4 LAST WEEK, AND THEN WE SUSPECT WE'LL CONTINUE WITH PROPONENT  
5 WITNESSES.

6 JUDGE CLIFTON: WITH REGARD TO THE MOVE TO INDEPENDENCE A  
7 AND B, THE GOOD NEWS IS, ALTHOUGH WE HAVE TO VACATE THIS ROOM,  
8 WE CAN TAKE OUR THINGS DIRECTLY INTO THAT ROOM AND SET THEM UP  
9 TONIGHT SO WE DON'T HAVE TO HAUL THINGS BACK TO OUR HOTELS AND  
10 THEN BRING THEM BACK AGAIN, WHICH IS GREAT.

11 MY PLAN IS TO STOP THE HEARING NO LATER THAN 4:45. THE  
12 CREW THAT IS COMING INTO THIS ROOM WANTS ACCESS AT 5:15, SO  
13 WE'LL NEED TO CLEAR OUT. IF IT BECOMES APPROPRIATE TO STOP  
14 PRIOR TO 4:45, FINE. BUT NO LATER THAN 4:45 WE WILL STOP  
15 TODAY.

16 ARE THERE OTHER PRELIMINARY MATTERS FROM ANYONE?

17 MR. ENGLISH: CHIP ENGLISH. OF COURSE WE'LL ALSO BE  
18 MONITORING WHAT MAY OR MAY NOT BE HAPPENING IN WASHINGTON DC.  
19 MY LATEST INFORMATION IS, IT'S ONLY AFTERNOON AND NOBODY VOTES  
20 BEFORE NOON IN WASHINGTON DC. SO WE'RE ALREADY STARTED, AND  
21 THEY ARE NOT. SO OBVIOUSLY WE HAVE GOT SOME VOTES TO GO  
22 THROUGH, AND WE'LL SEE WHAT HAPPENS. THAT COULD AFFECT WHETHER  
23 WE'RE IN INDEPENDENCE TOMORROW. HOPEFULLY NOT.

24 JUDGE CLIFTON: HOPEFULLY IT WILL NOT AFFECT IT AS OPPOSED  
25 TO HOPEFULLY WILL NOT CONTINUE.

1 MR. ENGLISH: TO BE CLEAR, YES. THAT'S EXACTLY WHAT I  
2 MEANT. I THINK IT IS THE ONE THING THAT EVERYBODY IN THIS ROOM  
3 AGREES ON.

4 JUDGE CLIFTON: I'M CERTAIN THAT'S TRUE. THIS IS HARD WORK  
5 AND WE WANT TO FINISH IT. ALL RIGHT.

6 ARE THERE ANY OTHER PRELIMINARY MATTERS? LET'S BEGIN,  
7 THEN, WITH THE PASSING OUT OF ANY EXHIBITS THAT YOU HAVE THAT  
8 SHOWS THE CLASSIFICATION COMPARISON, AND TELL US WHAT NUMBER IT  
9 WILL BE. THIS WILL BE 29. AND I DO HAVE A MAGNIFYING GLASS UP  
10 HERE IN CASE ANYONE NEEDS TO USE IT. I BELIEVE THAT EVERYONE  
11 HAS A COPY. THANK YOU. MS. BECKER.

12 (THEREAFTER, EXHIBIT NUMBER 29 WAS MARKED  
13 FOR IDENTIFICATION.)

14 MS. BECKER: THIS IS LAUREN BECKER FOR USDA.

15 WILL YOU PLEASE STATE AND SPELL YOUR NAME FOR THE  
16 RECORD?

17 JUDGE CLIFTON: LET ME SWEAR HIM IN FIRST. YOU KNOW, IT  
18 DOESN'T -- IT DOESN'T -- THERE IS NOT A ROUTINE WHETHER YOU ASK  
19 A PERSON HIS NAME BEFORE OR AFTER YOU SWEAR HIM IN. BUT I HAVE  
20 BEGUN TO REALIZE THAT THAT'S SOMETHING I WANT AFTER A PERSON IS  
21 SWORN IN. SO I'M GOING TO SWEAR YOU IN IN A SEATED POSITION.

22 DO YOU SOLEMNLY SWEAR OR AFFIRM UNDER PENALTY OF  
23 PERJURY THAT THE EVIDENCE YOU WILL PRESENT WILL BE THE TRUTH?

24 MR. NIERMAN: YES, I DO.

25 JUDGE CLIFTON: THANK YOU. PLEASE STATE AND SPELL YOUR

1 NAME.

2 MR. NIERMAN: MY NAME IS JASON NIERMAN. LAST NAME IS  
3 N-I-E-R-M-A-N.

4 JUDGE CLIFTON: MS. BECKER, YOU MAY PROCEED.

5 MS. BECKER: THANK YOU.

6 DIRECT EXAMINATION

7 BY MS. BECKER:

8 Q. MR. NIERMAN, WILL YOU PLEASE TELL ME YOUR POSITION AT  
9 USDA?

10 A. I'M AN ASSISTANT OF MARKET ADMINISTRATOR IN FEDERAL  
11 ROUTE 5 LOCATED IN LOUISVILLE, KENTUCKY.

12 Q. AND CAN YOU TELL US YOUR EDUCATION AND A LITTLE BIT  
13 ABOUT YOUR BACKGROUND?

14 A. I HAVE A BACHELOR'S DEGREE IN ANIMAL SCIENCE FROM  
15 PURDUE UNIVERSITY, AND A MASTER'S DEGREE IN AGRICULTURE  
16 ECONOMICS, ALSO FROM PURDUE UNIVERSITY. IN 1998, I STARTED  
17 WITH USDA DAIRY PROGRAMS AS AN AGRICULTURAL ECONOMIST, AND IN  
18 2003 I MOVED TO THE LOUISVILLE MARKET ADMINISTRATORS OFFICE AND  
19 I HAVE BEEN EMPLOYED THERE SINCE THAT TIME.

20 Q. DO YOU HAVE BEFORE YOU WHAT WE HAVE MARKED AS  
21 EXHIBIT 29?

22 A. YES, I DO.

23 Q. OKAY. CAN YOU TELL US THE TITLE OF THIS EXHIBIT?

24 A. IT IS PRODUCT CLASSIFICATION SCHEDULE COMPARISON  
25 BETWEEN CALIFORNIA AND FMMO PROVISIONS.

1 Q. WHY WAS THIS TABLE CREATED?

2 A. IT WAS REQUESTED BY LAND O'LAKES IN JULY 2015, AND  
3 SINCE THE BEGINNING OF THE HEARING HAS BEEN REQUESTED TO BE  
4 ENTERED INTO THE HEARING RECORD.

5 Q. DID YOU PREPARE THIS CHART?

6 A. I WAS INVOLVED IN ITS PREPARATION AND LOOKED OVER IT  
7 AND APPROVED IT.

8 Q. DID YOU PREPARE IT IN SUPPORT OF, OR OPPOSITION OF ANY  
9 PROPOSAL?

10 A. NO, I DID NOT.

11 Q. CAN YOU -- OH, IS THERE A VERSION OF THIS CHART ON THE  
12 WEBSITE?

13 A. YES, THERE WAS -- THERE IS A VERSION ON THE WEBSITE  
14 UNDER THE DATA REQUEST ON USDA DAIRY PROGRAMS WEBSITE.

15 Q. IS THIS DOCUMENT DIFFERENT IN ANY WAY FROM THE ONE ON  
16 THE WEBSITE?

17 A. YES, THERE HAS BEEN A FEW CLARIFICATIONS. I BELIEVE IN  
18 THE FOURTH COLUMN WITH THE EVAPORATED, SWEETENED, UNSWEETENED,  
19 THE NOTES IN THE FOURTH COLUMN HAVE CHANGED, AND ALSO THERE'S  
20 BEEN A FOOTNOTE NUMBER 2 THAT'S BEEN ADDED ALSO ON EVAPORATED  
21 AND CONDENSED MILK.

22 Q. OKAY.

23 A. I BELIEVE THAT'S THE ONLY MAJOR CHANGES TO IT.

24 Q. OKAY. CAN YOU CLARIFY FOR US THE HEADER AT THE TOP  
25 UNDERNEATH THE TITLE THAT YOU PREVIOUSLY READ?

1           A.   IT MENTIONS, "A MARKET ADMINISTRATOR SHOULD ALWAYS BE  
2 CONSULTED FOR A FORMAL FEDERAL MILK MARKETING ORDER  
3 CLASSIFICATION DETERMINATION." SO THE FINAL SAY IS ALWAYS WITH  
4 A MILK MARKET ADMINISTRATORS OFFICE.

5           Q.   OKAY. AND SO THIS DOCUMENT IS FOR INFORMATIONAL USE  
6 ONLY?

7           A.   THAT'S CORRECT.

8           Q.   OKAY. COULD YOU GO AHEAD AND WALK US THROUGH WHAT THIS  
9 TABLE SHOWS, PLEASE?

10          A.   THE FIRST, THERE'S FOUR COLUMNS ON THIS TABLE. THE  
11 FIRST TWO COLUMNS WERE TAKEN DIRECTLY FROM A DOCUMENT ON THE  
12 CDFA WEBSITE, AND THAT WEB ADDRESS IS CITED IN THE FOOTNOTE  
13 ONE.

14                 THE THIRD COLUMN IS THE CORRESPONDING FEDERAL ORDER  
15 CLASSIFICATION BASED ON SECTION 1000.40. AND THE FOURTH COLUMN  
16 NOTES EXCEPTIONS TO THE FEDERAL ORDER CLASSIFICATION.

17          Q.   ALL RIGHT. YOUR HONOR, AT THIS POINT, I WOULD MOVE TO  
18 HAVE EXHIBIT 29 ENTERED INTO THE RECORD.

19          JUDGE CLIFTON: DOES ANYONE HAVE ANY QUESTIONS FOR THE  
20 WITNESS BEFORE DETERMINING WHETHER YOU OBJECT TO EXHIBIT 29  
21 BEING ADMITTED? THERE ARE NONE. DOES ANYONE OBJECT TO THE  
22 ADMISSION INTO EVIDENCE OF EXHIBIT 29? NO ONE.

23                 EXHIBIT 29 IS ADMITTED INTO EVIDENCE.

24                 (THEREAFTER, EXHIBIT NUMBER 29 WAS  
25 RECEIVED INTO EVIDENCE.)

1 MS. BECKER: THAT'S ALL THE QUESTIONS WE HAVE FOR THIS  
2 WITNESS, YOUR HONOR.

3 JUDGE CLIFTON: WHO WILL BE THE FIRST TO ASK QUESTIONS OF  
4 THIS WITNESS?

5 MR. BESHORE: MARVIN BESHORE.

6 CROSS-EXAMINATION

7 BY MR. BESHORE:

8 Q. GOOD MORNING, MR. NIERMAN.

9 A. GOOD MORNING.

10 Q. LET ME -- I WANT TO TALK ABOUT FOOTNOTE 2 AND THE  
11 CATEGORIES TO PROPER DESCRIPTIONS TO WHICH IT IS, TO WHICH IT  
12 IS ATTACHED.

13 FIRST OF ALL, HOW MANY PLACES DOES IT APPEAR?

14 A. I BELIEVE JUST TWO.

15 Q. OKAY. AND THOSE PRODUCTS WHERE IT APPEARS ARE WHAT?

16 A. IT'S CONDENSED, SWEETENED AND UNSWEETENED; AND  
17 EVAPORATED, SWEETENED AND UNSWEETENED PRODUCTS.

18 Q. OKAY. AND COULD YOU JUST TELL US WHAT FOOTNOTE 2 SAYS  
19 AND WHY IT IS THERE?

20 A. FOOTNOTE 2 SAYS, "BULK PRODUCT IS CLASSIFIED WITHIN A  
21 PLANT BASED ON FINAL USE." THOSE PRODUCTS ARE IN CONSUMER TYPE  
22 PACKAGES THAT ARE IN CLASS 4, BUT IF THEY ARE IN BULK FORM,  
23 THEY ARE IN THE CLASSIFIED, BASED ON THEIR FINAL USE IN THE  
24 PLANT.

25 Q. OKAY. SO JUST TAKING THE FIRST LINE, WHICH IS MILK,



1 UNDER CONDENSED, SWEETENED AND UNSWEETENED. THE CALIFORNIA  
2 CLASS IS INDICATED AS 2, THE FEDERAL FMMO CLASS IS INDICATED AS  
3 IV, BUT WITH THE ELABORATION PROVIDED BY THE FOOTNOTE 2, COULD  
4 YOU EXPLAIN HOW FEDERAL, WHAT THE CLASSIFICATION FOR CONDENSED  
5 MILK WOULD BE IN THE FEDERAL SYSTEM?

6 A. IF IT'S IN A CONSUMER TYPE PACKAGE, IT WOULD BE CLASS  
7 IV. IF IT IS IN A BULK FORM AND WENT TO AN ICE CREAM PLANT, IT  
8 COULD BE CLASSIFIED AS CLASS II IN THIS SITUATION.

9 Q. IF IT WENT TO THE CHEESE PLANT?

10 A. CLASS III.

11 Q. IT WENT TO A BUTTER POWDER PLANT?

12 A. IT WOULD BE CLASS IV.

13 JUDGE CLIFTON: IF I COULD ASK MR. NIERMAN, THE CHART  
14 ITSELF USES THE WORD EVAPORATED RATHER THAN CONDENSED; IS THAT  
15 CORRECT?

16 MR. NIERMAN: THEY USE BOTH.

17 JUDGE CLIFTON: OKAY. I'M LOOKING AT THE WRONG PART OF THE  
18 CHART, AREN'T I? I SHOULD HAVE BEEN LOOKING HIGHER.

19 MR. NIERMAN: YES, THERE'S A CONDENSED, AND EVAPORATED  
20 TOWARD THE BOTTOM, TWO-THIRDS DOWN.

21 JUDGE CLIFTON: RIGHT, OKAY. I SEE NOW. SO IF YOU,  
22 MR. BESHORE, THESE CATEGORIES ARE ALPHABETICAL, YOU TRULY WERE  
23 LOOKING AT THE CONDENSED SECTION?

24 MR. BESHORE: I WAS.

25 JUDGE CLIFTON: GOOD. THANK YOU.

1 MR. BESHORE: I WAS, JUST FOR PURPOSES OF CONCEPT AND  
2 ILLUSTRATION HERE, I WAS WORKING OFF THE FIRST LINE THAT I  
3 FOUND IN THIS FOOTNOTE 2, CLASS II.

4 JUDGE CLIFTON: THANK YOU.

5 BY MR. BESHORE:

6 Q. OKAY. SO WHAT HAPPENS THEN, IF CONDENSED IS, IN TERMS  
7 OF FEDERAL ORDER CLASSIFICATION, IF A CONDENSED IS USED AT A  
8 CLASS I PLANT, A DESSERT PLANT? WHAT IS THE CLASSIFICATION?

9 A. I THINK SOMEBODY MAY HAVE TESTIFIED ON THAT ON LAST  
10 WEEK, I BELIEVE.

11 Q. OKAY. THERE WAS SOME TESTIMONY ABOUT THAT?

12 A. I BELIEVE SO.

13 Q. OKAY. SO YOU DON'T -- YOU DON'T HAVE ANYTHING TO ADD?  
14 I MEAN, THAT TESTIMONY APPLIES TO THIS, IS EXPLANATORY OF THIS  
15 EXHIBIT?

16 A. YES.

17 Q. OKAY. AND -- OKAY. SO THE USE TO PRODUCE THAT APPLIES  
18 TO ALL FORMS OF CONDENSED, SWEETENED AND UNSWEETENED, ALL FORMS  
19 OF BULK EVAPORATED, SWEETENED AND UNSWEETENED; IS THAT CORRECT?

20 A. YES, IN BULK FORM THAT WOULD BE CORRECT, YES.

21 Q. OKAY. THE ASTERISKS IN THE FMMO CLASS LINE, THEY, JUST  
22 EYEBALLING, IT LOOKS LIKE EVERY TIME THERE'S AN ASTERISK, THE  
23 NOTES AND EXCEPTION SAYS CANNOT DETERMINE, BASICALLY. CAN YOU  
24 JUST ELABORATE ON THAT A LITTLE BIT?

25 A. WELL, THEY ARE -- PROVIDED THOSE PRODUCTS SAY MILK

1 DRINK COULD BE CLASSIFIED IN CLASS 1 OR CLASS II, BASED ON THIS  
2 SPECIFICATIONS OF THE PRODUCT, IF THE INDIVIDUAL PRODUCT  
3 INCLUDED IN THAT CATEGORY.

4 Q. ESSENTIALLY BASED ON THE COMPONENTS AS STIPULATED IN  
5 THE -- SO THE MILK PRODUCT DEFINITION?

6 A. CORRECT.

7 Q. OKAY. AND DOES THE SAME SORT OF PRINCIPAL APPLY TO ALL  
8 THE PRODUCTS FOR WHICH THERE'S AN ASTERISK IN THE FMMO CLASS  
9 COLUMN?

10 A. YES.

11 Q. OKAY. NOW, I WOULD LIKE TO GO TO THE BACK PAGE, MINE  
12 IS TWO-SIDED, IT WOULD BE THE SECOND PAGE OF THE EXHIBIT. AND  
13 THERE'S A -- THE ONLY NOTE ON THE SECOND PAGE IN THE FMMO NOTES  
14 AND EXCEPTIONS COLUMN, THE ONLY NOTES ARE WITH RESPECT TO DRY  
15 MILK, DRY WHEY AND DRY WHEY FROM OTHER CHEESE. THE NOTES SAY,  
16 "WHEN A BY PRODUCT OF CLASS III CHEESE MANUFACTURING."

17 CAN YOU EXPLAIN WHAT THAT NOTE, HOW THAT CLASSIFICATION  
18 WORKS THERE FOR DRY MODIFIED WHEY, DRY WHEY FROM OTHER CHEESE?

19 A. I BELIEVE THAT THAT NOTE IS PROVIDED BECAUSE OF ITS  
20 ABRUPT. IF WHEY IS A BY PRODUCT OF COTTAGE CHEESE PRODUCTION  
21 OR OTHER CHEESES THAT ARE IN FEDERAL ORDER CLASS II ARE -- YES,  
22 THAT IT WOULD BE A WHEY IN THOSE PRODUCTS WOULD BE IN CLASS II  
23 PRODUCT, OR THE MILK THAT'S USED TO MAKE THOSE PRODUCTS WOULD  
24 BE CLASSIFIED AS CLASS II.

25 Q. SO THIS -- THIS THEN SAYS, THIS SAYS FMMO CLASS III.

1           A.    YES, IT'S A BY PRODUCT OF CHEESE PRODUCTION, SO THE  
2 MILK THAT WENT INTO THE CHEESE PRODUCTION, WOULD BE CLASSIFIED  
3 AS CLASS III, AND THE DRY WHEY THAT COMES OFF OF THAT CHEESE  
4 MANUFACTURING WOULD ALSO BE CLASSIFIED IN CLASS III.  DRY WHEY  
5 WOULD NOT BE FOLLOWED FURTHER THROUGH THE PROCESS.

6           Q.    BUT IF IT IS MADE FROM BY PRODUCT OF COTTAGE CHEESE,  
7 WHAT HAPPENS THEN?

8           A.    COTTAGE CHEESE IS A CLASS II PRODUCT IN THE FEDERAL  
9 ORDER SYSTEM, SO IT WOULD BE, THE DRY WHEY WOULD BE THE MILK  
10 THAT WAS USED TO MAKE THE COTTAGE CHEESE, AND THEREFORE, THE BY  
11 PRODUCT OF DRY WHEY WOULD BE CLASSIFIED AS CLASS II.

12          Q.    SO IF THAT'S USED AS AN INGREDIENT IN ANOTHER PRODUCT,  
13 WHAT DOES -- WHAT HAPPENS TO IT?

14          A.    IT STAYS IN THE INITIAL CLASS THE MILK WAS USED.

15          Q.    OKAY.  NOW, AT THE BOTTOM, TOWARDS THE BOTTOM OF THE  
16 SECOND PAGE THERE'S -- THERE ARE WHAT, FOUR LINES DESCRIBING  
17 ADDITIONAL FMMO CLASSIFICATIONS NOT COVERED.  COULD YOU JUST  
18 WALK US THROUGH THOSE BRIEFLY AND TELL US WHAT THAT INDICATES?

19          A.    ALL RIGHT.  THESE ARE ITEMS THAT WERE NOT INCLUDED IN  
20 THE CDFA PRODUCT LISTING THAT WAS NOTED.  THE FIRST ONE IS  
21 FLAVORED BEVERAGES THAT DO NOT MEET THE FLUID MILK DEFINITION.  
22 THAT WOULD BE A CLASS II PRODUCT IN THE FEDERAL ORDER SYSTEM.

23                    BUTTERMILK THAT'S LABELED FOR BAKING AND CONTAINS  
24 GREATER THAN TWO PERCENT ADDED STARCH WOULD BE A CLASS II  
25 PRODUCT IN THE FEDERAL ORDER SYSTEM.

1 FLUID MILK PRODUCTS IN CONTAINERS LARGER THAN ONE  
2 GALLON SHIPPED TO COMMERCIAL FOOD PROCESSORS WOULD BE CLASS II  
3 IN THE FEDERAL MILK MARKETING ORDERS.

4 AND FLUID CREAM SHIPPED TO COMMERCIAL FOOD PROCESSORS  
5 WOULD ALSO BE CLASS II IN THE FEDERAL ORDER SYSTEM.

6 Q. THOSE CATEGORIES AREN'T SPECIFICALLY ENUMERATED BY CDFA  
7 IN ITS PRODUCT CLASSIFICATION LIST?

8 A. YES, THAT'S CORRECT.

9 Q. OKAY. THANK YOU. THANK YOU VERY MUCH, MR. NIERMAN.  
10 THANKS FOR YOUR EFFORTS IN PUTTING THIS TOGETHER, YOU AND YOUR  
11 TEAM, AND FOR YOUR TESTIMONY. APPRECIATE IT.

12 A. THANK YOU.

13 Q. I MAY HAVE ANOTHER QUESTION LATER.

14 JUDGE CLIFTON: SO WE'LL NOW INVITE QUESTIONS FROM OTHERS,  
15 ALTHOUGH MR. BESHORE MAY HAVE ADDITIONAL QUESTIONS AFTERWARDS.

16 DOES THAT MAKE YOU NERVOUS, MR. NIERMAN, WHEN THEY COME  
17 WITH REGULATIONS AND LAPTOPS TO QUESTION?

18 MR. NIERMAN: THAT'S ALL RIGHT.

19 MR. ENGLISH: CHIP ENGLISH.

20 CROSS-EXAMINATION

21 BY MR. ENGLISH:

22 Q. LET'S START WITH A THANK YOU FOR APPEARING AND PUTTING  
23 THIS IN. AND I THINK, YOUR HONOR, IF THERE'S -- IF THERE'S ANY  
24 -- THE PURPOSE OF MY BEING UP HERE IS CLARIFICATION. AND IF  
25 THERE'S ANY SIGNIFICANT CLARIFICATION, IT MAY COME FROM THE

1 AWKWARDNESS THAT WE CONTINUE TO HAVE WITH HAVING USDA DATA,  
2 WITH USDA WITNESSES, AND CDFA DATA THAT IS SOMEWHERE ELSE AND  
3 NOTICE. AND THAT IS CLEARLY NOT AN AWKWARDNESS THAT IS CAUSED  
4 BY USDA, SO NO, HE SHOULD NOT BE IN THE SLIGHTEST NERVOUS.

5 I HAVE A SERIES OF A COUPLE OF QUESTIONS FROM, SOME OF  
6 IT IS FROM MR. BESHORE.

7 JUDGE CLIFTON: NOW, WE KNOW YOU ARE CHIP ENGLISH, BUT I  
8 JUST WANT PEOPLE ON THE AUDIO FEED TO KNOW WHO IS TALKING.  
9 BY MR. ENGLISH:

10 Q. I THOUGHT I SAID THAT WHEN I STARTED -- CHIP ENGLISH.

11 SO LET'S START WITH EXHIBIT 29, AND I DON'T THINK I  
12 HEARD THIS ASKED, BUT I WAS LOOKING AT ANOTHER DOCUMENT.  
13 WITHIN THE FMMO NOTES AND EXCEPTIONS, ABOUT FIVE OR SIX TIMES  
14 THERE'S ANOTHER PARTICULAR EXCEPTION, FOR INSTANCE, UNDER MILK  
15 DRINK, WHERE YOU HAVE AN ASTERISK AND YOU SAY "CANNOT DETERMINE  
16 UNTIL PRODUCT SPECIFICATIONS ARE EVALUATED," CORRECT?

17 A. YES.

18 Q. OKAY. AND THAT IS THAT BASED UPON THE SPECIFICATIONS  
19 OF A MILK DRINK, IT COULD BE ONE OF A COUPLE OR MAYBE MORE  
20 DIFFERENT CLASSES, CORRECT?

21 A. THAT'S CORRECT.

22 Q. SO JUST, WITHOUT SPENDING A LOT OF TIME ON THIS, FOR  
23 INSTANCE, A MILK DRINK COULD, DEPENDING ON THE SPECIFICATIONS,  
24 MEET THE FLUID MILK DEFINITIONS OF A CLASS I PRODUCT, CORRECT?

25 A. THAT'S CORRECT.

1 Q. IF IT DOESN'T MEET THE FLUID MILK DEFINITION, IS IT  
2 CLASS II?

3 A. IT WOULD LIKELY BE A CLASS II PRODUCT IN THE FEDERAL  
4 ORDER SYSTEM.

5 Q. CAN IT BE SOMETHING OTHER THAN CLASS II, AND CLASS I OR  
6 CLASS II?

7 A. IF IT IS IN A BEVERAGE FORM, IT WOULD BE CLASS I OR  
8 CLASS II.

9 Q. WELL, CAN IT BE A DRINK IF IT IS NOT IN BEVERAGE FORM?

10 A. NO, IT CANNOT.

11 Q. I'M NOT BEING TRICKY, YOUR HONOR. IT CAN BE -- IF IT  
12 MEETS THE PRODUCT SPECIFICATIONS OF CLASS I, IT'S CLASS I; IF  
13 NOT, IT IS CLASS II AND THOSE ARE THE ONLY TWO THINGS IT COULD  
14 BE; IS THAT CORRECT?

15 A. YES.

16 Q. FOR A MILK FOR DRINK?

17 A. FOR MILK DRINK.

18 Q. NOW, A MILK DRINK MIX, THE WORD MIX IS A LITTLE  
19 DIFFERENT, CAN THAT BE DEFINITION OF A CLASS I PRODUCT IF IT IS  
20 A MIX?

21 A. WE WOULD HAVE TO -- THE INFORMATION WOULD HAVE TO BE  
22 PROVIDED TO THE MARKET ADMINISTRATOR AND THE MARKET  
23 ADMINISTRATOR WOULD HAVE TO MAKE THAT DETERMINATION.

24 Q. SO, AGAIN, IF IT SOMEHOW MET THE FLUID MILK DEFINITION?

25 A. IF IT MET THE FLUID MILK DEFINITION IN THE 1000.15, IT

1 WOULD BE A CLASS I PRODUCT.

2 Q. AND IF NOT, IT COULD BE A CLASS II PRODUCT, CORRECT?

3 A. YES.

4 Q. IS THERE ANOTHER CLASS IT COULD BE?

5 A. NOT THAT I'M AWARE OF.

6 Q. ALL RIGHT. SO DROPPING DOWN TO "FROMAGE FRAIS, (LOWFAT  
7 AND FAT FREE)," WHICH IS SPELLED F-R-O-M-A-G-E, F-R-A-I-S,  
8 AGAIN, YOU HAVE "CANNOT DETERMINE UNTIL PRODUCT SPECIFICATIONS  
9 ARE EVALUATED." SO THAT COULD, IF IT MEETS THE FLUID MILK  
10 DEFINITION, BE A CLASS I PRODUCT?

11 A. IF IT MEETS THE FLUID MILK DEFINITION. I THINK THE  
12 PRODUCT THE FEDERAL ORDER SYSTEM IS NOT MANUFACTURING OR  
13 PROCESSED IN THE FEDERAL ORDER SYSTEM, SO WE'RE NOT AWARE OF  
14 WHEN IT HAS BEEN CLASSIFIED AT THIS POINT.

15 Q. SO, WAIT A MINUTE, GOING BACK TO YOUR DISCUSSIONS  
16 EARLIER, AND THIS IS FOR INFORMATION ONLY, AND SINCE THE  
17 FEDERAL MARKET INDUSTRY WOULD HAVE TO BE CONSULTED, TO YOUR  
18 KNOWLEDGE SO FAR, THERE HAS BEEN SUCH A PRODUCT PRODUCED, YOU  
19 HAVEN'T HAD TO WORRY ABOUT IT?

20 A. THAT IS CORRECT.

21 Q. OKAY. I REALLY DON'T WANT TO STRAY TOO FAR, TO YOUR  
22 KNOWLEDGE, IS THAT PRODUCT USED IN CALIFORNIA?

23 A. I DO NOT KNOW.

24 Q. OKAY. ALL RIGHT. SO YOU WOULDN'T KNOW WHETHER IT  
25 COMES IN THE FEDERAL ORDER WE HAVE TO WORRY ABOUT PARTIALLY



1 REGULATED STATUS?

2 A. I DO NOT KNOW THAT.

3 Q. OKAY. SO MOVING DOWN TO ULTRA HIGH TEMPERATURE AND  
4 PRODUCTS, UNDER DAIRY SPREAD. YOU HAVE "CANNOT DETERMINE UNTIL  
5 PRODUCT SPECIFICATIONS ARE EVALUATED." SO DAIRY SPREAD, WHAT  
6 IS THAT, TO YOUR KNOWLEDGE?

7 A. I THINK IT'S, WITH THE ASTERISK I THINK IT COULD BE  
8 MANY DIFFERENT THINGS, SO THAT'S WHY THAT -- IT COULD BE A  
9 CREAM SPREAD OR A CHEESE SPREAD, AND THEREFORE, THAT'S WHERE  
10 THE --

11 Q. SO IT COULD BE CLASS II OR CLASS III?

12 A. AT LEAST, YES.

13 Q. AND POTENTIALLY POSSIBLE, BUT SOMEWHAT UNLIKELY THAT IT  
14 WOULD MEET THE FLUID MILK DEFINITION?

15 A. THAT'S CORRECT.

16 JUDGE CLIFTON: YOUR VOICE DROPPED. WHAT DID -- WHAT WAS  
17 THE LAST PHRASE? UNLIKELY THAT IT WOULD BE?

18 MR. ENGLISH: IT IS POSSIBLE, BUT UNLIKELY THAT IT WOULD BE  
19 THE DEFINITION OF FLUID MILK PRODUCT. I'LL CONSUME MORE WATER,  
20 YOUR HONOR.

21 BY MR. ENGLISH:

22 Q. THEN YOU HAVE FLAVORED DRINK. AND I'M NOT GOING TO  
23 BELABOR THIS, FLAVORED DRINK COULD LITERALLY HAVE THE SAME  
24 CLASSIFICATION SORT OF AS A MILK DRINK, CORRECT? BY DEFINITION  
25 USE THE WORD DRINK, FLUID DRINK. SO WE DON'T HAVE TO GO

1 FARTHER THAN THAT.

2 A. YES.

3 Q. AND THEN YOU HAVE GOT MILK DRINK MIX. AGAIN, WE HAVE  
4 ALREADY TALKED ABOUT MIXES UP, CORRECT?

5 A. YES.

6 Q. ALL RIGHT. NOW, YOU HAD A DISCUSSION WITH MR. BESHORE  
7 ABOUT THE, SORT OF THE ULTIMATE USE, SORT OF THE BULK CONCEPT  
8 VERSUS AN ULTIMATE USE CONCEPT, CORRECT?

9 A. YES.

10 Q. OKAY. NOW, THIS IS WHERE I THINK THINGS GET A LITTLE  
11 AWKWARD. YOU HAVE NOTICE, YOU HAVE FOOTNOTE 1 REFERENCES CDFA  
12 CLASSIFICATION OF DAIRY PRODUCTS AND A WEBSITE, CORRECT?

13 A. YES.

14 Q. OKAY. YOU HAVE A COLUMN FOR FMMO NOTES AND EXCEPTIONS.  
15 BECAUSE, OF COURSE, YOU KNOW ABOUT FMMO NOTES AND EXCEPTIONS,  
16 CORRECT?

17 A. YES.

18 Q. OKAY. AND FOR REASONS I THINK ARE PRETTY  
19 SELF-EXPLANATORY, YOU DIDN'T CREATE A FIFTH COLUMN FOR CDFA  
20 NOTES AND EXCEPTIONS, CORRECT?

21 A. NO, I DID NOT.

22 Q. OKAY. AND IF THERE ARE NOTES AND EXCEPTIONS, THEN  
23 THAT'S WITHIN THE CDFA DATA, THAT'S NOT WHAT YOU ARE TRYING TO  
24 PRESENT TODAY, CORRECT?

25 A. THAT'S CORRECT.

1 Q. OKAY. SO, YOUR HONOR, THIS IS WHERE WE REALLY DO HAVE  
2 THIS AWKWARDNESS GOING BACK AND FORTH. I THINK THE FOOTNOTE IS  
3 ENTIRELY APPROPRIATE, BUT I THINK IN ESSENCE TO MAKE IT REALLY  
4 WORK, WE HAVE TO TAKE OFFICIAL NOTICE OF WHAT'S IN FOOTNOTE 1,  
5 BECAUSE I REPRESENT TO YOU, YOUR HONOR, THAT THERE ARE  
6 EXCEPTIONS TO THE FOOTNOTES WITHIN THAT, THAT IS A NUMBER OF  
7 INSTANCES HAVE A SIMILAR RESULT UNDER CDFA RULES WITH RESPECT  
8 TO ULTIMATE DISPOSITION.

9 AND I'M NOT ASKING TO REWRITE THE EXHIBIT, THE EXHIBIT  
10 IS WHAT IT IS, BUT IN ORDER TO UNDERSTAND IN THE RECORD AT THIS  
11 POINT, THAT THERE COULD HAVE BEEN A FIFTH COLUMN, I DON'T THINK  
12 THAT -- I DIDN'T MEAN IT THAT WAY. FIFTH COLUMN THERE.

13 OBVIOUSLY, THE DEPARTMENT HAS ITS OWN EXHIBIT, BUT I  
14 THINK IN ORDER TO UNDERSTAND THIS EXHIBIT, WE NEED TO TAKE  
15 OFFICIAL NOTICE OF THE FOOTNOTE THAT WAS REFERENCED IN FOOTNOTE  
16 1 SO PEOPLE COULD GO TO THAT FOOTNOTE AND SEE WHAT NOTES AND  
17 CLARIFICATIONS CDFA HAS THAT WOULD CORRESPOND OR BE DIFFERENT  
18 FROM USDA'S NOTES AND EXCEPTIONS.

19 JUDGE CLIFTON: I'M HAPPY TO TAKE OFFICIAL NOTICE OF THAT  
20 WEBSITE. I DO WANT SOME KIND OF A HARD COPY IN THE RECORD  
21 EVENTUALLY, THAT REFLECTS WHAT THAT WEBSITE CURRENTLY SHOWS.

22 MR. ENGLISH: I THINK THAT LAST WEEK WE DISCUSSED THAT  
23 ISSUE AND WE WILL ADD THAT CERTAINLY TO OUR LIST OF WHAT COULD  
24 BE INCLUDED. BUT YES, I CERTAINLY AGREE, AND WE WILL CERTAINLY  
25 ADD THAT TO OUR LIST.

1 BY MR. ENGLISH:

2 Q. AND I TAKE IT, JUST TO BE CLEAR, MR. NIERMAN, YOU ARE  
3 NOT FAMILIAR WITH THOSE NOTES AND EXCEPTIONS AND ARE NOT  
4 PREPARED TO TESTIFY ABOUT THOSE TODAY?

5 A. THAT IS CORRECT.

6 Q. ALL RIGHT. THANK YOU. I HAVE NOTHING FURTHER AND I  
7 THANK YOU FOR YOUR APPEARANCE.

8 JUDGE CLIFTON: WHO WOULD LIKE TO ASK MR. NIERMAN QUESTIONS  
9 NEXT?

10 MR. VETNE: JOHN VETNE APPEARING FOR HILMAR.

11 CROSS-EXAMINATION

12 BY MR. VETNE:

13 Q. GOING BACK TO FOOTNOTE 2. FOOTNOTE 2 MODIFIES  
14 CONDENSED PRODUCTS AND EVAPORATED PRODUCTS FOR WHICH THERE ARE  
15 CALIFORNIA AND FEDERAL CLASSIFICATIONS. YOU HAVE INDICATED  
16 THAT FOOTNOTE 2 DESCRIBES A BULK PRODUCT CLASSIFIED WITHIN A  
17 PLANT, BASED ON FINAL USE IN THE FEDERAL ORDER SYSTEM.

18 TO YOUR KNOWLEDGE, DOES FOOTNOTE 2 ALSO MODIFY THE  
19 COLUMN THAT REFERS TO CALIFORNIA CLASS?

20 A. I'M NOT SPEAKING ON BEHALF OF HOW THE CALIFORNIA SYSTEM  
21 WORKS.

22 Q. OKAY. SO FOOTNOTE 2, IN ESSENCE, IS THE KIND OF  
23 INFORMATION THAT WOULD COME UNDER THE COLUMN FMMO NOTES AND  
24 EXCEPTIONS? IT IS AN FMMO NOTE, NOT A NOTE THAT CROSSES BOTH  
25 SYSTEMS?

1 A. THAT'S CORRECT.

2 Q. AND LET'S SEE, ONE FINAL THING. ON THE SECOND PAGE  
3 THERE'S A CLASSIFICATION FOR DRY BUTTERMILK, THAT WOULD BE  
4 BUTTERMILK THAT'S SOMETHING DIFFERENT THAN THE BUTTERMILK  
5 APPEARING ON THE PRIOR PAGE CLASS I IN BOTH MARKETS, CORRECT?

6 A. YES.

7 Q. THE BUTTERMILK ON PAGE TWO APPEARING DIRECTLY UNDER THE  
8 WORD BUTTER, IS BY PRODUCT OF BUTTER MANUFACTURING, CORRECT?

9 A. YES.

10 Q. OKAY. AND IN THE FEDERAL SYSTEM, WITH RESPECT TO THAT  
11 BY PRODUCT, IF THE BUTTERMILK THAT IS PRODUCED BY A BUTTER  
12 MANUFACTURER IS CULTURED AND PUT IN A PACKAGE AND SOLD TO  
13 CONSUMERS, THE WAY IT MIGHT HAVE BEEN IN THE 1800'S, HOW WOULD  
14 THAT BE CLASSIFIED?

15 A. MARKET ADMINISTRATOR WOULD HAVE TO GIVE MORE  
16 INFORMATION ABOUT THAT PROCESS AND THAT PRODUCT BEFORE MAKING A  
17 DETERMINATION.

18 Q. OKAY. ARE YOU AWARE THAT, IN FACT, THERE IS SUCH A  
19 PRODUCT BEING MARKETED IN THE FEDERAL SYSTEM?

20 A. THERE IS NONE IN FEDERAL ORDER 5 THAT I OPERATE IN, SO  
21 NO, I'M NOT AWARE OF THAT PRODUCT.

22 Q. OKAY. WELL, THERE IS IN THE STATE OF MAINE THERE IS  
23 SUCH A PRODUCT, ALSO IN NEW ENGLAND. SO THE CLASSIFICATION  
24 THEN, YOU WOULD LOOK TO NOT DAIRY PROGRAMS, BUT TO THE MARKET  
25 ADMINISTRATOR FOR THE NORTHEAST?

1           A.   THE NORTHEAST MARKET ADMINISTRATOR WOULD MAKE THAT  
2 DETERMINATION AND CONSULT WITH DAIRY PROGRAMS AND THE OTHER  
3 MARKET ADMINISTRATORS BEFORE A FINAL DETERMINATION WOULD BE  
4 MADE.

5           Q.   AND WHEN DETERMINATIONS LIKE THAT ARE MADE FOR NEW  
6 PRODUCTS, IS A, SOME SORT OF MEMORANDUM OR GUIDELINE  
7 DISTRIBUTED THROUGHOUT THE MARKET ADMINISTRATOR'S SYSTEM SO  
8 THAT EVERYBODY KNOWS AND CAN DO -- AND CAN APPLY THE RULES  
9 UNIFORMLY?

10          A.   I DON'T BELIEVE THERE'S A MEMO THAT'S PASSED AROUND AT  
11 THE TIME OF A FINAL DETERMINATION.

12          Q.   THANK YOU.

13          JUDGE CLIFTON:  ARE THERE OTHER QUESTIONS FOR MR. NIERMAN?  
14 THERE APPEAR TO BE NONE.  MR. NIERMAN, THANK YOU SO MUCH.

15          MR. NIERMAN:  YOU'RE WELCOME.

16          JUDGE CLIFTON:  NOW, LET'S ADDRESS USDA'S INQUIRY, THAT'S  
17 CLARIFICATION THAT IT NEEDS IN ORDER TO OBTAIN AND PRESENT MORE  
18 DATA.  WHO WOULD LIKE TO GO TO A MICROPHONE TO ASK CLARIFYING  
19 QUESTIONS?  MR. ENGLISH, I -- THIS IS SOMETHING DIFFERENT,  
20 RIGHT?

21          MR. ENGLISH:  IT IS -- BUT THIS IS CHIP ENGLISH.  I WANT TO  
22 MAKE SURE, SUE TAYLOR IS COMING UP ON BEHALF OF THE DAIRY  
23 INSTITUTE OF CALIFORNIA FOR THIS PARTICULAR ISSUE.

24          JUDGE CLIFTON:  ALL RIGHT.  SO LET'S FIRST HAVE SOME --  
25 LET'S SEE -- IS THERE A QUESTION.

1           SO MS. BECKER WAS SO EFFICIENT, IT WAS ADMITTED BEFORE  
2 WE EVEN GOT VERY FAR INTO IT. SO NORMALLY WE HAVE BEEN WAITING  
3 KIND OF LATE IN THE GAME, BUT SHE TOOK CARE OF IT RIGHT UP  
4 FRONT. THANK YOU. I DO APPRECIATE YOUR HELPING WITH THAT.  
5 ALL RIGHT. ALL RIGHT.

6           QUESTIONS? WHO WILL THE QUESTIONS COME FROM? ALL  
7 RIGHT. SO THAT WOULD BE GOOD, MS. TAYLOR, FOR YOU TO TAKE THE  
8 PODIUM SO THAT YOU WILL BE NEAR A MICROPHONE. BECAUSE  
9 MR. RICHMOND WILL BE ASKING FOR THE CLARIFYING INFORMATION AND  
10 HE ALREADY HAS A MICROPHONE. SO MR. RICHMOND.

11          MR. RICHMOND: BILL RICHMOND, USDA. THANK YOU, YOUR HONOR.  
12 THANK YOU MS. TAYLOR FOR TAKING A STAND. WE JUST HAD SOME  
13 CLARIFYING QUESTIONS REGARDING DATA REQUESTS YOU MADE LAST  
14 WEEK. WE WERE JUST WONDERING IF YOU COULD WALK THROUGH THE  
15 REQUEST AGAIN SO WE HAVE A BETTER UNDERSTANDING EXACTLY WHAT  
16 YOU ARE LOOKING FOR.

17          MS. TAYLOR: CERTAINLY. FIRST OF ALL, I VERY MUCH  
18 APPRECIATE THIS UNIT'S WORK, AGAIN, ALL THE TESTIMONY, AND  
19 ECONOMIC MODEL, AND THERE ARE MANY ECONOMIC MODELS THAT ARE  
20 WELL BEYOND ME TO TRY TO RECONCILE AND UNDERSTAND, QUITE  
21 HONESTLY.

22          MR. RICHMOND: LIKEWISE, AS I.

23          MS. TAYLOR: BUT I WOULD EXPECT TO BE ABLE TO REPLICATE THE  
24 CLASS PRICE IMPACTS. AND THOSE CLASS PRICE IMPACTS SHOW UP IN,  
25 WE'RE REFERRING TO EXHIBIT 5, I BELIEVE IT IS, THE ECONOMIC

1 IMPACT ANALYSIS.

2 AND MY FIRST QUESTION IS ROOTED IN MY INABILITY TO TIE  
3 UP RESULTS SHOWN IN THE CALIFORNIA TO FEDERAL ORDER TABLE  
4 IMPACTS. AND THIS INABILITY TO RECONCILE IT IS CONSISTENT  
5 ACROSS THE ANALYSIS ON ALL PROPOSALS. I FOCUSED MOSTLY ON  
6 TABLES 10 AND 58, BUT I EXPECT THAT THE SAME DIFFERENCE WOULD  
7 CARRY THROUGH IN TABLES 26 AND 42.

8 MY QUESTION WAS SPECIFIC TO THE CALIFORNIA COMMODITY  
9 PRICES INCORPORATED IN THE BASELINE ANALYSIS. MY UNDERSTANDING  
10 FROM THE DOCUMENTATION ON PAGE 19 OF THE EXHIBIT, IS THAT THE  
11 MODEL USES THE DAIRY INSTITUTE DEFAULT VALUES FOR COMMODITY  
12 PRICES, WITH THE EXCEPTION OF AN ADDITIONAL PENNY DECREASE IN  
13 THE CHEESE PRICE TO REFLECT THE EXCLUSION OF BARREL CHEESE FROM  
14 THE DAIRY INSTITUTE PROPOSAL, WHEN THEY ARE ANALYZING THE  
15 FEDERAL ORDER COMMODITY PRICES AND CLASS PRICES.

16 WHAT I DO NOT HAVE, AND THIS WOULD BE MY REQUEST, IS  
17 THE COMMODITY VALUES THAT WERE USED IN THE BASELINE CALIFORNIA  
18 CLASS PRICE CALCULATION, SPECIFICALLY THOSE PRICES THAT  
19 SUBSTITUTE FOR THE CME CHEDDAR, CME BUTTER, WESTERN STATES  
20 WHEY, CALIFORNIA WEIGHTED AVERAGE NONFAT DRY MILK PRICE, TO  
21 CALCULATE THE BASELINE FOR 4A AND 4B PRICES. SO THAT'S THE  
22 FIRST REQUEST.

23 I DO HAVE A SECOND QUESTION THAT I ELUDED TO IN THE  
24 REQUEST LAST FRIDAY, AND THAT IS RELATED TO WHETHER THE MODEL  
25 INCORPORATES THE MAKE ALLOWANCE CHANGES THAT ARE PART OF THE



1 DAIRY INSTITUTE PETITION.

2 AS I LOOK AT TABLE 57 OF EXHIBIT 5, IT APPEARS THAT THE  
3 FEDERAL ORDER PRICE CHANGE IMPACT IS CALCULATED BASED ON  
4 CURRENT FORMULAS EXTENDED BY COMMODITY PRICE IMPACTS, AND DOES  
5 NOT TAKE INTO CONSIDERATION THE MAKE ALLOWANCE IMPACTS. THAT'S  
6 NOT TO SAY THAT THE MODEL DOESN'T TAKE THAT INTO CONSIDERATION.  
7 BUT MY SECOND QUESTION IS TO VERIFY THAT, IN FACT, THE MODEL  
8 DOES CAPTURE THOSE MAKE ALLOWANCE CHANGES SOMEWHERE IN THE  
9 MODEL.

10 MR. RICHMOND: OKAY.

11 JUDGE CLIFTON: NOW, IF I WERE THE PERSON UNDERTAKING THE  
12 ASSIGNMENT, I WOULD WANT HER TO START AGAIN FROM THE TOP AND  
13 SAY IT AGAIN. BUT DO YOU ALL NOT NEED THAT?

14 MR. RICHMOND: I THINK WE UNDERSTAND THE REQUEST, YOUR  
15 HONOR. I DON'T THINK I AM ABLE TO RESPOND TO HER REQUEST RIGHT  
16 AT THIS TIME. SO IF IT IS OKAY, WE REALLY APPRECIATE THE  
17 ABILITY TO GET BACK TO MS. TAYLOR AND LET HER KNOW WHAT WE CAN  
18 DO.

19 JUDGE CLIFTON: RIGHT. I KNEW YOU -- THAT YOU WOULD HAVE  
20 TO GO BACK TO THE DATA IN ORDER TO RESPOND TO THE QUESTION.  
21 WILL YOU BE DOING THAT WITH PERSONNEL BOTH HERE AND BACK IN THE  
22 HEADQUARTERS?

23 MR. RICHMOND: YES, YOUR HONOR.

24 JUDGE CLIFTON: VERY GOOD. DO YOU WANT TO GIVE US AN  
25 ESTIMATE AS TO WHEN YOU WOULD BE ABLE TO RESPOND?

1 MR. RICHMOND: WE SHOULD BE ABLE TO RESPOND BY THE END OF  
2 THE WEEK, YOUR HONOR.

3 JUDGE CLIFTON: GREAT.

4 MR. RICHMOND: THANK YOU VERY MUCH.

5 JUDGE CLIFTON: IS THERE ANYTHING ELSE PRELIMINARY TO  
6 MR. HOLLON RESUMING HIS TESTIMONY? THERE APPEARS TO BE NOTHING  
7 ELSE.

8 MR. HOLLON, WELCOME BACK TO THE WITNESS STAND.  
9 MR. HOLLON, YOU REMAIN SWORN. WOULD YOU AGAIN STATE AND SPELL  
10 YOUR NAME?

11 MR. HOLLON: ELVIN, E-L-V-I-N, HOLLON, H-O-L-L-O-N.

12 MR. ENGLISH: CHIP ENGLISH.

13 CROSS-EXAMINATION (CONTINUED)

14 BY MR. ENGLISH:

15 Q. GOOD MORNING, MR. HOLLON.

16 A. GOOD MORNING, MR. ENGLISH.

17 Q. SO I'M HOPING TO CLOSE OUT WHERE WE WERE WITH RESPECT  
18 TO THE CENTRAL MILK USE COOPERATIVE ISSUE, QUICKLY.

19 WHEN I QUESTIONED YOU ABOUT THE ACTUAL MATERIAL THAT IS  
20 EXHIBIT 24, YOU SAID YOU RECOGNIZED THEM AND YOU HAD NO REASON  
21 TO BELIEVE THEY WERE NOT ACCURATE IN THE ACTUAL DOCUMENTS FROM  
22 CMBC. CORRECT?

23 A. THAT WAS BASED ON YOUR REPRESENTATION TO ME THAT THEY  
24 WERE.

25 Q. I MOVE THE ADMISSION OF EXHIBIT 24.

1 JUDGE CLIFTON: YOU KNOW, I DON'T THINK THERE'S A VERY  
2 GOOD, I DON'T THINK THERE'S A VERY GOOD FOUNDATION FOR THIS  
3 OTHER THAN YOUR REPRESENTATION. YOU KNOW, NORMALLY YOU WOULD  
4 NEED A WITNESS WHO KNOWS ABOUT IT. BUT I'LL TAKE IT IN IF  
5 THERE'S NO OBJECTION.

6 MR. ENGLISH: I UNDERSTAND YOUR POSITION, BUT HE ADOPTED IT  
7 EFFECTIVELY.

8 JUDGE CLIFTON: HE ADOPTED IT BASED ON YOUR REPRESENTATION  
9 AND YOU ARE NOT EVEN A WITNESS.

10 MR. ENGLISH: WELL, BUT THAT'S THE POINT OF HAVING A  
11 WITNESS ADOPT IT, YOUR HONOR. I UNDERSTAND. I'M HOPING TO  
12 MOVE QUICKLY, BECAUSE OTHERWISE WE'RE GOING TO HAVE TO SPEND A  
13 LOT OF TIME ON THAT ISSUE. I THINK IT IS A FAIRLY INNOCUOUS  
14 REQUEST, BUT LET'S SEE IF MR. BESHORE WANTS TO OBJECT.

15 MR. BESHORE: ACTUALLY, PERHAPS REGRETTABLY, I DO WANT TO  
16 OBJECT THAT IT IS SIMPLY BECAUSE OF THE NATURE OF THE TESTIMONY  
17 THAT HAS ALREADY COME INTO THE RECORD ABOUT THIS DOCUMENT,  
18 WHICH WAS, IS EXTREMELY CONFUSING AND MISLEADING, BECAUSE OF  
19 THE FACT THAT MY, AMONG OTHER THINGS, THEIR DOCUMENTS ARE  
20 UNFAMILIAR. AND I BELIEVE THAT FOR THEM TO BE IN THE RECORD,  
21 WE SHOULD WE NEED A WITNESS THAT KNOWS WHAT THEY ARE, HAS  
22 RECEIVED THEM, AND CAN AUTHENTICATE THEM AND EXPLAIN THEM. SO  
23 I OBJECT TO THEM BEING RECEIVED.

24 JUDGE CLIFTON: MR. ENGLISH, WHY DO YOU NOT CALL SOMEBODY  
25 LIKE MR. BLAUFUSS WHO --

1 MR. ENGLISH: I MEAN, OBVIOUSLY I CAN. I WAS JUST TRYING  
2 TO EFFICIENTLY MOVE FORWARD SO WE DON'T LOSE TRACK OF EXHIBIT  
3 24. I HAVE OBVIOUSLY ANTICIPATED THAT POSSIBILITY. I HAD  
4 HOPED THAT MAYBE TODAY WE COULD NOT HAVE THAT KIND OF -- I  
5 UNDERSTAND, AND IF HE WANTS TO OBJECT, HE WANTS TO OBJECT. I  
6 THINK THE DOCUMENTS -- IT'S TESTIMONY ABOUT THEM IS DIFFERENT  
7 FROM WHETHER THE DOCUMENTS ARE AUTHENTIC, AND CAN BE ADMITTED.  
8 AND THAT'S FINE. I CAN WAIT UNTIL MR. BLAUFUSS IS ON THE  
9 STAND. I THINK IT IS LITTLE LESS EFFICIENT FOR THE RECORD  
10 BECAUSE HE WILL NOT BE ON THE STAND UNTIL MUCH LATER IN THIS  
11 HEARING. BUT I HAD ALREADY ANTICIPATED THIS POSSIBILITY,  
12 HOWEVER, I'M HOPING THAT TODAY THAT WE CAN MOVE QUICKLY, MORE  
13 QUICKLY, AND THIS MAYBE AN EXAMPLE OF WHERE WE CAN'T. IF  
14 THAT'S THE ANSWER, THAT'S THE ANSWER.

15 JUDGE CLIFTON: IT IS NOT --

16 MR. HOLLON: I'LL BE GLAD TO LET MR. BLAUFUSS HAVE MY SEAT.

17 JUDGE CLIFTON: YOU KNOW, IT'S NOT JUST MR. BESHORE WHO  
18 OBJECTS. I WATCHED THIS WITNESS STRUGGLE WITH YOUR QUESTIONS  
19 AND NOT BE ABLE TO ANSWER THEM. SO GETTING EXHIBIT 24 INTO  
20 EVIDENCE IS NOT PARTICULARLY MEANINGFUL, YET. SO --

21 MR. ENGLISH: I ACCEPT THAT, YOUR HONOR. AS I SAID, I  
22 ANTICIPATED THE POSSIBILITY. I STILL THINK THERE'S A  
23 DIFFERENCE BETWEEN THE EXHIBIT'S AUTHENTICITY AND THE QUESTIONS  
24 ABOUT THE EXHIBIT. I REALLY DON'T WANT TO BELABOR IT ANY  
25 LONGER. I HEAR YOU. I'M GOING TO MOVE ON, AND WE WILL GET IT

1 ADMITTED AT A LATER DATE. AND I JUST WAS HOPING THAT MAYBE WE  
2 COULD WORK TOGETHER ON THAT. THAT'S FINE.

3 JUDGE CLIFTON: OKAY. SO I, AT THIS POINT, REJECT EXHIBIT  
4 24 UNTIL WE HAVE FURTHER TESTIMONY WITH REGARD TO HOW WE USE  
5 IT.

6 MR. ENGLISH: THANK YOU, YOUR HONOR.

7 BY MR. ENGLISH:

8 Q. SO I KNOW WE WERE TALKING ABOUT PRICES, BUT THE REASON  
9 WE WERE TALKING ABOUT PRICES WAS BECAUSE I MOVED ON FROM MY  
10 SECTION 3 AND NATIONAL PRICING CLASS I, BECAUSE I HAD A  
11 PROBLEM WITH THE EXHIBIT, SO I WISH TO GO BACK NOW TO WHERE I  
12 WAS, THEN. AND WE WERE DISCUSSING AT THAT POINT, THE FACT THAT  
13 THE CLASS I PRICE SERVICE, WITH THE EXCEPTION OF THE TEMPORARY  
14 ADJUSTMENTS FOR THE SOUTHEAST, WERE ESTABLISHED AS A RESULT OF  
15 FEDERAL ORDER AND THE FEDERAL ORDERS. CORRECT, MR. HOLLON?

16 A. YES.

17 Q. AND THAT'S BASED UPON DATA FROM THE SPACIAL MODELING  
18 FROM 1996, CORRECT?

19 A. I DON'T KNOW THE EXACT DATES. THERE WERE MULTIPLE RUNS  
20 OF THE MODEL PRIOR TO ITS ADOPTION, BUT '96 WOULD BE ONE OF  
21 THEM. I DON'T KNOW THAT IT WOULD BE THE ONLY DAY.

22 Q. IT CERTAINLY WOULDN'T BE AFTER IMPLEMENTATION IN LATE  
23 1999, CORRECT?

24 A. IT WOULD NOT BE.

25 Q. NOW, AS -- ARE YOU DAIRY FARMERS OF AMERICA'S LEAD WHEN

1 IT COMES TO ECONOMIC ANALYSIS OF FEDERAL ORDERS?

2 A. I'M ONE OF A TEAM OF PEOPLE WHO WORKS WITH FEDERAL  
3 ORDER ISSUES, I'M NOT THE ONLY ONE, BUT I'M ONE OF THEM.

4 Q. AND AS PART OF THAT, YOU KEEP ABREAST OF DEVELOPMENTS  
5 THROUGHOUT THE DAIRY INDUSTRY, CORRECT?

6 A. YES, WE ATTEMPT TO.

7 Q. AND DO YOU REGULARLY ATTEND MEETINGS OF DAIRY  
8 ECONOMISTS, NOT JUST THOSE FROM DAIRY FARMERS OF AMERICA, BUT  
9 FROM AROUND THE UNITED STATES?

10 A. YES.

11 Q. AND SO FOR INSTANCE, NOT LIMITING IT, BUT FOR INSTANCE,  
12 THERE IS AN ANNUAL MEETING PUT ON BY THE UNIVERSITY ECONOMISTS,  
13 CORRECT?

14 A. YES.

15 Q. DO YOU HAPPEN TO RECALL WHETHER YOU ATTENDED THE DAIRY  
16 ECONOMISTS MEETING PUT ON BY THE UNIVERSITY'S IN 2011? IT WAS  
17 IN CHICAGO, IF THAT HELPS.

18 A. I DON'T SPECIFICALLY RECALL.

19 Q. OKAY. DO YOU RECALL AT ONE OF THESE DAIRY ECONOMISTS  
20 MEETINGS IN THE LAST FIVE YEARS, A POWER POINT PRESENTATION  
21 WITH RESPECT TO A STUDY BY A MR. MARK STEPHENSON AND DR. CHUCK  
22 NICHOLSON WITH RESPECT TO SPACIAL ANALYSIS, ESPECIALLY OF CLASS  
23 1 PRICE SERIES?

24 A. I DON'T RECALL SPECIFICALLY.

25 Q. SO WHAT I HAVE HANDED TO YOUR HONOR AND THE WITNESS AND

1 TO THE COURT REPORTER, AND THREE COPIES TO MEREDITH, AND THAT'S  
2 BEING HANDED OUT, IS A DOCUMENT THAT IS A COPY OF A POWER POINT  
3 PRESENTATION, IT WAS ALSO AVAILABLE ON THE WEBSITE FOR NOW.

4 THE FIRST LINE IS: CLASS I DIFFERENTIALS WITH \$2.50  
5 FUEL TO \$5.00 FUEL. CHUCK NICHOLSON AND MARK STEPHENSON, CAL  
6 POLY, SAN LUIS OBISPO AND UW MADISON.

7 AND DOWN AT THE BOTTOM IT SAYS, "LIVING ON A ROLLER  
8 COASTER. 18TH ANNUAL WORKSHOP FOR DAIRY ECONOMISTS AND POLICY  
9 ANALYSTS."

10 AND YOU ARE CERTAINLY WELCOME TO LOOK THROUGH THE WHOLE  
11 DOCUMENT, MR. HOLLON. I WILL OBVIOUSLY START WITH THE FIRST  
12 QUESTION AND WHETHER YOU RECOGNIZE THIS DOCUMENT?

13 A. ACTUALLY, I DON'T RECOGNIZE THIS DOCUMENT. I DON'T  
14 THINK I HAVE SEEN THIS PRESENTATION FROM THE TWO DOCTORS.

15 Q. I WOULD ASK TO BE MARKED, YOUR HONOR, SO THAT I COULD  
16 COME BACK TO IT.

17 JUDGE CLIFTON: WILL THIS BE EXHIBIT 30?

18 MS. FRISIUS: YES.

19 JUDGE CLIFTON: WE'LL MARK THIS EXHIBIT AS EXHIBIT 30.

20 (THEREAFTER, EXHIBIT NUMBER 30 WAS MARKED  
21 FOR IDENTIFICATION.)

22 JUDGE CLIFTON: AND WHAT SHALL WE CALL IT?

23 MR. ENGLISH: I WOULD CALL IT, "PRESENTATION MADE TO THE  
24 18TH ANNUAL WORKSHOP FOR ECONOMISTS AND POLICY ANALYSTS, BY  
25 CHUCK NICHOLSON AND MARK STEPHENSON."

1 JUDGE CLIFTON: AND FOR THE RECORD, WOULD YOU SPELL THE  
2 NAMES OF BOTH CHUCK NICHOLSON AND MARK STEPHENSON?

3 MR. ENGLISH: CHUCK IS C-H-U-C-K. NICHOLSON,  
4 N-I-C-H-O-L-S-O-N. AND MARK, M-A-R-K. STEPHENSON,  
5 S-T-E-P-H-E-N-S-O-N.

6 JUDGE CLIFTON: THANK YOU.

7 BY MR. ENGLISH:

8 Q. SO I HAVE JUST, I AM NOT GOING TO ASK A LOT MORE  
9 QUESTIONS, I PROMISE. BUT TURNING TO PAGE 11, IT IS A SLIDE  
10 DATED MAY 2006, \$2.36. YOU HAVE NEVER SEEN THIS SLIDE BEFORE?

11 A. I HAVE NOT.

12 Q. SO YOUR TESTIMONY ON MONDAY -- AND GOING BACK TO LAST  
13 FRIDAY -- I THINK IS BASED ON THE IDEA THAT THERE ARE  
14 DISORDERLY MARKETING CONDITIONS, FOR AMONG OTHER REASONS, THAT  
15 THE CLASS I PRICES FROM THE NATIONAL PRICE SERVICE IN THE  
16 FEDERAL ORDERS IS DIFFERENT FROM, AND HIGHER THAN, WHAT PRICES  
17 RESULT IN CALIFORNIA, CORRECT?

18 A. CLASS I PRICES?

19 Q. YES, CLASS I PRICES?

20 A. CLASS I PRICES SET BY THE CALIFORNIA ORDER AND COMPARED  
21 TO THE FEDERAL ORDER?

22 Q. YES. AND THAT'S --

23 A. YES.

24 Q. YES. AND YOU BASE THAT TESTIMONY ON THE DATA FROM  
25 FEDERAL MILK ORDER REFORM THAT PREDATES PRICE IMPLEMENTATION IN



1 1999, CORRECT?

2 A. THE DATA THAT WAS ESTABLISHED IN FEDERAL MILK ORDER  
3 REFORM THAT'S IN FORCE TODAY, YES.

4 Q. OTHER THAN THIS STUDY BY THE SAME CHUCK NICHOLSON AND  
5 MARK STEPHENSON WHO PERFORMED THE STUDY FOR COOPERATIVES, HAVE  
6 YOU LOOKED AT OTHER STUDIES AND SPACIAL ANALYSIS OF CLASS I  
7 PRICING SINCE THAT HAVE BEEN ISSUED SINCE 1999?

8 A. I MAY HAVE, THAT'S 15 PLUS YEARS OF TIME, SO --

9 Q. IN PREPARING FOR THIS HEARING, OR MAKING THE PROPOSAL  
10 THE COOPERATIVES MADE, DID YOU CONSIDER IT IMPORTANT TO LOOK AT  
11 CURRENT DATA WITH RESPECT TO SPACIAL ANALYSIS OF, SAY FOR  
12 INSTANCE, CLASS I PRICING?

13 A. I DIDN'T BECAUSE THOSE OTHER ANALYSIS, WHATEVER THEY  
14 MAY BE, ARE NOT WHAT'S IN FORCE TODAY. AND THE ONLY WAY TO  
15 INCORPORATE THEM WOULD BE TO HAVE A HEARING ON THOSE, AND  
16 THERE'S NOT ONE OF THOSE GOING ON AT THE MOMENT.

17 Q. AND AGAIN, YOU DIDN'T REQUEST THAT THAT BE OPEN FOR  
18 PURPOSES OF THIS PROCEEDING, CORRECT?

19 A. DID NOT.

20 Q. OBVIOUSLY, I HAVE TO HOLD OFF ON EXHIBIT 30, YOUR  
21 HONOR.

22 JUDGE CLIFTON: MAY I INQUIRE, MR. ENGLISH, JUST AS A  
23 ROADMAP FOR MY HEAD. IS ANY OF THE CURRENT PROPOSALS  
24 INCORPORATING A RECOMMENDATION THAT TAKES INTO ACCOUNT SPACIAL  
25 ANALYSIS?

1 MR. ENGLISH: I THINK HARKING BACK TO MY OPENING STATEMENT,  
2 YOUR HONOR, AND THE DISCUSSION ABOUT THE NEED TO PROVE IN A  
3 PROMULGATION HEARING WHAT PRICES SHOULD BE, I THINK IT IS  
4 HIGHLY RELEVANT TO THE QUESTION THAT FACES THE DEPARTMENT IN  
5 ESTABLISHING CLASS I DIFFERENTIALS. WE OBVIOUSLY ARE GOING TO  
6 HAVE A LEGAL ARGUMENT OVER WHETHER IT IS SUFFICIENT TO RELY ON  
7 DATA FROM 1999, OR 16 YEARS LATER IN CALIFORNIA, WHETHER IN THE  
8 ESTABLISHING AN ORDER FOR CALIFORNIA, IT'S IMPORTANT TO LOOK AT  
9 CURRENT INFORMATION. BUT THAT'S GOING TO BE A LEGAL ARGUMENT.  
10 BUT I THINK IT IS IMPORTANT TO KNOW WHAT THIS WITNESS DID IN  
11 PREPARING FOR THIS PROCEEDING WITH RESPECT TO THAT ISSUE.

12 JUDGE CLIFTON: MORE IMPORTANTLY --

13 MR. ENGLISH: MY ROADMAP IS THAT WE CHALLENGE, I HAVE A FEW  
14 MORE QUESTIONS THAT MIGHT HELP THAT, BUT I THINK GOING BACK TO  
15 MY OPENING STATEMENT. IN 2015, I THINK THERE'S A LEGITIMATE  
16 QUESTION OF WHAT THE CLASS I PRICES COULD OR SHOULD BE, AND  
17 FROM A COUPLE MORE OF MY QUESTIONS, I THINK THERE'S A QUESTION  
18 OF WHETHER CLASS I DIFFERENTIALS ARE JUSTIFIED AT ALL.

19 JUDGE CLIFTON: THANK YOU.

20 BY MR. ENGLISH:

21 Q. SO WHILE YOU ARE RELYING ON THE DATA FROM 1999, BECAUSE  
22 THAT'S WHAT'S IN THE FEDERAL ORDERS, DON'T YOU THINK THAT THE  
23 UNDERLYING DATA SINCE THE 1990'S HAS LIKELY CHANGED?

24 A. YES. THERE ARE PLACES WHERE THE DATA HAS CHANGED OVER  
25 TIME.

1 Q. AND, IN FACT, DON'T WE HAVE -- DON'T CLASS I PROCESSORS  
2 FACE INCREASINGLY CHALLENGING MARKET FOR THE SALE OF THEIR  
3 PRODUCTS, NOT JUST IN CALIFORNIA, BUT NATIONALLY?

4 A. YES.

5 Q. AND, IN FACT, THERE ARE A NUMBER OF PRODUCTS ON SALE  
6 TODAY IN 2015, COMPETING WITH FOOD MILK PRODUCTS THAT DIDN'T  
7 EVEN EXIST IN 1999, CORRECT?

8 A. CORRECT.

9 Q. AND HAVEN'T FLUID MILK SALES SINCE 1999 FALLEN? THEY  
10 HAVE DECREASED?

11 A. THEY HAVE.

12 Q. AND THAT MAY BE ATTRIBUTABLE TO A NUMBER OF FACTORS,  
13 BUT WOULD YOU AGREE THAT AT LEAST ONE OF THOSE FACTORS WOULD BE  
14 PRICE LEVELS?

15 JUDGE CLIFTON: WOULD BE WHAT?

16 MR. ENGLISH: PRICE LEVELS.

17 JUDGE CLIFTON: PRICE LEVELS.

18 BY MR. ENGLISH:

19 Q. OF MILK IN COMPETITION WITH NON-MILK PRODUCTS.

20 A. MR. ENGLISH, PRICE IS ALWAYS IN CONSIDERATION IN EVERY  
21 TRANSACTION, SO YOU ARE GOING TO HAVE TO BROADEN YOUR BASE TO  
22 COME UP WITH MUCH MORE OF A CONCLUSION.

23 Q. WELL, YOU ARE AN ECONOMIST WITH DFA, ACTIVE IN THE  
24 DAIRY INDUSTRY. DON'T YOU KNOW THAT AS A MATTER OF FACT, ONE  
25 OF THE REASONS WHY FLUID MILK SALES HAVE DECREASED IS BECAUSE

1 OF THE RELATIVE PRICE OF CLASS I PRODUCTS ON THE GROCERY STORE  
2 SHELF RELATIVE TO NONDAIRY PRODUCTS?

3 A. I THINK I JUST ANSWERED YOU BY SAYING THAT, YES, PRICE  
4 IS A FACTOR AND THERE ARE MANY FACTORS, AND TO POINT TO JUST  
5 ONE IS NOT GOING TO BE ABLE TO DRAW A CONCLUSION. THERE'S A  
6 VARIETY OF DEMAND FOR PRODUCTS THAT ARE AVAILABLE IN THE DAIRY  
7 CASE, NEXT TO THE DAIRY CASE, AND AROUND THE DAIRY CASE.

8 Q. WELL, SPEAKING OF DEMAND. HAVE YOU OR ANY OF YOUR  
9 ORGANIZATION, OR DFA, CONDUCTED ANY PRICE INELASTICITY --  
10 I-N-E-L-A-S-T-I-C-I-T-Y -- ANY PRICE INELASTICITY STUDY FOR  
11 FLUID MILK IN PREPARING FOR THIS PROCEEDING?

12 A. NO.

13 Q. TO YOUR KNOWLEDGE, WHEN WAS THE LAST TIME THAT USDA  
14 CONDUCTED AND PUBLISHED A PRICE INELASTICITY STUDY FOR FLUID  
15 MILK?

16 A. I'M NOT AWARE THAT USDA HAS PUBLISHED STUDIES ON PRICE  
17 ELASTICITY AND INELASTICITY. I THINK, THOUGH, THAT MS. SINK --  
18 I FORGET HER NAME -- REFERRED TO SOME OF THOSE FACTORS IN THE  
19 MODEL THAT THEY RAN.

20 Q. BUT YOU DON'T KNOW WHEN THOSE FACTORS SHE USED ARE  
21 CURRENT OR FROM SOME TIME PERIOD IN THE PAST?

22 A. I DO NOT.

23 Q. NOW, TURNING AWAY FROM CLASS I FOR A MOMENT TO  
24 CLASS II. THE FEDERAL ORDER CLASS II PRICE IS BASED OFF OF THE  
25 CLASS IV, PLUS 70 CENT ADDITIONAL DIFFERENTIAL, CORRECT?

1 A. CORRECT.

2 Q. AND ADVANCE CLASS IV SKIM BACKWARD-LOOKING BUTTER FAT,  
3 BUT 70 CENTS IS APPLIED EFFECTIVE WITH THE SKIM OF THE BUTTER  
4 FAT AND THE RATIOS IN WHICH THEY EXIST IN MILK, CORRECT?

5 A. CORRECT.

6 Q. AND WOULD YOU AGREE WITH ME THAT THAT 70 CENT  
7 DIFFERENTIAL IS LARGELY BASED ON THE CONVERSION FACTOR OF  
8 MAKING, BETWEEN THE FLUID USE OF THE PRODUCT OR TAKING DRY  
9 PRODUCT AND REWETTING IT?

10 A. YES.

11 Q. DO YOU KNOW WHETHER THAT COST OF CONVERSION HAS CHANGED  
12 SINCE THE MID-1990'S?

13 A. I DON'T.

14 Q. AND DID YOU STUDY THAT FOR THIS PROCEEDING?

15 A. I DID NOT.

16 Q. SO JUST FOR ROADMAP PURPOSES, YOUR HONOR, I'M NOW BACK  
17 TO WHERE I WAS. THAT WAS THE LITTLE DIVERSION I HAD TO TAKE  
18 FROM LAST FRIDAY, WHEN I DIDN'T HAVE THE EXHIBIT, BECAUSE  
19 SOMEHOW, EVEN THOUGH THE ORIGINAL COLOR COPY PRINTED OUT, SOME  
20 OF THOSE PAGES DID NOT PRINT OUT ALL THE DOCUMENT. FOR WHAT IT  
21 IS NOT ADMITTED, EXHIBIT 30.

22 SO I WANT TO GO BACK NOW, MR. HOLLON, TO MAILBOX PRICES  
23 BUT I PROMISE I'M DONE WITH CMDC.

24 ON PAGE 7 OF YOUR TESTIMONY.

25 JUDGE CLIFTON: THAT EXHIBIT NUMBER, PLEASE.

1 MR. ENGLISH: I'M SORRY, EXHIBIT 19. AND I'M GOING TO TRY  
2 HARD NOT TO BE REPETITIVE, BASED ON WHERE WE WERE MONDAY.

3 JUDGE CLIFTON: SO MR. ENGLISH, YOU LET YOUR VOICE DROP AND  
4 YOU SPEEDED UP AT THE END OF THESE PHRASES, AND IT REALLY IS  
5 HARD TO FOLLOW.

6 MR. ENGLISH: I THINK IT IS STILL -- I APPRECIATE THAT, I  
7 DON'T THINK THAT NORMALLY HAPPENS, AS MR. HOLLON NOTED. BUT  
8 I'M TRYING TO DRINK AS MUCH WATER AS POSSIBLE. AND I DID  
9 MENTION TO THE COURT REPORTER OFF THE RECORD, SHE'S WELCOME TO  
10 WAVE HER ARMS OR DO WHATEVER SHE NEEDS. I APPRECIATE THAT AND  
11 I WILL TRY TO DO THAT.

12 BY MR. ENGLISH:

13 Q. SO YOU HAVE REFERENCED THE MAILBOX PRICES ACROSS OTHER  
14 STATES WHERE THERE MAYBE A SPREAD. AND WE CHATTED BRIEFLY  
15 ABOUT THE PACIFIC NORTHWEST, AND I BELIEVE WE HAVE ALSO  
16 DISCUSSED YOUR DECISION TO OMIT NEW MEXICO, CORRECT?

17 A. I THINK THAT'S CORRECT.

18 Q. ARE THERE OTHER FACTORS BESIDES MINIMUM PRICES THAT  
19 HAVE A ROLE IN DRIVING THOSE MAILBOX PRICE SPREADS?

20 A. THERE WOULD CERTAINLY BE WHATEVER TIME ARE PAID IN THE  
21 TWO MARKETPLACES, BECAUSE OF THAT'S THE WAY THE SERIES ARE  
22 CONSTRUCTED.

23 Q. SO DOES CLASS I UTILIZATION, IN A GIVEN MARKETING AREA,  
24 INFLUENCE MAILBOX PRICES?

25 A. YOU SAID OTHER THAN MINIMUM PRICES, RIGHT?

1 Q. YES.

2 A. SO I THINK THAT WOULD WASH OUT THE QUESTION ABOUT  
3 CLASS I YOU HAVE ALREADY CONSIDERED THAT AS MINIMUM PRICE.

4 Q. OKAY. SO ACTUALLY, WITHIN THE MINIMUM PRICE, BUT THE  
5 MINIMUM PRICE IS ALSO FACTORED IN THE MAILBOX PRICE, CORRECT?

6 A. CORRECT.

7 Q. SO GOING BACK THEN, TO THE REGULATED PRICE AS WELL, THE  
8 CLASS I UTILIZATION IN A GIVEN MARKET WILL INFLUENCE MAILBOX  
9 PRICES, CORRECT?

10 A. YES.

11 Q. DOES PROXIMITY TO MAJOR POPULATION CENTERS, FOR  
12 INSTANCE ON THE EAST COAST, HAVE AN IMPACT ON MAILBOX PRICES?

13 A. IT MAY.

14 Q. ISN'T IT A FACT THAT MAJOR PRODUCTS USED IN CLASSIFIED  
15 PRICING, SUCH AS CHEESE, BUTTER, AND NONFAT DRY MILK, TEND TO  
16 SELL AT HIGHER PREMIUMS THE MORE EAST THEY MOVE?

17 A. I'M NOT AWARE OF THAT.

18 Q. YOU ARE NOT AWARE THAT CHEESE PRODUCTS SOLD, SAY, INTO  
19 NEW JERSEY COMMAND A HIGHER PRICE THAN CHEESE PRODUCTS SOLD IN  
20 CHICAGO?

21 A. NO.

22 Q. AND IF I ASK THAT QUESTION ABOUT OTHER GEOGRAPHICAL  
23 REGIONS, THE ANSWER WOULD BE THE SAME, YOU ARE NOT AWARE OF  
24 DIFFERENCES?

25 A. CORRECT.

1 Q. DO COMPETITIVE CONDITIONS HAVE AN IMPACT ON MAILBOX  
2 PRICES?

3 A. THEY DO.

4 Q. SO THE LAW OF SUPPLY AND DEMAND IS ALIVE AND WELL IN  
5 THE DAIRY INDUSTRY, CORRECT.

6 A. THE LAW OF SUPPLY AND DEMAND IS ALIVE AND WELL IN THE  
7 DAIRY INDUSTRY, I AGREE.

8 Q. SO, FOR EXAMPLE, WHEN A NEW PLANT IS BUILT, IT MAY  
9 CAUSE MANUFACTURERS IN THAT PLANT TO PAY MORE, TO PAY  
10 MANUFACTURERS BOTH THERE AND PLANTS THAT DIDN'T HAVE TO COMPETE  
11 AGAINST THAT PLANT FOR MILK SUPPLY, TO PAY MORE TO KEEP THE  
12 PLANTS FULL, CORRECT?

13 A. CORRECT.

14 Q. TURNING TO PAGE 8 OF EXHIBIT 19. REGARDING YOUR  
15 STATEMENT, AT THE TOP OF THE PAGE, "IN EACH CASE, A MONTHLY  
16 TEST WAS COMPARED TO THE STANDARD TEST, AND THE DIFFERENCE OVER  
17 OR UNDER THE STANDARD WAS SUBTRACTED OR ADDED TO THE MAILBOX  
18 PRICE BASED ON THAT DIFFERENCE."

19 CAN YOU GIVE AN EXAMPLE MATHEMATICALLY OF HOW THAT  
20 ADJUSTMENT WAS MADE?

21 A. IN EACH CASE, FOR EACH COMPONENT, THE TEST DIFFERENCE  
22 WAS COMPARED TO THE 3, 5 TEST, AND IT WAS GREATER OR LESS THAN  
23 THE APPROPRIATE ADJUSTMENT WAS MADE USING THE DIFFERENCE IN THE  
24 PREVAILING PRICE PER POUND PRODUCT.

25 Q. IS IT, THEREFORE, ADJUSTED ON A TOTAL SOLIDS BASIS?



1 A. EACH TEST IS ON ITS OWN TEST BASIS. SO BUTTERFAT HAS  
2 ITS BUTTERFAT TEST, PROTEIN HAS ITS PROTEIN TEST, OTHER SOLIDS  
3 HAVE ITS OTHER SOLIDS TEST. SO I'M NOT SURE IF I UNDERSTAND  
4 YOUR QUESTION, BUT EACH TEST WAS SUBTRACTED TO ITSELF, SO I  
5 THINK THE ANSWER WOULD BE YES.

6 Q. OKAY. SO TURNING NOW TO YOUR DISCUSSION ABOUT 2007 AND  
7 THE WHEY FACTOR CHANGE MADE IN CALIFORNIA.

8 A. IS THAT ON THIS PAGE?

9 Q. IT IS NOT ON THIS PAGE. I'M NOW MORE GENERIC.

10 A. OKAY.

11 Q. YOU DID TALK ABOUT THE TIMEFRAMES AND THE CHANGES IN  
12 CALIFORNIA, CORRECT?

13 A. CORRECT.

14 Q. OKAY. AND YOU DISCUSSED THE CHANGE IN NOVEMBER OF  
15 2007, CORRECT?

16 A. REFERRED TO IT, YES.

17 Q. NOW, CDFA MADE THAT CHANGE, WHETHER YOU AGREE WITH IT  
18 OR NOT, IT MADE ITS CHANGE BASED UPON TESTIMONY THAT WAS  
19 CONSIDERED AT A PROCEEDING THAT MR. BESHORE WENT THROUGH, A  
20 LITTLE DIFFERENT THAN THIS, BUT NONETHELESS IT IS A PROCEEDING  
21 THAT IS SIMILAR TO THIS, CORRECT?

22 A. CORRECT.

23 Q. THE CHANGE DIDN'T JUST SORT OF HAPPEN WITHOUT CAUSE,  
24 WHETHER, AGAIN, YOU AGREE WITH THE CHANGES OR NOT. IT DIDN'T  
25 HAPPEN WITHOUT CAUSE, CORRECT?

1 A. CORRECT. AS I SAY, IT DIDN'T, CHANGE OCCURRED AS A  
2 RESULT OF A HEARING.

3 Q. YES. IT OCCURRED AS A RESULT OF A HEARING.

4 AND THERE WERE MARKETING CONDITIONS THAT LED TO CDFA TO  
5 MAKE THAT CHANGE, CORRECT?

6 A. CDFA REVIEWED THE TESTIMONY AT THE HEARING, AT WHICH  
7 THERE WERE TESTIMONY ABOUT MARKETING CONDITIONS, AND THEY MADE  
8 THEIR DECISION.

9 Q. DID YOU PARTICIPATE IN THAT PROCEEDING?

10 A. I THINK SO.

11 Q. OKAY.

12 A. THERE HAVE BEEN QUITE A FEW OF THEM, AND ONE OR TWO OF  
13 THEM I WASN'T ABLE TO MAKE.

14 Q. WAS ONE OF THE PIECES OF TESTIMONY THE CDFA CONSIDERED  
15 AT THAT PROCEEDING, THAT THERE WAS TOO MUCH MILK THAT COULD BE  
16 HANDLED IN CALIFORNIA AT CALIFORNIA PRICES?

17 A. SOME OF THE PROCEEDINGS RUN TOGETHER, AND SO I DON'T  
18 REMEMBER WHICH AND WHERE, SO I DON'T KNOW IF THAT WAS ONE OF  
19 THEM OR NOT, BUT CLEARLY THERE'S A RECORD OF THAT, THAT  
20 HEARING, SO IF THAT WAS TESTIMONY IN THAT RECORD, THAT'S EASILY  
21 SHOWN TO THIS PROCESS.

22 Q. NOW, NONETHELESS, YOU DO RECOLLECT THAT A CHANGE WAS  
23 MADE TO THE WHEY FACTOR AS A RESULT OF THAT PROCEEDING,  
24 CORRECT?

25 A. I THINK SO.

1 Q. AND DIDN'T CDFA CONCLUDE -- AND YOU KNOW THAT BECAUSE  
2 YOU PARTICIPATED IN THE PROCEEDING, AND IF YOU DON'T, THAT'S  
3 FINE, THAT'S WHAT I'M ASKING.

4 DO YOU RECALL THAT CDFA CONCLUDED THAT A REASON FOR  
5 MAKING THE CHANGE WAS WITH THE CHEESE PRICE, USING THE THEN  
6 EXISTING WHEY FACTOR IN CALIFORNIA FORMULA, WAS RESULTING IN  
7 NON-MARKET CLEARING PRICES?

8 MR. BESHORE: OBJECTION, THE WITNESS HAS BEEN --

9 JUDGE CLIFTON: NAME?

10 MR. BESHORE: MARVIN BESHORE. THE WITNESS HAS BEEN ASKED  
11 TO AGREE OR DISAGREE WITH APPARENTLY THE TEXT, PARTIAL TEXT OF  
12 A CDFA DECISION. NOW, THE DECISION COMPLETELY SPEAKS FOR  
13 ITSELF. HE DOESN'T HAVE IT IN FRONT OF HIM. IT'S WORTHLESS  
14 QUESTIONING, MEANINGLESS, IRRELEVANT, AND I -- AND I OBJECT TO  
15 IT. THE DECISIONS SPEAK FOR THEMSELVES. THE RECORDS SPEAK FOR  
16 THEMSELVES. TO ASK THIS WITNESS TO RECALL WHAT WAS IN THAT  
17 RECORD AND WHAT WAS IN THE DECISION EIGHT YEARS AGO, I OBJECT  
18 TO IT.

19 JUDGE CLIFTON: YES, WE MAY BE ASKED TO TAKE OFFICIAL  
20 NOTICE OF THAT DOCUMENT. BUT AT THIS POINT, MR. ENGLISH, YOU  
21 MAY ASK THIS WITNESS IF HE RECALLS WHETHER THAT WAS PART OF THE  
22 FINDINGS OF THE CDFA.

23 MR. ENGLISH: THAT'S A MUCH BETTER WAY THAN I ASKED IT,  
24 YOUR HONOR.

25 BY MR. ENGLISH:

1 Q. SO DO YOU RECALL WHETHER THAT WAS PART OF THE FINDINGS  
2 FROM CDFA?

3 A. I DON'T RECALL.

4 Q. ALL RIGHT. TURNING BACK TO OUR DISCUSSION OF WHAT WAS  
5 DONE IN FEDERAL ORDER REFORM. DO YOU RECALL THE SPACIAL  
6 ANALYSIS FROM CORNELL THAT WAS AT LEAST THE BASIS, I AGREE, ON  
7 OTHER STUDIES FOR USDA'S PRELIMINARY RULE -- NOT THE FINAL  
8 RULE, BUT THE PROPOSED RULE, RESULTING FROM FEDERAL ORDER  
9 REFORM? DO YOU RECALL THAT STUDY?

10 A. ARE YOU IMPLYING THERE WAS MORE THAN ONE CORNELL STUDY?

11 Q. NO, I THINK YOU SAID THERE MIGHT HAVE BEEN MORE  
12 STUDIES, SO I WAS TRYING TO ADOPT YOUR TESTIMONY FROM EARLIER.  
13 I THINK THERE WAS ONLY ONE CORNELL STUDY, DATED NOVEMBER 1996.  
14 BUT I WAS TRYING TO INCORPORATE YOUR TESTIMONY FROM ABOUT 20  
15 MINUTES AGO, THAT YOU THOUGHT THEY WERE --

16 A. YOU ASKED ME IF THERE ARE HAD BEEN OTHER SPACIAL  
17 STUDIES DONE, I SAID THERE MAY HAVE BEEN, BUT I DO KNOW THAT  
18 THERE WAS A STUDY DONE BY CORNELL THAT UNDER, THAT SET THE  
19 FRAMEWORK FOR THE DIFFERENTIAL SERVICE. I DON'T RECALL IF  
20 THERE WAS MORE THAN ONE STUDY, AND I DON'T RECALL IF IT WAS  
21 DONE IN '96, '97, '98, OR '99, BUT THERE WAS ONE DONE.

22 Q. DO YOU RECALL THAT THAT STUDY RECOGNIZED REGIONAL PRICE  
23 VALUES THAT WERE DIFFERENT FOR CLASS II, III, AND IV?

24 A. YES.

25 Q. AND DO YOU RECALL THAT STUDY RECOGNIZED THAT CHEESE HAS

1 A LOWER VALUE IN THE WEST RELATIVE TO THE REST OF THE COUNTRY?

2 A. NO, I DON'T RECALL THAT. THAT SENTENCE, I DON'T  
3 RECALL.

4 Q. IF I ASKED A QUESTION DIFFERENTLY STATED, THAT MILK  
5 USED TO MAKE CHEESE HAS A DIFFERENT VALUE, HAS A LOWER VALUE IN  
6 THE WEST THAN THE EAST, WOULD THAT HELP YOUR RECOLLECTION?

7 A. AGAIN, I DON'T RECALL THAT SENTENCE, BUT I DO RECALL  
8 THAT THERE WERE DIFFERENTIAL PRICE SURFACES FOR DIFFERENT  
9 CLASSES.

10 JUDGE CLIFTON: AND SO THAT THE TRANSCRIPT IS CORRECT, YOU  
11 ARE USING THE WORD SURFACE, SPELLED S-U-R-F-A-C-E; IS THAT  
12 CORRECT?

13 MR. HOLLON: CORRECT.

14 MR. ENGLISH: COULD I HAVE A MINUTE, YOUR HONOR? I'M GOING  
15 TO CHANGE SUBJECTS RATHER SIGNIFICANTLY, AND I WAS WONDERING  
16 WHETHER IT MAYBE A CHANCE TO CHANGE QUESTIONERS. I'M PREPARED  
17 TO DO WHAT I'M DOING, AND IT MAY ALSO BE TIME FOR OUR MORNING  
18 BREAK.

19 JUDGE CLIFTON: THAT'S WHAT I'M THINKING. ALL RIGHT.

20 IT IS ABOUT 10:23. PLEASE BE BACK AND READY TO GO AT  
21 10:38.

22 (WHEREUPON, A BREAK WAS TAKEN.)

23 JUDGE CLIFTON: ALL RIGHT. WE'RE BACK ON RECORD. IT IS  
24 10:39. MR. ENGLISH, YOU MAY CONTINUE YOUR CROSS-EXAMINATION OF  
25 MR. HOLLON.

1 MR. ENGLISH: CHIP ENGLISH.

2 BY MR. ENGLISH:

3 Q. AS I SUGGESTED PRIOR TO THE BREAK, AS I SUGGESTED PRIOR  
4 TO THE BREAK, WE'RE TRYING TO ORGANIZE THIS IN SOME FASHION AND  
5 I'M NOW GOING TO TEMPORARY YIELD THE FLOOR TO JAMES DEJONG.

6 MR. DEJONG: JAMES DEJONG, HILMAR CHEESE.

7 JUDGE CLIFTON: AND BECAUSE THE LAST NAME OF YOUR -- YOUR  
8 LAST NAME IS UNUSUAL, MR. DEJONG, WOULD YOU SPELL IT AGAIN FOR  
9 US?

10 MR. DEJONG: SURE. LAST NAME IS D-E-J-O-N-G.

11 CROSS-EXAMINATION

12 BY MR. DEJONG:

13 Q. GOOD MORNING. I HAVE SOME QUESTIONS.

14 JUDGE CLIFTON: I THINK YOU CAN POINT THAT UP MORE. AND  
15 LET'S GO OFF THE RECORD JUST A MINUTE.

16 (THEREAFTER, A DISCUSSION WAS HAD BETWEEN  
17 THE COURT AND COUNSEL AT BENCH, NOT  
18 REPORTED.)

19 BY MR. DEJONG:

20 Q. IF I COULD HAVE YOU GO WITH ME TO YOUR FIRST EXHIBIT  
21 1(A)1, EXHIBIT 28, I'M SORRY?

22 A. YES.

23 Q. SO WE HAVE SOME MAILBOX PRICES HERE. AND YOU  
24 STANDARDIZED THEM FOR BUTTERFAT, PROTEIN, AND OTHER SOLIDS,  
25 CORRECT? ACCORDING TO YOUR TITLE?

1 A. CORRECT.

2 Q. I THINK THERE'S STILL A LITTLE BIT OF CONFUSION ON  
3 EXACTLY HOW YOU DID THAT. IF YOU DON'T MIND, COULD I JUST GIVE  
4 YOU A HYPOTHETICAL EXAMPLE OF A MAILBOX PRICE AND A BUTTERFAT  
5 TEST, A PROTEIN TEST, AND OTHER SOLIDS TEST, AND YOU COULD JUST  
6 KIND OF WALK ME THROUGH MATHEMATICALLY HOW WOULD YOU  
7 STANDARDIZE OR GET TO A STANDARD MILK PRICE?

8 A. YOU CAN TRY. I MAY NOT HAVE MY EXCEL SHEET IN FRONT OF  
9 ME.

10 Q. OKAY. WE'LL GIVE IT A TRY. I'M JUST -- THIS IS JUST  
11 FOR CLARIFICATION, I'M NOT TRYING TO, YOU KNOW, HAVE YOU TRY TO  
12 SPLIT AN ATOM IN YOUR HEAD, SOMETHING MATHEMATICALLY. OKAY?

13 A. OKAY.

14 Q. SO LET'S SAY THAT THERE IS A GIVEN AREA WHERE, YOU  
15 KNOW, THERE'S A MAILBOX PRICE AND A CERTAIN AVERAGE PRODUCER  
16 TEST ASSOCIATED WITH THAT. AND LET'S SAY THAT THE TRUE PROTEIN  
17 IS 3.1 PERCENT, THE BUTTERFAT IS 3.7 PERCENT, AND THE OTHER  
18 SOLIDS TEST IS 5.73 PERCENT. AND THE MAILBOX PRICE ASSOCIATED  
19 WITH THAT IS \$20 PER HUNDREDWEIGHT. HOW WOULD YOU, YOU KNOW,  
20 WHAT'S YOUR GENERAL APPROACH TO GETTING TO A STANDARD MILK  
21 PRICE?

22 A. WELL, I WOULD TAKE THE PROTEIN TEST AND ADJUST IT PLUS  
23 OR MINUS THE STANDARD; TAKE THE BUTTERFAT TEST AND ADJUST IT  
24 PLUS OR MINUS THE STANDARD; TAKE THE OTHER SOLIDS TEST AND  
25 ADJUST IT PLUS OR MINUS THE STANDARD; ADD THOSE PLUSES AND

1 MINUSES TOGETHER, AND ADD THEM OR SUBTRACT THEM FROM THE  
2 MAILBOX PRICE.

3 Q. OKAY. I -- I WILL GO BACK AND THEN TRY TO DUPLICATE  
4 THAT AND SEE IF IT KIND OF CROSS-REFERENCES WITH WHAT YOU DID.  
5 AND IF WE NEED FURTHER CLARIFICATION, WE CAN COME BACK AND ASK.  
6 IS THAT FAIR?

7 A. SURE.

8 Q. NEXT, I WOULD LIKE TO GO TO YOUR EXHIBIT ON, I BELIEVE  
9 IT IS EXHIBIT 20 STILL, TABLE 1J, OR THE ENTIRE EXHIBIT, GOING  
10 THROUGH THE -- I MEAN, THE ENTIRE TABLE 1J, GOING THROUGH ALL  
11 THE PAGES AS WELL.

12 A. OKAY.

13 Q. COULD YOU JUST KIND OF, I THINK THIS HAS COME UP A FEW  
14 TIMES ALREADY JUST IN THE VARIOUS QUESTIONING, BUT YOU HAVEN'T  
15 REALLY SPECIFICALLY WENT INTO THIS.

16 IS IT FAIR TO SAY THAT IN YOUR CALCULATION OF THE WHEY  
17 CONTRIBUTION FOR THE FEDERAL MILK MARKETING ORDER PRICE, THAT  
18 YOU JUST USE ONE EQUATION AND YOU RAN IT BACK THROUGH THE  
19 ENTIRE TIME SERIES? IS THAT AN ACCURATE --

20 A. YES.

21 Q. OKAY. CAN YOU EXPLAIN TO ME YOUR REASONING OF WHY YOU  
22 DID THAT?

23 A. I JUST WANTED THE TWO SERIES TO BE COMPARABLE OVER  
24 TIME.

25 Q. OKAY.



1           A.    AND NOT -- NOT NECESSARILY ACCOUNT FOR CHANGES IN  
2 POLICY, AND ALSO THE MOST CURRENT FEDERAL ORDER FORMULA HASN'T  
3 CHANGED ANY, AND THE STATE FORMULA HAS CHANGED OVER TIME.  BUT  
4 THE MOST RECENT BRACKET IS USED IN THE SUMMARIES THAT I USED  
5 WERE COMPARABLE ONLY OVER THE MOST RECENT BRACKET.

6           Q.    OKAY.  SO JUST TO CLARIFY, DID YOU SAY THAT THE, THAT  
7 THE FMMO WHEY FACTOR HASN'T CHANGED OVER THIS TIME PERIOD SINCE  
8 2000 TO THE LAST AVAILABLE DATE?

9           A.    NO, THAT STATEMENT IS PROBABLY INACCURATE.  PROBABLY  
10 THE FORMULA HAS CHANGED.  I DON'T REMEMBER WHICH CHANGES IN THE  
11 MAKE ALLOWANCES, BUT FOR THE PURPOSES OF THIS CALCULATION, I  
12 USE THE 1991 MAKE ALLOWANCE, THE FORMULA ADJUSTER 1.03, AND THE  
13 5.9 YIELD FACTOR, THOSE ARE THE FACTORS IN PLACE TODAY AND  
14 THAT'S WHAT IT IMPLIES.

15          Q.    SO LOOKING, IF WE HAD THE ACTUAL HISTORY IN FRONT OF US  
16 OF WHAT THOSE WHEY FACTORS ACTUALLY WERE FOR THOSE TIME  
17 PERIODS, THEY WOULDN'T NECESSARILY MATCH UP WITH WHAT YOU HAVE?

18          A.    CORRECT.

19          Q.    OKAY.  SHOULD I JUST -- OKAY.  AND ALSO I JUST HAVE  
20 ANOTHER, ONE MORE QUESTION ON THIS WHEY CALCULATION.  YOU HAVE  
21 A YIELD FACTOR OF I BELIEVE 5.9?

22          A.    THAT'S WHAT'S IN THE FORMULA.

23          Q.    OKAY.  IS IT POSSIBLE THAT 5.9 YIELD FACTOR IS ACTUALLY  
24 FOR SKIM MILK AND NOT FOR ACTUAL STANDARD TEST MILK?

25          A.    I DID REFER TO THAT AND SAID I DIDN'T ADJUST THE

1 FACTOR.

2 JUDGE CLIFTON: WAIT, WAIT, WAIT, ONE AT A TIME. YOU STOP  
3 AND LET HIM FINISH HIS EXPLANATION.

4 AND GO AGAIN, MR. HOLLON, FROM THE BEGINNING.

5 MR. HOLLON: I DID REFER TO THAT IN MY STATEMENT, AND SAID  
6 IF YOU WERE GOING TO APPLY ALL THE WAY TO MILK YOU WOULD USE  
7 THE 96 AND THAT .965 FACTOR, AND MY GOAL HERE WAS TO SHOW WHAT  
8 THE TOTAL DOLLARS AVAILABLE. AND IF YOU DID USE THE 96.5 CENT  
9 FACTOR, YOU COULD LOWER THESE BY APPROXIMATELY 8 CENTS  
10 HUNDREDWEIGHT.

11 BY MR. DEJONG:

12 Q. SO IT WOULD BE A LITTLE BIT LOWER. I REMEMBER YOU  
13 SAYING THAT NOW. THANK YOU.

14 A. YOU'RE WELCOME.

15 Q. AND THEN JUST ONE MORE THING ON HERE. THE CALIFORNIA  
16 STATE ORDER WHEY CONTRIBUTION, I BELIEVE YOU HAVE IT START IN  
17 AUGUST 2012, AND I BELIEVE YOU HAVE ALREADY MENTIONED THIS AS  
18 PART OF YOUR TESTIMONY, YOU REALIZE THAT THERE WAS A WHEY  
19 FACTOR BEFORE THAT TIME IN THE CALIFORNIA STATE ORDER?

20 A. YES.

21 Q. OKAY. IS THIS -- COULD YOU JUST WALK ME THROUGH YOUR  
22 REASONING, WHY YOU DIDN'T INCLUDE IT IN THE FULL COMPARISON?

23 A. I JUST INTENDED TO SHOW FOR COMPARISON PURPOSES, THE  
24 MOST RECENT TIME PERIOD. AND SO THAT WAS WHERE I FELT WAS THE  
25 MOST CRITICAL TO POINT OUT.

1 Q. OKAY.

2 A. THOSE NUMBERS ARE CLEARLY ON THE TABLE.

3 Q. OKAY. AND JUST ONE MORE, JUST KIND OF CALCULATION  
4 QUESTION. WITH THE CALIFORNIA STATE ORDER, TO MY KNOWLEDGE,  
5 THAT THERE IS -- PART OF THE FORMULA ASSUMES THAT THERE IS 8.8  
6 PERCENT SOLIDS NONFAT, SO WHATEVER THE WHEY FACTOR IS, LET'S  
7 SAY THE SLIDING SCALE SHOWED 50 CENTS PER HUNDREDWEIGHT, THAT'S  
8 ACTUALLY ASSUMING AN 8.8 PERCENT SNF. DO YOU DISAGREE WITH  
9 THAT OR --

10 A. I DIDN'T ATTEMPT TO TAKE THAT INTO ACCOUNT IN THIS  
11 TABLE.

12 Q. THIS ACTUALLY DOESN'T NECESSARILY HELP US, BECAUSE IT  
13 WOULD ACTUALLY ADJUST THE CALIFORNIA WHEY PRICE A LITTLE BIT  
14 LOWER. BUT I JUST --

15 A. IT JUST DEPENDS ON WHICH WHEY YOU MEASURE, BUT YOU ARE  
16 GOING TO ADD OR SUBTRACT THE SAME NUMBER TO BOTH SIDES, EVEN IF  
17 YOU MAKE ONE LOWER OR ONE HIGHER. AND THEN IN THE LATER  
18 TESTIMONY, I DO HAVE SOME ADJUSTMENTS FOR THAT, BUT YOU CAN GET  
19 AFTER ME THEN.

20 Q. SO IN EFFECT IT WOULD ESSENTIALLY LOWER --

21 JUDGE CLIFTON: WAIT, WAIT, LET ME JUST TELL YOU, YOU ARE  
22 HAVING THE NORMAL KIND OF CONVERSATION --

23 MR. DEJONG: SORRY, I'M NOT USED TO THIS.

24 JUDGE CLIFTON: RIGHT. AND YOU CAN'T DO THAT. YOU HAVE TO  
25 PAUSE AND WAIT UNTIL HIS VOICE IS ACTUALLY DIED DOWN.

1 MR. DEJONG: OKAY.

2 JUDGE CLIFTON: SO START AGAIN.

3 BY MR. DEJONG:

4 Q. OKAY. SO JUST TO CLARIFY THAT BOTH SERIES WOULD  
5 PROBABLY HAVE A LITTLE BIT OF AN ADJUSTMENT DOWNWARD JUST FOR  
6 STANDARD TEST?

7 A. IT COULD BE ADJUSTED.

8 Q. OKAY. I HAVE NO FURTHER QUESTIONS.

9 JUDGE CLIFTON: YOU'RE JUST GETTING GOOD AT THIS.

10 MR. ENGLISH: CHIP ENGLISH. AND I'M NOT SURE, BECAUSE HE'S  
11 THAT TALL, BUT MAYBE A RELATIVE POSITION ISSUE.

12 CROSS-EXAMINATION (CONTINUED)

13 BY MR. ENGLISH:

14 Q. SO FIRST I'M GOING TO ASK A GENERAL QUESTION ABOUT  
15 EXHIBIT 20.

16 I THINK YOU SAID THAT YOU, YOU PERSONALLY, PUT TOGETHER  
17 ALL OF THESE TABLES IN EXHIBIT 20, CORRECT?

18 A. CORRECT.

19 Q. ALL RIGHT. DID YOU SHARE THEM WITH YOUR PROFESSIONAL  
20 COLLEAGUES AT THE OTHER COOPERATIVES, LAND O'LAKES AND CDI?

21 A. YES.

22 Q. DO YOU KNOW IF THEY REVIEWED THEM AND CHECKED THE  
23 INFORMATION DATA?

24 A. I DO NOT.

25 Q. WHEN YOU TOOK, AS OPPOSED TO MAILBOX PRICES, BUT WHEN

1 YOU LOOK AT THE CLASS PRICES FROM FEDERAL ORDER IN CALIFORNIA,  
2 DID YOU TAKE THOSE DIRECTLY FROM EXCEL SPREADSHEETS OR WAS THE  
3 DATA RE-INPUT?

4 A. THEY WERE DOWNLOADED FROM THE APPROPRIATE ORDERS, FROM  
5 THE FEDERAL ORDER TABLES IN THE CALIFORNIA STATE TABLES,  
6 CALIFORNIA STATE ORDER TABLES.

7 Q. AS AN ECONOMIST, IF YOU SEE A NUMBER THAT LOOKS LIKE AN  
8 OUTLIER, WOULD YOU DOUBLE CHECK IT A LITTLE BIT?

9 A. YES.

10 Q. SO, FOR INSTANCE, LOOKING AT EXHIBIT 20, TABLE 1(A)1,  
11 AND FOR DECEMBER 2012, WOULD YOU AGREE THAT THE DIFFERENCES  
12 SHOWN THERE, \$4.27 TO WISCONSIN, \$4.07 FOR MINNESOTA, WERE THE  
13 HIGHEST OF ANY OF THE DIFFERENCES IN THE MAILBOX PRICES?

14 A. YES.

15 Q. AND WHEN YOU SAW THOSE, DID YOU CONSIDER THOSE  
16 OUTLIERS?

17 A. OTHER THAN TO SAY THEY WERE HIGHER THAN THE REST, THAT  
18 WAS ALL I DID. I DID THE CALCULATION, MADE THE SUBTRACTION,  
19 PUT THEM ON THE TABLES.

20 Q. YOU DIDN'T GO LOOK BEHIND THE NUMBERS AND SEE WHETHER  
21 THERE MIGHT BE EITHER SOMETHING EXPLAINING IT OR SOMETHING  
22 WRONG?

23 A. DID NOT.

24 Q. DID YOU LOOK AT, FOR INSTANCE, THE CALIFORNIA STATEWIDE  
25 BLEND REGULATED PRICE AND MAYBE COMPARE IT TO THE UPPER MIDWEST

1 PRICE?

2 A. DID NOT.

3 Q. YOUR HONOR, I HAVE PROVIDED TO USDA, THE OFFICIAL COPY,  
4 THREE COPIES, YOUR HONOR, THE WITNESS AND THE COURT REPORTER, A  
5 TWO-PAGE DOCUMENT, UNITED STATES DEPARTMENT OF AGRICULTURE  
6 UPPER MIDWEST MARKETING AREA, FEDERAL ORDER NUMBER 30, A  
7 COMPUTATION OF PRODUCER PRICE DIFFERENTIAL FOR DECEMBER 2012.  
8 IT IS A TWO-PAGE DOCUMENT. I WOULD LIKE TO HAVE MARKED AS  
9 EXHIBIT NUMBER 31.

10 JUDGE CLIFTON: THE DOCUMENT WILL BE MARKED AS EXHIBIT 31.

11 (THEREAFTER, EXHIBIT NUMBER 31 WAS MARKED  
12 FOR IDENTIFICATION.)

13 MR. ENGLISH: YOUR HONOR, IT WAS DOWNLOADED FROM THE UPPER  
14 MIDWEST MARKETING AREA WEBSITE, AND I THINK IT IS PROPER TO  
15 TAKE OFFICIAL NOTICE AND THEREFORE, ADMIT IT INTO EVIDENCE.

16 JUDGE CLIFTON: I DO ADMIT INTO EVIDENCE, EXHIBIT 31.

17 (THEREAFTER, EXHIBIT NUMBER 31 WAS  
18 RECEIVED INTO EVIDENCE.)

19 MR. ENGLISH: HAND ANOTHER ONE-PAGE DOCUMENT, FIRST TO THE  
20 USDA, AND MARK THIS. THIS IS A ONE-PAGE DOCUMENT ENTITLED  
21 CLASS AND POOL PRICES. IT SHOWS CALIFORNIA MINIMUM PRICES FOR  
22 CLASS 1, 2, 3, 4A AND 4B MARKET MILK FOB PLANT AND POOL PRICES  
23 FOR QUOTA, OVERBASE PRICE AND BLEND, JULY 2009 THROUGH FEBRUARY  
24 OF 2013. DOWNLOADED FROM THE CDFA OFFICIAL DOCUMENT, CDFA, AND  
25 I WOULD ASK TO TAKE OFFICIAL NOTICE AND MARK THIS AS EXHIBIT 32

1 AND ADMIT IT.

2 (THEREAFTER, EXHIBIT NUMBER 32 WAS MARKED  
3 FOR IDENTIFICATION.)

4 JUDGE CLIFTON: FIRST, I AM MARKING THE EXHIBIT AS EXHIBIT  
5 32. AND IS THERE ANYONE HERE AN EXPERT IN CDFA WEBSITE  
6 DOCUMENTS? WE DON'T HAVE SUCH AN EXPERT HERE.

7 I WILL RECEIVE IT INTO EVIDENCE. I WILL ADMIT IT INTO  
8 EVIDENCE. I SHARE YOUR DISCOMFORT, MR. ENGLISH, IN THAT IT  
9 WOULD BE LOVELY TO HAVE AN EXPERT HERE FROM CDFA TO MAKE SURE  
10 WE DON'T MISUNDERSTAND, BUT NEVERTHELESS, I DO ADMIT INTO  
11 EVIDENCE EXHIBIT 32.

12 (THEREAFTER, EXHIBIT NUMBER 32 WAS  
13 RECEIVED INTO EVIDENCE.)

14 MR. BESHORE: SEEMS LIKE A GOOD TIME. I JUST WANT TO NOTE,  
15 ON ITS FACE, IT IS PAGE 22 OF SOMETHING APPARENTLY.

16 JUDGE CLIFTON: THANK YOU, MR. BESHORE, YOU ARE CORRECT.

17 MR. ENGLISH: YOUR HONOR, THAT WOULD BE THE DAIRY  
18 INFORMATION BULLETIN ISSUED BY CDFA IN FEBRUARY 2013. AND WE  
19 KNOW THAT BECAUSE WE DON'T HAVE ALL POOL INFORMATION FOR  
20 JANUARY, AND ALL PRICING INFORMATION FOR FEBRUARY, BUT IT WOULD  
21 HAVE BEEN ISSUED FEBRUARY 2013, AS THE MARKET INFORMATION  
22 BULLETIN. I, OF COURSE, HAVE NO PROBLEM WITH THE ENTIRE  
23 DOCUMENT, MR. BESHORE, COMING IN.

24 MR. BESHORE: IS THAT STILL ON THE WEBSITE?

25 MR. ENGLISH: IT IS.

1 JUDGE CLIFTON: DR. SCHIEK NODDED HIS HEAD YES. THAT'S  
2 GOOD. I'M GLAD TO KNOW THAT.

3 MR. ENGLISH: WE CAN CERTAINLY ASSIST YOU IN FINDING IT, IF  
4 NECESSARY.

5 JUDGE CLIFTON: ALL RIGHT. AND DR. SCHIEK, DO YOU KNOW HOW  
6 OFTEN THE WEBSITE CHANGES WITH MORE UP-TO-DATE INFORMATION FOR  
7 THE TABLE WE HAVE MARKED AS EXHIBIT 32?

8 MR. SCHIEK: BILL SCHIEK, YOUR HONOR. YES, I DO. THIS  
9 COMES FROM A PUBLICATION CALLED THE DAIRY INFORMATION BULLETIN,  
10 AND THAT IS A MONTHLY COMPENDIUM OF PRICE PRODUCTION  
11 UTILIZATION INFORMATION THAT CDFA PUBLISHES. THEY, BEGINNING  
12 THIS YEAR, STOPPED PUTTING IT INTO A BOOKLET. SO FOR 2015,  
13 AFTER THIS DOCUMENT WAS DONE, AND NOW THEY JUST PUBLISH THE  
14 TABLES INDIVIDUALLY ON THEIR WEBSITE, BUT IT COMES OUT MONTHLY.

15 JUDGE CLIFTON: THANK YOU. BUT THE BOOKLET FORM IS STILL  
16 ON THE WEBSITE?

17 MR. SCHIEK: YES, IT IS, YOUR HONOR.

18 JUDGE CLIFTON: THANK YOU.

19 MR. ENGLISH: CHIP ENGLISH. THANK YOU VERY MUCH, YOUR  
20 HONOR.

21 BY MR. ENGLISH:

22 Q. SO, MR. HOLLON, YOU ARE CERTAINLY FAMILIAR WITH THE  
23 UPPER MIDWEST MARKETING AREA PUBLICATION, CORRECT?

24 A. I'M FAMILIAR WITH THE PUBLICATION, THAT'S CORRECT.

25 Q. AND FOR THE MONTH OF DECEMBER, ON THE SECOND PAGE, THE



1 MARKET ADMINISTRATOR, BOTTOM OF THE FIRST BOX, PUBLISHED THE  
2 STATISTICAL UNIFORM PRICE, CORRECT?

3 A. YES.

4 Q. AND EVEN THOUGH THIS PRODUCER PRICE DIFFERENTIAL,  
5 BECAUSE OF MULTIPLE COMPONENT PRICING IN THE UPPER MIDWEST,  
6 THEY NONETHELESS, STILL FOR INFORMATIONAL PURPOSES, PUBLISH  
7 THESE AND THIS IS GIVING FULL PRICE, CORRECT?

8 A. YES.

9 Q. AND THAT WAS \$18.98, CORRECT?

10 A. YES.

11 Q. IF YOU -- ARE YOU FAMILIAR WITH THE CALIFORNIA FORM  
12 THAT I HAVE SHARED WITH YOU?

13 A. I HAVE SEEN IT BEFORE.

14 Q. AND IF YOU LOOK AT THE DECEMBER OF 2012 FOR STATEWIDE  
15 BLEND, YOU WOULD FIND \$18.65, CORRECT?

16 A. YES.

17 Q. WHICH IS A 33 CENT DIFFERENCE BETWEEN THE SPECIFIC  
18 UNIFORM PRICE FOR UPPER MIDWEST AND CALIFORNIA, CORRECT?

19 A. CORRECT.

20 Q. AND YET, YOU HAVE A MAILBOX PRICE DIFFERENCE ON  
21 TABLE 1A1 FOR WISCONSIN TO CALIFORNIA OF \$4.27, CORRECT?

22 A. CORRECT.

23 Q. SO OVER \$3.90 OF YOUR DECEMBER MAILBOX DIFFERENCE WAS  
24 NOT DUE TO MINIMUM REGULATED PRICES, WAS IT, SIR?

25 A. I'M NOT SURE THAT YOU CAN MAKE THAT STATEMENT. THE

1 MAILBOX PRICE HAS MINIMUM, AS WELL AS LOCATION, AS WELL AS  
2 PREMIUM. SO, AND HOW DIFFERENT PEOPLE COMPUTE THEIR PRICE TO  
3 THEIR FARMS WOULD HAVE A VARIETY, BUT I WOULD AGREE WITH YOUR  
4 ASSERTION THAT THE STATEWIDE BLEND, WHICH I'M NOT INTIMATELY  
5 WITH HOW THAT'S CALCULATED, IS RELATIVELY CLOSE IN THAT  
6 PARTICULAR MONTH TO THE ORDER 30 STATISTICAL UNIFORM BLEND.  
7 ONE OF THE REASONS WHY WE WOULD USE MAILBOX PRICES TO TRY AND  
8 CAPTURE ALL THE VALUES IN THE MARKETPLACE, PLUS THE MINIMUM.

9 Q. BUT AGAIN, WHEN YOU SAW \$4.27, IT DIDN'T SEND YOU  
10 LOOKING TO SEE WHAT MIGHT EXPLAIN THAT DIFFERENCE?

11 A. DID NOT.

12 Q. WELL, LET ME TRY SOMETHING DIFFERENT. EXHIBIT 20, YOU  
13 HAVE PREPARED A COMPARISON OF FEDERAL MILK ORDER CLASS I  
14 ANNOUNCED PRICES IN THE MARKETING AREA AND CSO FOR CALIFORNIA  
15 STATE CLASS 1 PRICES, 2000 TO JULY 2015, CORRECT?

16 A. CORRECT.

17 Q. AND THOSE ARE TABLES 1B1 THROUGH 1B5, CORRECT?

18 A. CORRECT.

19 Q. OKAY. SO LET'S GO TO DECEMBER 2012 IN EXHIBIT 20,  
20 COOPERATIVE TABLE 14, 1B4, AND LOOK AT THE SAME MONTH, DECEMBER  
21 2012, AND FOR INSTANCE, YOU HAVE A DIFFERENCE TO SOUTHERN  
22 CALIFORNIA FEDERAL ORDER IN COLUMN I OF A NEGATIVE \$1.78,  
23 CORRECT?

24 A. CORRECT.

25 Q. AND IN THE NORTHERN CALIFORNIA YOU HAVE A NEGATIVE

1 \$1.56, CORRECT? FOR COLUMN N, NORTHERN CALIFORNIA?

2 A. N WOULD BE AT THE \$1.60 ZONE.

3 Q. AND YOU HAVE A \$1.56 DIFFERENCE?

4 A. YES.

5 Q. OR THE \$1.80 ZONE, YOU HAVE NEGATIVE \$1.76, CORRECT?

6 A. CORRECT.

7 Q. THOSE ARE THE LARGEST DIFFERENCES IN TABLES 1B1 THROUGH  
8 1B5?

9 A. I HAVEN'T LOOKED TO SEE. THEY MAY WELL BE, I DO NOT  
10 KNOW.

11 Q. WHEN YOU SAW A DIFFERENCE OF THAT SIZE IN DECEMBER OF  
12 2012, DID IT GIVE YOU PAUSE AND GO LOOK TO SEE WHAT MIGHT BE  
13 CAUSING THAT?

14 A. I DID NOT.

15 Q. OKAY. LET'S NOW LOOK AT EXHIBIT 32 FOR THE MONTH OF  
16 DECEMBER AND COMPARE IT TO COOPERATIVES TABLE 1 (B) 4 FOR THE  
17 MONTH OF DECEMBER 2012. AND YOU HAVE FOR SOUTHERN CALIFORNIA  
18 IN THE \$1.80 ZONE. I'M SORRY, COLUMN H. COLUMN H YOU HAVE  
19 \$21.71 FOR THE CLASS 1 PRICE FOR SOUTHERN CALIFORNIA, CORRECT?  
20 COLUMN H?

21 A. REPEAT THAT? 21 WHAT DID YOU SAY?

22 Q. LOOKING, CAN YOU READ IT FOR ME, DECEMBER 2012, UNDER  
23 COLUMN H, WHICH IS THE CLASS 1 PRICE FOR CALIFORNIA THAT YOU  
24 HAVE SUBMITTED FOR DECEMBER 2012?

25 A. \$21.71.

1 Q. WOULD YOU LOOK AT EXHIBIT 32 FOR DECEMBER 2012, THE  
2 SECOND COLUMN IS SOUTHERN CALIFORNIA CLASS 1. DO YOU SEE  
3 \$23.35?

4 A. IT APPEARS THERE IS A COPY ERROR THERE, SO THAT SHOULD  
5 BE \$23.35 INSTEAD OF \$21.71.

6 Q. AND SIMILARLY, FOR NORTHERN CALIFORNIA, WHERE YOU HAVE  
7 UNDER COLUMN K, \$21.43, IT SHOULD BE \$23.08?

8 A. CORRECT.

9 Q. SO LET'S GO TO THE ONE BEFORE. IF IN FACT YOU HAD USED  
10 \$23.35 FOR THE MONTH OF DECEMBER 2012, RATHER THAN \$21.71, THAT  
11 DIFFERENCE OF \$1.64 FOR SOUTHERN CALIFORNIA WOULD HAVE  
12 SIGNIFICANTLY ALTERED YOUR CONCLUSION, CORRECT?

13 A. FOR THIS TABLE, YES.

14 Q. LET'S LOOK AT THE MONTH OF NOVEMBER 2012 FOR SOUTHERN  
15 CALIFORNIA. YOU USED, UNDER COLUMN H, \$23.34, AND, IN FACT,  
16 UNDER EXHIBIT 32 FOR NOVEMBER 2012, IT IS \$23.44. CORRECT?

17 A. CORRECT. IT APPEARS THAT FOR SEVERAL MONTHS IN 2012  
18 THE DOWNLOADED DATA WAS INCORRECT.

19 Q. IN FACT, IT IS INCORRECT FOR FEBRUARY 2012, MARCH 2012,  
20 APRIL 2012, MAY 2012, JUNE 2012, JULY 2012, AUGUST 2012,  
21 SEPTEMBER 2012, OCTOBER 2012, NOVEMBER 2012, DECEMBER 2012 AND  
22 JANUARY 2013, CORRECT? YOU ARE WELCOME TO TAKE THE TIME TO  
23 LOOK.

24 A. YES.

25 Q. AND LET'S LOOK AT JUNE 2013. WELL, SORRY, THIS

1 DOCUMENT DOESN'T HAVE IT, SO I'LL HAVE TO COME BACK TO THAT,  
2 BECAUSE THAT'S EXHIBIT 32 DOESN'T HAVE THAT.

3 SO TABLE 1B4 FOR DECEMBER 2012, WOULD ALSO CARRY  
4 THROUGH TO YOUR ANALYSIS DONE FOR TABLE 1B5, WHEN YOU, FOR THE  
5 LAST COLUMN, MOST RECENT COLUMN, WENT FROM AUGUST 2012 TO THE  
6 CURRENT AVERAGE, CORRECT?

7 A. I'M SORRY, REPEAT?

8 Q. THE ERROR THAT WE HAVE IDENTIFIED FOR A NUMBER OF  
9 MONTHS, BUT FOR PARTICULARLY FOR DECEMBER OF 2012, IS GOING TO  
10 CARRY FORWARD INTO YOUR AVERAGE AND MEDIAN CALCULATION ON  
11 TABLE 1B5 FOR AUGUST 2012 TO THE CURRENT. DOES IT NOT?

12 A. CORRECT.

13 Q. YOU ALSO, THEN, FOR PURPOSES OF CLASS 1, COMPARED PRICE  
14 SURFACES FOR PHOENIX TO LA, SAN DIEGO; LA, SAN DIEGO, LAS  
15 VEGAS; AND SACRAMENTO TO RENO, CORRECT?

16 A. CORRECT.

17 Q. I'M SORRY, WHICH TABLE WAS THAT ON, I APOLOGIZE?

18 A. C1C.

19 Q. I JUST HAD MY EXHIBIT FOLDED OVER. ALL RIGHT. SO WHEN  
20 A CALIFORNIA PLANT LOCATED IN SAN DIEGO, LOS ANGELES, SELLS  
21 INTO PHOENIX, THIS PRICE SURFACE COMPARISON YOU HAVE DONE AS TO  
22 THAT TRANSACTION WHEN THE SALE IS INTO ARIZONA, YOUR ANALYSIS  
23 IN TABLE 1C, THE FIRST BOX, DOESN'T TAKE INTO CONSIDERATION THE  
24 IMPACTS OF 1000.76 (C) AND REGULATED PLANT IMPLICATIONS FOR  
25 SUCH A PLANT SELLING INTO ARIZONA, DOES IT?

1 A. DOES NOT.

2 Q. IN COMPARISON, IT DOES TAKE INTO CONSIDERATION THAT A  
3 PHOENIX PLANT SELLS INTO SAN DIEGO, LOS ANGELES, CORRECT?

4 A. YES.

5 Q. OKAY. NOW, LET'S TURN --

6 A. WELL, ON YOUR FIRST QUESTION, THAT COULD ASSUME THAT  
7 THAT PLANT WAS FORCED TO BE REGULATED IN THE 76 PROVISIONS  
8 APPLY.

9 Q. WELL, UNDER WHAT CIRCUMSTANCES COULD A LOS ANGELES, SAN  
10 DIEGO PLANT SELL INTO ARIZONA AND NOT BE SUBJECT TO 76?

11 A. YOU ARE CORRECT.

12 Q. THE ANSWER IS UNDER ALL CIRCUMSTANCES, CORRECT?

13 A. CORRECT.

14 Q. THANK YOU. SO NOW, LET'S TURN TO YOUR SECOND BOX. THE  
15 FEDERAL ORDER DIFFERENCE OF BETWEEN LOS ANGELES, SAN DIEGO AND  
16 LAS VEGAS. AND YOUR BOX, THIS ENTIRE ANALYSIS RUNS FROM  
17 JANUARY 2000 THROUGH THE PRESENT TIME, CORRECT?

18 A. CORRECT.

19 Q. NOW, AS OF JANUARY 2000, WHILE THERE WAS A FEDERAL  
20 ORDER PRICE APPLICABLE TO LAS VEGAS, ISN'T IT THE CASE THAT  
21 BECAUSE OF THE CONGRESSIONAL ENACTMENT, PLANTS LOCATED IN LAS  
22 VEGAS, PRODUCING MILK IN LAS VEGAS, IN A FEDERAL ORDER  
23 TERRITORY WHICH INCLUDED LAS VEGAS, WERE NOT SUBJECT TO  
24 REGULATION AT ALL?

25 A. IT'S MY UNDERSTANDING THAT IF A PLANT LOCATED IN LAS

1 VEGAS WERE TO MEET THE PLANT REQUIREMENTS, THEY WOULD BECOME  
2 REGULATED. IF THEY -- IF THEY HAD THE, THEY MET THE FIRST  
3 REQUIREMENT BEING A DISTRIBUTING PLANT, THE SECOND REQUIREMENT,  
4 DISTRIBUTION IN A ROUTE AREA, THEY WOULD BE REGULATED IN THE  
5 APPROPRIATE FEDERAL ORDER.

6 Q. NOW, IN 2000, IT'S TRUE THAT LAS VEGAS WAS PART OF THE  
7 MARKET AREA, CORRECT?

8 A. NO. PART OF WHAT MARKETING AREA?

9 Q. THE ARIZONA, LAS VEGAS MARKETING AREA, WHICH WAS NAMED,  
10 WASN'T IT CALLED THE ARIZONA, LAS VEGAS MARKETING AREA AFTER  
11 FEDERAL ORDER REFORM?

12 A. UH-HUH. IT WAS, I DON'T REMEMBER THE GEOGRAPHY.

13 Q. THE TITLE DOESN'T -- ARIZONA, LAS VEGAS DOESN'T TELL  
14 YOU ABOUT THE GEOGRAPHY?

15 A. THERE'S MORE OF NEVADA THAN JUST LAS VEGAS.

16 Q. BUT YOU AGREE IT IS CALLED ARIZONA, LAS VEGAS? LIKELY  
17 THAT LAS VEGAS WAS IN THE MARKETING AREA?

18 A. CORRECT.

19 Q. NOW, IF A PLANT WAS LOCATED IN LAS VEGAS, AND UNDER  
20 NORMAL FEDERAL ORDER RULES, AND HAD SUFFICIENT FLUID MILK  
21 PRODUCT SO IT WOULD OTHERWISE MEET THE FLUID PLANT DEFINITION,  
22 AND HAD 80 PERCENT OF ITS ROUTE DISTRIBUTION IN LAS VEGAS,  
23 UNDER NORMAL FEDERAL RULES IT WOULD BECOME A 7A OR DSL 7B  
24 PLANT, CORRECT?

25 A. CORRECT.

1 Q. NOW, DO YOU KNOW, AND FOR PURPOSES OF THIS ANALYSIS,  
2 YOU KNOW WHETHER OR NOT THAT ACTUALLY WAS THE RULE AS OF  
3 JANUARY OF 2000?

4 A. I DON'T KNOW.

5 Q. SO IN PREPARING THE BOX THAT IS COLUMN 2 FROM JANUARY  
6 OF 2000 TO THE PRESENT IN TABLE 1C1, ETCETERA, YOU DID NOT  
7 CONSIDER THE FOLLOWING PROVISION, THAT WAS UNTIL THE MILK  
8 REGULATORY EQUITY ACT, PART OF THE STATUTE? THE PRICE OF MILK  
9 PAID BY A HANDLER AT A PLANT OPERATING IN CLARK COUNTY NEVADA,  
10 SHALL NOT BE SUBJECT TO ANY ORDER ISSUED UNDER THIS SECTION.

11 A. I DID NOT CONSIDER THAT.

12 Q. AND ONCE THE MILK REGULATORY EQUITY ACT WAS ADOPTED, AT  
13 THAT TIME, LAS VEGAS WAS REMOVED FROM THE MARKETING AREA  
14 ENTIRELY, AS NO PART OF NEVADA MAY BE PART OF A MARKING ORDER,  
15 CORRECT?

16 A. I DON'T REMEMBER THE EXACT LANGUAGE, BUT THERE WAS, I  
17 DO REMEMBER THAT THERE WAS SPECIAL EXEMPTIONS FOR CLARK COUNTY.

18 Q. SO READING FROM THE STATUTE, WHAT WAS REMOVED FROM THE  
19 STATUTE THAT WAS INSERTED IN 1999 THAT I JUST READ YOU, WAS  
20 REPLACED WITH THE FOLLOWING LANGUAGE: "IN THE CASE OF MILK AND  
21 ITS PRODUCTS, NO COUNTY OR OTHER POLITICAL SUBDIVISION OF THE  
22 STATE OF NEVADA, SHALL BE WITHIN THE MARKETING AREA DEFINITION  
23 OF ANY ORDER ISSUED UNDER THIS SECTION."

24 DOES THAT TELL YOU THAT A PLANT LOCATED IN LAS VEGAS,  
25 UNLESS IT MEETS THE ROUTE DISTRIBUTION BY SELLING SUFFICIENT



1 MILK IN ARIZONA, OR IN ANOTHER MARKETING AREA, WILL NOT BE  
2 FULLY REGULATED?

3 A. SO A PLANT, UNLESS, YOU SAID, UNLESS IT MEETS THE  
4 CRITERIA --

5 Q. I'M DOING A CAPTION.

6 A. SO IF IT MET THAT CRITERIA, IT WOULD BE REGULATED IN  
7 THE ORDER, AND IN THE ORDER WHERE IT MET THE CRITERIA?

8 Q. YES.

9 A. YES.

10 Q. BUT, IN FACT, IF YOU LOOK AT USDA STATISTICS, THERE IS  
11 NO SUCH PLANT SINCE THE ADOPTION OF MREA THAT'S LOCATED IN  
12 NEVADA, THAT WILL BECOME FULLY REGULATED BY ANY ORDER, CORRECT?

13 A. NOT YET. BUT I THINK IF ONE MET THOSE CRITERIA IT  
14 WOULD BE, AND PRICING MECHANISMS WOULD TAKE PLACE.

15 Q. SO NOW YOU HAVE NONETHELESS DONE AN ANALYSIS OF A  
16 FEDERAL ORDER PRICE APPLICABLE TO LAS VEGAS AND A FEDERAL ORDER  
17 PRICE IN LOS ANGELES AND SAN DIEGO, EVEN THOUGH FROM 2000 ON,  
18 NO PLANT LOCATED IN LAS VEGAS WOULD BE SUBJECT TO THAT PRICE  
19 SERVICE, CORRECT?

20 A. CORRECT.

21 Q. AND TO COMPLETE THE PICTURE, BEFORE THE MILK REGULATORY  
22 EQUITY ACT WAS PASSED, IRONICALLY, THE PROVISION THAT WAS LATER  
23 REMOVED, APPLIED TO PLANTS LOCATED IN CLARK COUNTY ONLY, SO  
24 THAT IF CALIFORNIA PLANTS IN LOS ANGELES, SAN DIEGO, SOLD INTO  
25 THE LAS VEGAS, THEY GOT THE PRIVILEGE OF BEING SUBJECT TO 76C,

1 CORRECT?

2 A. I DO NOT KNOW.

3 Q. YOU DON'T KNOW. BUT AFTER THE ADOPTION OF THE MILK  
4 REGULATORY ACT IN 2008, SORRY 2006, EVEN THAT WENT AWAY AND SO  
5 THERE IS NO -- THERE'S PRESENTLY NO FEDERAL RELATIONSHIP IN  
6 PRICING THAT IS APPLICABLE TO ANY PLANTS, UNLESS THEY ARE A  
7 PLANT THAT SELLS INTO LAS VEGAS FROM A FEDERAL ORDER, CORRECT?

8 A. OR IF A PLANT IN LAS VEGAS WERE TO GET REGULATED UNDER  
9 FEDERAL ORDER, AND IF THERE WERE FEDERAL ORDERS IN CALIFORNIA,  
10 IT WOULD GET REGULATED. AND IF THOSE WERE THE CASES, THEN  
11 THESE PRICE DIFFERENCES WOULD BE IN PLACE AND THIS DIFFERENCE  
12 WOULD BE CORRECT.

13 Q. BUT TODAY --

14 A. BUT TODAY.

15 Q. THE ENTIRE PRICE DIFFERENCE YOU DISCUSSED HAS NO  
16 RELEVANCE. THERE'S NOBODY SUBJECTED TO THAT PRICE SURFACE  
17 TODAY?

18 A. THERE MAY NOT BE ANYONE SUBJECTED TO THAT PRICE SURFACE  
19 TODAY, BUT AGAIN, THE SECRETARY IS REQUIRED TO BE FORWARD  
20 LOOKING IN MAKING THEIR DELIBERATIONS.

21 Q. EXCEPT WHEN IT COMES TO PRICE SURFACES AND DATA FOUND  
22 IN '98, THEY ARE NOT SUPPOSED TO BE FORWARD LOOKING FOR THAT,  
23 ARE THEY?

24 A. NO, YOU ARE WRONG, MR. ENGLISH. THE RECORD CLEARLY  
25 SAYS THAT THE SECRETARY CONSIDERED ALL OF THOSE DIFFERENCES,

1 CONSIDERED THE INFORMATION THAT YOU POINTED OUT, OR ATTEMPTED  
2 TO POINT OUT IN THE STEPHENSON STUDY, AND IN THEIR DELIBERATION  
3 THEY SAID THAT WE'RE GOING TO HAVE A NATIONAL PRICE SURFACE FOR  
4 THOSE, AND THAT'S GOING TO BE OUR TOP CRITERIA. AND THAT'S THE  
5 WAY THEY ESTABLISHED THE CLASS II, III, AND IV PRICES TO BE  
6 NATIONAL AND UNIFORM.

7 Q. WITHOUT CALIFORNIA BEING PART OF THE ORDER AT THE TIME?

8 A. AT THE TIME, CALIFORNIA CHOSE TO BE OUTSIDE THE ORDER.  
9 THEY HAD THEIR OPPORTUNITY, AND THERE WAS -- THEY PARTICIPATED  
10 IN THE DEBATE, PROVIDED DATA AND DETAIL, AND WERE GRANTED AN  
11 EXTENDED PERIOD OF TIME, AND CHOSE AT THE TIME NOT TO PETITION.

12 Q. BUT THEY WEREN'T PART OF IT IN 2002 AND 2006 AND 2007,  
13 WHEN THE DEPARTMENT CONSIDERED CHANGES TO THE MAKE ALLOWANCES,  
14 WERE THEY?

15 A. THEY WERE NOT IN THE ORDER SYSTEM. THEIR DATA WAS  
16 INCLUDED IN THIS PRICING, BUT THEY WERE NOT REGULATED BY THE  
17 ORDER SYSTEM.

18 Q. SO LET'S NOW TURN FROM THE SECOND COLUMN THAT DOESN'T  
19 ACTUALLY APPLY TO ANY FACILITIES FROM 2000 TO TODAY --

20 A. BUT WOULD APPLY IF THERE WAS A CALIFORNIA ORDER IN THE  
21 FUTURE. LET'S JUST KEEP THE RECORD CLEAR.

22 Q. I UNDERSTAND. BUT YOU HAVE TALKED ABOUT DISORDERLY  
23 MARKETING CONDITIONS AS THEY EXIST, AND COLUMN 2 DOESN'T  
24 ACTUALLY CREATE ANY CONDITION WHATSOEVER, BECAUSE IT DOESN'T  
25 APPLY TO ANY PRESENT FACILITY, DOES IT?

1 A. THAT WOULD BE TRUE.

2 Q. THANK YOU. SO LET'S TURN TO THE THIRD COLUMN, WHICH IS  
3 YOUR ANALYSIS OF RENO, SACRAMENTO. WHEN WAS THE LAST TIME RENO  
4 WAS PART OF A FEDERAL MILK MARKETING ORDER?

5 A. I DON'T KNOW.

6 Q. DO YOU KNOW AT LEAST THAT IT HAS NOT BEEN PART OF A  
7 FEDERAL MILK MARKETING ORDER SINCE AT LEAST 1975?

8 A. I DON'T KNOW.

9 Q. DO YOU KNOW AT LEAST THAT IT WAS NOT PART OF A FEDERAL  
10 MILK MARKETING ORDER AFTER FEDERAL ORDER REFORM IN FEBRUARY OF  
11 2000?

12 A. I DO NOT.

13 Q. AND THERE IS A PLANT LOCATED IN RENO, A FLUID MILK  
14 MARKET, LOCATED IN RENO, LEAVING ASIDE YOUR PLANT IN FALLON,  
15 THERE IS A FLUID MILK PLANT LOCATED IN RENO, CORRECT?

16 A. CORRECT.

17 Q. AND TO THE EXTENT THAT PLANT SELLS INTO CALIFORNIA, IT  
18 IS NOT SUBJECT TO, UNLESS IT IS MET -- FIRST OF ALL, DO YOU  
19 KNOW WHETHER THAT, I THINK MARK SAID SOMETHING ABOUT IT -- THAT  
20 PLANT HAS ALSO NOT MET THE FULL STANDARDS OF ANY FEDERAL ORDER  
21 TO BE FULLY REGULATED SINCE JANUARY OF 2000, CORRECT?

22 A. TO MY KNOWLEDGE, THAT'S TRUE.

23 Q. SO WHEN THAT PLANT SELLS INTO CALIFORNIA, YOUR BOX FOR  
24 ANALYSIS FOR PRICE SURFACE RENO TO SACRAMENTO, DOESN'T APPLY TO  
25 IT, CORRECT?

1 A. CORRECT.

2 Q. AND SIMILARLY, WHEN PLANTS FROM SACRAMENTO SELL INTO  
3 RENO, IT DOESN'T APPLY TO THEM EITHER, CORRECT?

4 A. THEY PAY THEIR BASE DIFFERENTIAL PRICE, SO IT DOES NOT.

5 Q. AND ISN'T IT A FACT THAT THE PRICE SET -- FIRST OF ALL,  
6 LET ME BACKTRACK AND --

7 JUDGE CLIFTON: I'M SORRY, BACKTRACK AND WHAT?

8 MR. ENGLISH: I'M SORRY, LET ME BACKTRACK AND CREATE A  
9 PREDICATE.

10 JUDGE CLIFTON: CREATE A PREDICATE.

11 MR. ENGLISH: FOUNDATION.

12 BY MR. ENGLISH:

13 Q. THERE IS SOMETHING CALLED THE NEVADA DAIRY COMMISSION,  
14 CORRECT, MR. HOLLON?

15 A. YES.

16 Q. AND IT, AT LEAST ATTEMPTS TO REGULATE IN SOME  
17 INSTANCES, PRICES, MINIMUM PRICES, IT SETS MINIMUM PRICES FOR  
18 MILK, AT LEAST AS TO NORTHERN NEVADA, CORRECT?

19 A. IT ATTEMPTS TO DO SO.

20 Q. AND DO YOU KNOW, DO YOU AGREE WITH ME THAT THE PRICE  
21 SET BY THE NEVADA DAIRY COMMISSION FOR PLANTS LOCATED IN RENO,  
22 IS EXACTLY THE NORTHERN CALIFORNIA PRICE?

23 A. YES.

24 Q. SO, IN FACT, THE ACTUAL REGULATORY ENVIRONMENT THAT  
25 FACES PLANTS IN RENO TO SACRAMENTO, IS THAT THEY FACE THE SAME

1 REGULATED PRICE, CORRECT?

2 A. AS LONG AS THOSE REGULATIONS ARE THE SAME, THEY ARE.

3 Q. AND SO YOUR THIRD BOX ON EXHIBIT 1C, TABLE 1C, DOES NOT  
4 APPLY TO ANY ACTUAL OCCURRING TRANSACTIONS BETWEEN JANUARY 2000  
5 AND THE PRESENT?

6 A. SO LONG AS THOSE REGULATIONS WERE IN PLACE AND WOULD BE  
7 NOW, WOULD BE IN THE FUTURE.

8 Q. MY QUESTION, SIR, WAS LIMITED TO THE TIME, NOT THE  
9 FUTURE, BECAUSE I ASKED JANUARY OF 2000 TO THE PRESENT, THEY DO  
10 NOT ACTUALLY APPLY TO ANYTHING?

11 A. CORRECT.

12 Q. NOW, I HAVE DISCUSSED A LITTLE BIT ABOUT THE MILK  
13 REGULATORY EQUITY ACT, BUT YOU ALSO, I BELIEVE, MENTIONED IT IN  
14 YOUR TESTIMONY FROM PAGES 16 TO 17, CORRECT?

15 A. CORRECT.

16 Q. AND I THINK YOUR CONCLUSION IS ON THE TOP OF PAGE 17,  
17 THAT "AS A RESULT OF THE MILK REGULATORY EQUITY ACT, THESE  
18 ACTIONS ALSO CONSTITUTE DISORDERLY MARKETING CONDITIONS AND  
19 CURED BY IMPLEMENTATION OF CALIFORNIA FEDERAL MILK ORDER."

20 A. YES.

21 Q. SO IT'S YOUR CONCLUSION THAT CONGRESS, IN ADOPTING THE  
22 MILK REGULATORY EQUITY ACT, CREATED DISORDERLY MARKETING  
23 CONDITIONS?

24 A. THE MILK REGULATORY EQUITY ACT WAS ESTABLISHED BY  
25 CONGRESS, IT HAS ITS PROVISIONS. THOSE PROVISIONS WERE

1 ESTABLISHED FOR REASONS AT THE TIME, BUT IF THERE WAS A FEDERAL  
2 ORDER, THE SITUATION, THE SITUATION HERE BETWEEN FEDERAL ORDER  
3 131 AND THE PROPOSED CALIFORNIA FEDERAL ORDER WOULD CHANGE.  
4 AND THAT SCENARIO WHERE CLASS I PRICES ARE EXCLUDED FROM THE  
5 CALIFORNIA POOL, OR CLASS I VALUES, BECAUSE OF THE MILK  
6 REGULATORY EQUITY ACT WOULD BE SOLVED, SO IF THAT WERE THE CASE  
7 AND IF YOU WANT TO LINK ALL THOSE THINGS TOGETHER, YOU COULD  
8 SAY CONGRESS' LAW ESTABLISHED THIS TO HAPPEN, AND CONGRESS' LAW  
9 FILED CHANGE THE FEDERAL ORDER TO FIX IT.

10 Q. JUST TO BE CLEAR. DAIRY FARMERS OF AMERICA SUPPORTED  
11 ADOPTION OF THE MILK REGULATORY EQUITY ACT, CORRECT?

12 A. IT DID, AND THE CONDITIONS THAT WERE IN EFFECT AT THE  
13 TIME, BUT YES, IT DID.

14 Q. I'M GOING TO, FOR EFFICIENCY PURPOSES I HOPE,  
15 TEMPORARILY YIELD THE FLOOR TO MR. VETNE.

16 MR. VETNE: IF THAT'S OKAY.

17 MR. ENGLISH: OBVIOUSLY, IF THAT'S OKAY WITH YOUR HONOR.

18 JUDGE CLIFTON: CERTAINLY. IT IS CERTAINLY FINE WITH ME,  
19 THANK YOU. THANK YOU FOR ALL THAT EXCESS DEFERENCE.

20 MR. VETNE: GOOD MORNING, AGAIN, I'M JOHN VETNE FOR HILMAR  
21 CHEESE, WHICH IS A DAIRY FARMER-OWNED MANUFACTURING FACILITY.

22 CROSS-EXAMINATION

23 BY MR. VETNE:

24 Q. MR. HOLLON, THIS IS MY FIRST TIME UP HERE WITH YOU AT  
25 THE WITNESS CHAIR.

1 A. DON'T SMILE SO BIG.

2 Q. LET ME GET SOME BACKGROUND HERE.

3 MR. HILL: YOUR HONOR?

4 JUDGE CLIFTON: MR. HILL, BRIAN HILL, I WOULD KINDLY ASK  
5 MR. VETNE TO SPEAK LOUDER. I THINK THE COURT REPORTER MIGHT BE  
6 HAVING A DIFFICULT TIME.

7 BY MR. VETNE:

8 Q. LET ME GET SOME BACKGROUND HERE. IT'S MY  
9 UNDERSTANDING, CORRECT ME IF THAT UNDERSTANDING IS WRONG,  
10 PLEASE, THAT YOU ARE THE PRINCIPAL WITNESS FOR THE THREE  
11 COOPERATIVE PROPONENTS ON ISSUES OF NEED FOR A MARKETING ORDER  
12 IN CALIFORNIA, AND THE EXISTENCE OF DISORDERLY MARKETING  
13 CONDITIONS. IS THAT UNDERSTANDING CORRECT?

14 A. YES.

15 Q. OTHER WITNESSES THAT FOLLOW YOU WILL MORE FOCUS ON  
16 PROVISIONS, THE REMEDY FOR THE -- FOR THE PROBLEM THAT YOU  
17 DESCRIBE?

18 A. IF I SAY YES, WILL THAT SAVE THEM FROM MORE DETAILED  
19 QUESTIONS FROM YOU?

20 Q. I CAN ONLY PROMISE TO SAVE YOU. I DON'T MEAN TO  
21 SUGGEST THAT OTHER WITNESSES WON'T ADDRESS ISSUES OF, HERE'S  
22 THE PROBLEM, HERE'S THE SOLUTION --

23 MR. BESHORE: JUST ASK QUESTIONS, CAN WE?

24 BY MR. VETNE:

25 Q. I'M TRYING TO FIND OUT, IN PART, WHAT THE FOCUS OF THIS



1 WITNESS'S TESTIMONY IS?

2 A. PLEASE FEEL FREE TO ASK THE QUESTIONS AND I'LL DO MY  
3 BEST TO ANSWER THEM.

4 Q. OKAY. AND YOU HAVE -- YOU WERE QUALIFIED AS AN EXPERT,  
5 AS I UNDERSTAND IT, IN AGRICULTURAL ECONOMICS AND MILK  
6 MARKETING. IN PREPARATION FOR THIS HEARING, WHAT LITERATURE  
7 STUDIES, ECONOMIC SCHOLARLY ARTICLES, IF ANY, DID YOU STUDY TO  
8 UNDERLIE YOUR OPINIONS?

9 A. I DON'T KNOW THAT I DID ANYTHING ANY DIFFERENT THAN I  
10 NORMALLY DO IN MY DAY-TO-DAY, WEEK-TO-WEEK, MONTH-TO-MONTH.  
11 READ ARTICLES AND INFORMATION. I DID INCLUDE SOME THINGS YOU  
12 HAD WRITTEN IN MY PREPARATION, AND I GUESS THAT'S THE BEST I  
13 CAN TELL YOU.

14 Q. OKAY. SO NOTHING IN PARTICULAR, BUT JUST WHAT YOU DO  
15 ON AN ORDINARY DAY-TO-DAY BASIS?

16 A. YES, SIR.

17 Q. OKAY. YOU WEREN'T PARTICULARLY ASKED A QUESTION ABOUT  
18 THE USE OF THE DAIRY SECTOR SIMULATOR MODEL, THAT AT THE 2011  
19 ECONOMICS CONFERENCE IN CHICAGO, WHICH YOU SAID YOU HAD NOT  
20 PREVIOUSLY SEEN BEFORE. WAS THERE ANYTHING ELSE LIKE THAT OF  
21 WHICH YOU HAVE BECOME AWARE SINCE COMING TO THE HEARING, THAT  
22 YOU WOULD, HAD NOT STUDIED BEFORE COMING TO THE HEARING?  
23 BECAME AWARE OF THAT HERE, YOU HADN'T SEEN IT BEFORE?

24 A. NO.

25 Q. THERE'S NOTHING ELSE YOU HAVE BECOME AWARE OF SINCE?

1           A.  I DON'T THINK SO.  I'LL SEE WHICH THINGS YOU BRING UP  
2  AND MAYBE I'LL KNOW BETTER.

3           Q.  DO YOU ORDINARILY ATTEND THAT ECONOMICS CONFERENCE THAT  
4  MARK STEPHENSON PUTS TOGETHER?

5           A.  I DO.

6           Q.  OKAY.  NOW, I WANT TO UNDERSTAND THAT WHEN I USE THE  
7  TERM AND YOU USE A TERM, WE'RE ON THE SAME PAGE.  SO I WOULD  
8  LIKE TO UNDERSTAND WHAT YOU MEAN SO THAT I CAN BETTER FOCUS ON  
9  HOW TO ADDRESS THAT.

10          A.  IT WOULD BE HELPFUL IF YOU COULD INCLUDE A DEFINITION  
11  IN YOUR QUESTION, THEN.

12          Q.  OKAY.  WELL, HERE'S -- YOU USED THE TERM DISORDERLY  
13  MARKETING.  ON PAGES 2, 8, 9, 13, AMONG OTHERS OF YOUR  
14  STATEMENT -- 16, 17, 18 -- OH -- WHAT IS, IF YOU HAVE ONE, WHAT  
15  IS YOUR DEFINITION OF DISORDERLY MARKETING FOR PURPOSES OF  
16  RENDERING OPINIONS AS AN EXPERT AT THIS HEARING?

17          A.  I DON'T KNOW THAT I HAVE A CLASSICAL DEFINITION OF  
18  DISORDERLY MARKETING.  WHEN I LOOK THROUGH OTHER HEARINGS, WHEN  
19  I LOOK THROUGH DECISIONS, I CAN TELL YOU THAT THERE ARE THINGS  
20  THAT ARE REFERRED TO AS DISORDERLY MARKETING.  BUT I HAVE YET  
21  TO LOOK THROUGH, FOR EXAMPLE, THE VARIOUS USDA REPORTS TO SEE  
22  AN INDENTED DEFINITION OF DISORDERLY MARKETING.  BUT WHERE  
23  PRICES ARE NOT UNIFORM TO HANDLERS, WHERE PRICES ARE NOT  
24  UNIFORM TO PRODUCERS, WHERE REGULATIONS SEEM TO IMPLY A CERTAIN  
25  BEHAVIOR AND THEN BEHAVIOR IS NOT APPLICABLE TO THAT, THOSE

1 SEEM TO BE ELEMENTS THAT THE SECRETARY CONSIDERS TO BE  
2 EVIDENCES OF DISORDERLY MARKETING. AGAIN, I WOULD POINT OUT  
3 I'M NOT AWARE ON ANY USDA DAIRY PROGRAMS DOCUMENT THAT THERE'S  
4 A DEFINITION THAT SAYS THIS IS DISORDERLY MARKETING.

5 Q. LET ME PROVIDE A DEFINITION TO YOU AND ASK YOU IF YOU  
6 AGREE OR DISAGREE WITH IT OR SOMETHING IN BETWEEN.

7 "DISORDERLINESS REFERS TO A LACK OF PREDICTABLE, SUSTAINABLE  
8 AND EFFICIENT FLOW OF PRODUCTS TO A SPECIFIED MARKET."

9 MR. BESHORE: MAY I?

10 JUDGE CLIFTON: YES, MR. BESHORE.

11 MR. BESHORE: I OBJECT TO THE QUESTION IN THAT IT'S  
12 MISLEADING ON ITS FACE. HE SAYS, I'M GOING TO PROVIDE YOU A  
13 DEFINITION OF DISORDERLY MARKETING, AND THEN HE QUOTED A  
14 DEFINITION OF ANOTHER TERM. IT'S -- BUT THE QUESTION, YOU  
15 KNOW, IT IS, ON ITS FACE, DOESN'T MAKE ANY SENSE.

16 MR. VETNE: I DON'T UNDERSTAND THE OBJECTION, BUT I WILL  
17 EXPAND ON THE QUESTION.

18 BY MR. VETNE:

19 Q. MR. HOLLON, THERE WAS A 1995 PUBLICATION BY CORNELL  
20 UNIVERSITY DAIRY ECONOMISTS CALLED, THE EVOLUTION OF MILK  
21 PRICING AND GOVERNMENT INTERVENTION IN DAIRY MARKETS. AND IN  
22 THAT PUBLICATION, AFTER EXPLAINING THE HISTORY OF MILK STRIKES  
23 AND DISORDER THAT CREATED THE FEDERAL SYSTEM, THE AUTHORS  
24 EXPLAINED, "DISORDERLINESS REFERS TO LACK OF PREDICTABLE,  
25 SUSTAINABLE, AND EFFICIENT FLOW OF A PRODUCT TO A SPECIFIED

1 MARKET." THAT'S IT. ARE YOU FAMILIAR WITH THAT PUBLICATION?

2 A. I'M NOT.

3 JUDGE CLIFTON: MR. VETNE, THE WORD DISORDERLINESS, HE  
4 DIDN'T, THEY DIDN'T INCLUDE THE WORD MARKETING ANYWHERE, AND  
5 YET THEY GO TO MARKETS? DO YOU HAVE IT ALL THERE?

6 MR. VETNE: I HAVE THE QUOTE WRITTEN ALL HERE.

7 JUDGE CLIFTON: OKAY.

8 MR. VETNE: "DISORDERLINESS, WHICH REFERS TO LACK OF  
9 PREDICTABLE, SUSTAINABLE, AND EFFICIENT FLOW OF A PRODUCT TO A  
10 SPECIFIED MARKET."

11 JUDGE CLIFTON: OKAY. I'M WITH MR. BESHORE, IT SEEMS LIKE  
12 THE TERM LEFT OUT THE MARKETING PART, BUT CLEARLY THAT'S WHAT  
13 THEY ARE TALKING ABOUT. OKAY.

14 BY MR. VETNE:

15 Q. SO CAN YOU RESPOND WHETHER THAT IS THE DEFINITION OF  
16 DISORDER THAT YOU WOULD ADOPT?

17 A. IT COULD INCLUDE ELEMENTS OF DISORDER. AGAIN, I  
18 POINTED OUT THERE SEEMS TO BE A GREAT EMPHASIS IN ORDER  
19 HEARINGS ON UNIFORMITY, QUOTED MANY, MANY TIMES, AND EXAMPLES  
20 OF WHERE MARKET BEHAVIOR SEEM TO NOT MATCH UP WITH THE DESIRE,  
21 WITH THE REGULATION. I'LL USE AS A CLASSIC EXAMPLE. THE  
22 HEARINGS THAT LED TO THE LANGUAGE IN ALL FEDERAL ORDERS ABOUT  
23 POOLING IN STATE ORDERS WITH MARKET-WIDE POOLS, WHERE THERE WAS  
24 ATTEMPTS TO PAY THE POOLS, PROVIDE POOLS. ARE YOU FAMILIAR  
25 WITH THOSE HEARINGS IN GENERAL?

1 Q. I WAS GOING TO ASK YOU THAT QUESTION, TOO.

2 A. OKAY. FAIR ENOUGH.

3 Q. I'LL ASK YOU THAT.

4 A. SO IN THOSE HEARINGS, THAT BEHAVIOR WAS DEEMED TO BE  
5 NOT WHAT THE DESIRE WAS OF THE REGULATIONS, AND SOME OF THAT,  
6 THEY ARE ACCEPTED PROPOSAL PROVISIONS OF HEARINGS AND CHANGED  
7 THAT BEHAVIOR, SO THAT WOULD BE IN TABLE OF DISORDERLY BEING  
8 CORRECTED. BY THAT, IF IT IS AN EXACT DEFINITION, I'M SORRY.

9 Q. WELL, ACTUALLY, YOU PROBABLY WOULD MEET THIS  
10 DEFINITION, EFFICIENT FLOW OF A MARKET, EFFICIENT FLOW OF MILK  
11 TO A SPECIFIED MARKET, YOU WOULD AGREE WITH ME THAT SOME OF THE  
12 TRANSACTIONS INVOLVED THERE WERE NOT EFFICIENT?

13 A. I WOULD AGREE.

14 Q. AND WHAT YOU ARE REFERRING TO WAS A FEDERAL MILK ORDER  
15 PROCEEDING THAT WAS TRIGGERED BY THE POOLING WITHIN MIDEAST  
16 CENTRAL, UPPER MIDWEST MARKETS MILK ORIGIN ON CALIFORNIA FARMS,  
17 CORRECT?

18 A. AND OTHER PLACES.

19 Q. AND OTHER PLACES. WELL, PLACES WITH MARKET-WIDE  
20 POOLING WOULD BE CALIFORNIA, WE'RE REFERRING TO THAT SECTION?

21 A. CORRECT. BUT THE, WELL, IT WAS FROM OTHER AREAS, AND  
22 ENDED UP BEING PART OF THE DEFINITION, YES. AND THE  
23 REGULATIONS AT THAT TIME ALLOWED THAT, BUT THE INTENT, YOU  
24 KNOW, THE SECRETARY SAID, I DON'T THINK THAT'S WHAT WE WANT TO  
25 HAVE HAPPEN, THAT MILK'S NOT, EFFICIENT IS NOT A REGULAR PART

1 OF THE SUPPLY. THAT WAS AN EXAMPLE OF DISORDERLY.

2 Q. YES. AND ALWAYS CORRECT ME IF MY ASSUMPTIONS ARE WRONG  
3 OR MY RECOLLECTION IS WRONG. BUT IN THAT HEARING, MY  
4 RECOLLECTION IS THAT YOU TESTIFIED THAT DFA, AMONG OTHERS,  
5 POOLED MILK IN SOME OF THE MIDWESTERN MARKETS FROM CALIFORNIA,  
6 BECAUSE THE SYSTEM ALLOWED THAT, AND THAT YOU HAD A FIDUCIARY  
7 DUTY TO YOUR PRODUCERS TO MAKE MONEY WHERE YOU COULD.

8 A. THAT'S CORRECT.

9 Q. AND THEN YOU CAME TO HEARING AND SAID, WE DID IT. WE  
10 DON'T WANT ANYBODY TO DO IT, BECAUSE IT IS NOT FAIR.

11 A. I THINK I WOULD USE A DIFFERENT SET OF SENTENCES, BUT  
12 YES, WE DID THAT AND WE THOUGHT IT WAS NOT THE RIGHT BEHAVIOR,  
13 BUT THAT WAS WHAT THE RULES ALLOWED WE SHOULD DO IT, AND WE'RE  
14 HERE TO OFFER A DIFFERENT SET OF RULES, A DIFFERENT SET OF  
15 PROVISIONS.

16 Q. NOW, WITH RESPECT TO THAT PROCEEDING, AS WELL AS  
17 SEVERAL OTHERS POST REFORM, MARKETING DISORDER, AS I RECALL  
18 YOUR TESTIMONY IN THOSE HEARINGS, WAS ILLUSTRATED BY MARKET  
19 BEHAVIOR, CORRECT?

20 A. I DON'T KNOW THAT I RECALL THOSE HEARINGS AS WELL AS  
21 YOU DO. I'M NOT SAYING YOU ARE WRONG, I'M JUST SAYING I DON'T  
22 KNOW IF I RECALL ALL OF THE DETAIL.

23 Q. POOLING MILK LOCATED IN CALIFORNIA IN ONE OF THE  
24 MIDEAST ORDERS IS MARKET BEHAVIOR.

25 A. CORRECT.

1 Q. AND THOSE REPRESENT TRANSACTIONS WHICH, AT THAT TIME,  
2 YOU SAID THE REGULATORY SYSTEM SHOULD NOT ALLOW BECAUSE IT'S  
3 INEFFICIENT AND IT'S DISORDERLY. CORRECT?

4 A. FAIR ENOUGH, YES.

5 Q. NOW, WITH RESPECT TO PROPOSAL 1 HERE IN CALIFORNIA, YOU  
6 HAVE REFERRED TO A NUMBER OF REGULATORY DIFFERENCES.  
7 DIFFERENCES IN CLASS I PRICES, DIFFERENCES IN CLASS III PRICES,  
8 AND YOU HAVE DESCRIBED THOSE IN YOUR TESTIMONY ON VARIOUS  
9 PLACES AS A CAUSE OF CONCERN, OR GENERATING QUESTIONS. WITH  
10 RESPECT TO THOSE, DO YOU HAVE SPECIFIC TRANSACTIONAL AND MARKET  
11 BEHAVIOR ILLUSTRATIONS OF THE DIFFERENCES IN REGULATION THAT  
12 YOU OPINE ARE DISORDERLY?

13 A. I THINK I OFFERED SEVERAL IN MY BACK AND FORTH WITH  
14 MR. ENGLISH ON TWO DAYS AGO. IT IS ALREADY IN THE RECORD.

15 Q. SO TO THE EXTENT THAT YOU HAVE ALREADY OPINED, THOSE  
16 ARE THE TRANSACTIONS THAT YOU HAVE THAT ILLUSTRATE THE  
17 DISORDER?

18 A. I'M NOT SURE. IS THAT A QUESTION?

19 Q. THAT IS A QUESTION.

20 A. OKAY.

21 Q. ARE YOU DONE WITH THAT? ARE YOU DONE WITH PRESENTING  
22 EVIDENCE OF TRANSACTIONS IN MARKET BEHAVIOR TO ILLUSTRATE  
23 DISORDER?

24 A. I GAVE SOME EXAMPLES THAT DON'T NECESSARILY KNOW THAT  
25 THAT WILL BE ALL, EVERY EXAMPLE THAT I CAN THINK OF OR EVERY

1 EXAMPLE THAT THERE IS, BUT I DID GIVE EXAMPLES OF WHERE THE  
2 DIFFERENCE IN PRICES CAUSE MARKET BEHAVIORS, THE DIFFERENCE IN  
3 COMPETITIVE FACTORS THAT RELATED TO DIFFERENT MINIMUM PRICES,  
4 SO THAT WAS -- THOSE WERE MY EXAMPLES.

5 Q. OKAY. I RECALL ONE EXAMPLE, SEE IF MY RECOLLECTION IS  
6 CORRECT.

7 AN EXAMPLE OF THE OCCASIONAL OPPORTUNITY TO MARKET  
8 CONDENSED MILK OF CALIFORNIA ORIGIN, TO THE MIDWEST OR THE EAST  
9 WHEN PRICES WERE MARKEDLY DIFFERENT BETWEEN THE FEDERAL SYSTEM  
10 AND THE STATE SYSTEM. DO YOU RECALL THAT EXAMPLE?

11 A. I DON'T THINK I USED THE WORD OCCASIONAL, BUT I THINK I  
12 POINTED OUT THAT THERE WERE DIFFERENCES IN MARKETING CONDENSED  
13 MILK PRODUCTS TRAVELING OUT OF CALIFORNIA TO POINTS EAST, AND  
14 THAT IT WAS CAUSED MARKET DISRUPTION IN OUR OWN MARKETING  
15 PROGRAMS DUE TO THE DIFFERENCE IN THE MINIMUM PRICES.

16 Q. OKAY. AND WITH RESPECT TO DISORDERLY MARKETING IN  
17 FEDERAL HEARINGS, ANOTHER THING THAT YOU TRIED TO DO, FOR  
18 EXAMPLE, IN MILK FROM CALIFORNIA OR MILK FROM IDAHO, WHEREVER  
19 IT WAS, WAS TO QUANTIFY HOW MUCH MARKET BEHAVIOR THERE WAS.  
20 WITH RESPECT TO CONDENSED SKIM, ARE YOU GOING TO, OR DO YOU  
21 HAVE ANY EVIDENCE TO QUANTIFY THAT BEHAVIOR TO ILLUSTRATE THE  
22 DISORDER TO WHICH YOU HAVE OPINED?

23 A. I DO NOT, AND DON'T PLAN TO OFFER ANY FOLLOW-UP DATA.

24 Q. OKAY. WITH RESPECT TO AREAS WHERE YOU DESCRIBE  
25 DISORDER AS QUESTIONS OR CONCERNS EXPRESSED TO YOU, DO YOU HAVE



1 ANY TRANSACTIONAL OR BEHAVIOR ILLUSTRATIONS TO SHOW HOW A  
2 MARKETING PRODUCT, THAT CONCERN TRANSLATES TO MARKING  
3 DECISIONS?

4 A. TRY THAT QUESTION AGAIN.

5 Q. OKAY. WITH RESPECT TO SOME OF THE REGULATORY  
6 DIFFERENCES, YOU HAVE TESTIFIED THAT THEY ARE A CAUSE OF  
7 CONCERN OR HAVE GENERATED QUESTIONS TO YOU FROM YOUR CUSTOMERS?

8 A. YES.

9 Q. OKAY. FIRST OF ALL, DO YOU HAVE OR INTEND TO PRESENT  
10 ANY EVIDENCE OF TRANSACTIONS THAT ILLUSTRATE THE DISORDER THAT  
11 YOU DESCRIBE AS GENERATING QUESTIONS OR CONCERNS?

12 A. NOT BEYOND WHAT I HAVE ALREADY MENTIONED.

13 Q. YOU ALSO USE THE TERM IN YOUR TESTIMONY REPEATEDLY,  
14 "SIMILARLY SITUATED". IS THIS A TERM THAT HAS SPECIFIC MEANING  
15 IN THE DISCIPLINE OF ECONOMICS OR MILK MARKETING?

16 A. I THINK THAT I OWE THE ORIGIN OF THAT TERM TO MR. TOSI,  
17 A FORMER USDA MARKETING SPECIALIST, WHO LECTURED ME ON IT, AND  
18 SOME SIMILAR SITUATION YOU AND I ARE HERE NOW. AND HIS  
19 QUESTIONING BACK AND FORTH WHERE THERE WERE HANDLERS WHO HAD  
20 SIMILAR CONDITIONS, SIMILAR PRODUCTS, THAT WERE ALL OF THE SAME  
21 CLASS VALUE, THEY SHOULD HAVE SIMILAR PRICES. AND I THINK THAT  
22 TERM ALSO APPEARS IN SEVERAL DECISIONS IN THE EARLY PART OF THE  
23 2000'S WHERE THERE WERE DECISIONS MADE THAT THAT WAS AN  
24 EXAMPLE. THESE HANDLERS HAD SIMILAR SITUATIONS TO THEIR  
25 MARKETING PROGRAMS. AND WHATEVER THAT PARTICULAR DECISION WAS

1 WORKING ON OR WAS ATTEMPTING TO CORRECT, THAT WAS ONE OF THE  
2 REASONS THEY DIDN'T HAVE SOMETHING UNDER THE ORDER THAT WAS THE  
3 SAME.

4 PRODUCER-HANDLERS WHO WERE SIDE-BY-SIDE WITH POOL  
5 DISTRIBUTING PLANTS, WHO FULLY ACCOUNTED TO THE POOL, AND THE  
6 PRODUCER-HANDLER DIDN'T, THEY WERE IN SIMILARLY SITUATED  
7 MARKETING CONDITIONS, BUT THEY DIDN'T HAVE THE SAME PRICE.  
8 THAT WOULD BE AN EXAMPLE.

9 Q. OKAY. SO YOUR --

10 JUDGE CLIFTON: EXCUSE ME, WOULD YOU SPELL MR. TOSI'S NAME  
11 FOR THE TRANSCRIPT?

12 MR. HOLLON: T-O-S-I.

13 BY MR. VETNE:

14 Q. SO AS I UNDERSTAND YOUR ANSWER TO MY QUESTION, NO,  
15 THERE IS NO SOURCE IN THE DISCIPLINE OF ECONOMICS, BUT YOUR USE  
16 OF THE TERM IS DERIVED FROM WHAT YOU BELIEVE IS SIMILAR USE OF  
17 THE TERM IN REGULATORY HISTORY OF MILK MARKETING ORDER PROGRAM;  
18 IS THAT CORRECT?

19 A. CORRECT.

20 Q. YOU USED THE TERM SIMILARLY SITUATED TO QUALIFY THE  
21 WORD PRODUCERS -- SIMILARLY SITUATED PRODUCERS. WHAT  
22 CHARACTERISTICS DO YOU INCORPORATE WHEN YOU MODIFY THE WORD  
23 PRODUCERS TO REACH A CONCLUSION OF SIMILARLY SITUATED? WHAT  
24 FACTORS?

25 A. IN THAT CASE, THEY PRODUCE, IN, I THINK IT WAS USED IN

1 SOME OF THE MAILBOX MILK PRICE COMPARISONS, THAT THEY PRODUCE  
2 MILK THAT IS IN MARKET WITH AS BEST, AS CLOSE AS WE CAN GET, TO  
3 HIGH MANUFACTURING MARKETS, HIGH PRODUCTION OF CLASS II, III,  
4 AND IV ITEMS, LOW CLASS I UTILIZATION.

5 Q. WOULD IT BE CORRECT TO SAY THEN, THAT YOU ARE NOT  
6 LOOKING AT THE ECONOMIC CIRCUMSTANCES OF THE PRODUCER, BUT  
7 RATHER THE CHARACTERISTICS OF THE MARKET IN WHICH THEY PRODUCE,  
8 COMPARING THE MARKETS TO ONE ANOTHER RATHER THAN FACTORS THAT  
9 MAKE THE PRODUCERS SIMILAR?

10 A. I WOULD SAY IT WOULD BE IN THE MARKETS IN WHICH THEY  
11 PRODUCE ARE SIMILAR. THAT'S THE SIMILARLY SITUATED IN THAT  
12 DEFINITION.

13 Q. FOR PRODUCERS IT IS NOT THE SIZE OF THE PRODUCER, IT IS  
14 NOT THE COST OF PRODUCTION OF THE PRODUCER, IT IS NOT WHERE  
15 THEY BUY THEIR JOHN DEERE TRACTOR, WHERE THEY GET THEIR VET  
16 SERVICES, IT'S THE MARKET, NOT THE PRODUCER THAT YOU ARE  
17 COMPARING?

18 A. YES.

19 Q. YOU USE THE TERM SIMILARLY SITUATED STATES, REFERRING  
20 TO WORKING IN WASHINGTON, THE PACIFIC NORTHWEST. IN YOUR USE  
21 OF THE TERM THERE, IT'S SIMILARLY SITUATED, SIMILAR LY MEANS  
22 NOTHING MORE THAN THEY ARE ALSO ON THE WEST COAST?

23 A. AND COMPETE FOR MARKETS IN A SIMILAR, FROM A SIMILAR  
24 GEOGRAPHIC AREA, RIGHT IN THE WESTERN PART OF THE U.S., AND SO  
25 THEY ARE, THEIR PRODUCTION IS GREATER THAN THEIR LOCAL DEMAND

1 SO THEY COMPETE IN MARKET BOTH IN THEIR AREA AND OUT OF THEIR  
2 AREA, AND THEY HAVE SIMILAR GEOGRAPHIC ADVANTAGES AND  
3 DISADVANTAGES.

4 Q. NOW MAKE -- YOU DO NOT INCLUDE, HOWEVER, IN YOUR, IN  
5 THE FACTORS OF SIMILARLY SITUATED THERE, ANYTHING ABOUT THE  
6 NEED FOR THAT REGION TO SELL LOCALLY-PRODUCED MANUFACTURED  
7 PRODUCTS TO THE EAST, IN THE NORTHWEST VERSUS CALIFORNIA?

8 A. TRY THAT AGAIN.

9 Q. THERE'S NOTHING IN YOUR USE OF THE WORD SIMILARLY  
10 SITUATED, THE FACTORS ON THE QUANTITY OF MANUFACTURED PRODUCTS  
11 THAT NEED TO BE EXPORTED?

12 A. I THINK I INDICATED THAT THE PRODUCTION RELATIVE TO  
13 CONSUMPTION IN THOSE AREAS WOULD DICTATE IF SOME NEED TO MOVE  
14 PRODUCT.

15 Q. SOME NEED. SO I DON'T -- I DON'T HAVE A PROBLEM WITH  
16 THAT. WOULD YOU SAY THERE'S SOME NEED IN THE NORTHWEST AND  
17 HUGE NEED IN CALIFORNIA?

18 A. ACTUALLY, I DON'T HAVE A BETTER DEFINITION OF SOME,  
19 THAN SOME.

20 Q. OF COURSE. ON PAGE 24 YOU USE SIMILARLY SITUATED TO  
21 MODIFY DAIRY FARM BUSINESSES. PERHAPS THIS IS WHERE WE MIGHT  
22 GET INTO FARM SIZE, FARM COST OF PRODUCTION, THE COMPONENTS OF  
23 FARM COST OF PRODUCTION. WAS THAT YOUR INTENT?

24 A. NO.

25 Q. AND SO IN THIS, DID YOU MEAN ANYTHING DIFFERENT THAN

1 YOUR PRIOR USE OF THE WORD SIMILARLY SITUATED PRODUCERS, BY AS  
2 A REFERENCE TO THE MARKET?

3 A. THE MARKET THEY PRODUCE IN.

4 Q. AND THEN ON PAGE 21, HEADING OF SIMILARLY SITUATED  
5 HANDLERS. WHAT ARE THE CRITERIA THAT GO INTO YOUR USE OF THAT  
6 TERM AS A MODIFIER OF HANDLERS?

7 A. THE TYPE OF PRODUCT THAT THEY PRODUCE.

8 Q. OKAY. AND IT'S NOT THE MARKET CONDITIONS WITHIN THE  
9 PRODUCT THEY PRODUCE, IT'S SIMPLY THE TYPE OF PRODUCT THAT THEY  
10 PRODUCE?

11 A. YES.

12 JUDGE CLIFTON: I'M LOOKING FOR IT ON PAGE 21. I DIDN'T  
13 UNDERSTAND YOUR PHRASE, IF YOU COULD SAY IT AGAIN, MR. VETNE.

14 MR. VETNE: IT'S IN THE HEADING. SIMILARLY SITUATED  
15 HANDLERS. I MISSED IT THE FIRST TIME TOO, BECAUSE IT IS NOT IN  
16 THE TEXT.

17 JUDGE CLIFTON: ALL RIGHT. THANK YOU. SIMILARLY SITUATED  
18 HANDLERS.

19 MR. HOLLON: I THINK, MR. VETNE, THE TWO -- THE TWO  
20 SENTENCES DOWN FROM THERE, "FEDERAL MILK MARKET ORDER PRICE IS  
21 A NATION-WIDE PRICE FOR SIMILAR REASONS THAT'S NOTED, IN  
22 EFFECT, THE MANUFACTURING PRODUCT." SO THAT WAS -- THAT WAS --  
23 THAT WAS DEVELOPED A LITTLE BIT EARLIER IN THE TESTIMONY, AND I  
24 THINK CLEARLY, USDA AND THE SYSTEM RECOGNIZES THAT BECAUSE THEY  
25 DON'T ANNOUNCE A SINGLE PRICE FOR ALL THOSE PRODUCTS. SO THERE

1 HAS TO BE SOME DEGREE OF SIMILARITY ALREADY ACCEPTED IN THOSE  
2 CLASSES OF PRODUCTS.

3 BY MR. VETNE:

4 Q. OKAY. SO IT'S CHARACTERISTIC OF PRODUCT, NOT THE  
5 CHARACTERISTICS OF THE HANDLER?

6 A. WELL, THE HANDLER MAKES THAT PRODUCT, I THINK THOSE ARE  
7 INDISTINGUISHABLE.

8 Q. YOU ARE NOT FAMILIAR WITH USE OF THE ECONOMIC TERM  
9 HORIZONTAL EQUITY, ARE YOU?

10 A. HORIZONTAL EQUITY? I AM NOT.

11 Q. AS A DESCRIPTION OF SIMILARLY SITUATED?

12 A. NO.

13 Q. OKAY. I'M GOING TO GO A LITTLE BIT BACK NOW TO YOUR  
14 TESTIMONY, IF I GOT THIS AS A FOUNDATION FOR SOME THINGS.

15 ON THE, JUST BELOW THE MIDDLE OF PAGE 2 YOU REFER TO  
16 "THE STAND-ALONE CALIFORNIA STATE ORDER AS NO LONGER ACHIEVING  
17 THESE RESULTS." THESE RESULTS MEANING ORDERLY REGULATED  
18 MARKET; IS THAT CORRECT?

19 A. YES.

20 Q. OKAY. AT ONE TIME IT DID, AND NOW IT DOES NOT; IS THAT  
21 YOUR TESTIMONY?

22 A. YES.

23 Q. OKAY. COULD YOU DESCRIBE TEMPORAL IN TIME, THE PERIOD,  
24 IT NOW IT DOES NOT, THE PERIOD AT WHICH THE TRANSITION TOOK  
25 PLACE?

1           A.    I'M NOT GOING TO BE ABLE TO DO THAT EXACTLY, BECAUSE IT  
2 WAS A MOVEMENT OVER TIME.    BUT I WOULD POINT OUT, IT IS  
3 CERTAINLY IN THE 4B MARKET WHEN THE CALCULATIONS WHERE THE WHEY  
4 FACTOR CHANGED, THAT WOULD BE A POINT THERE.

5           Q.    THAT WOULD BE '07, '07 AND SUBSEQUENTLY?

6           A.    '07 AND SUBSEQUENT CHANGES.    THERE WOULD BE  
7 OPPORTUNITIES WHERE THERE WERE DISCUSSIONS ABOUT THE CLASS 1  
8 VALUES IN THE STATE ORDER AND ITS ALIGNMENT WITH SURROUNDING  
9 MARKETS, AND THERE WAS NO MOVEMENT IN THE VALUES.    THOSE, SO  
10 THOSE WOULD BE TWO THAT COME TO MIND.

11          Q.    ALIGNMENT'S A WORD WE HAVE USED, IT IS IN YOUR  
12 TESTIMONY AND YOU USED IT IN ANSWERS TO QUESTIONS.

13                    WHEN YOU WERE -- WHEN YOU USE ALIGNMENT IN YOUR  
14 TESTIMONY, ARE YOU REFERRING TO THE DIFFERENCE IN NUMBERS AS  
15 THEY APPEAR IN PUBLISHED REGULATIONS?

16          A.    NOT JUST PUBLISHED REGULATIONS, UNLESS IF YOU, FOR  
17 EXAMPLE, THE MAILBOX MILK PRICE IS NOT A PUBLISHED REGULATION,  
18 BUT THERE'S EXAMPLE OF WHERE WE TRY TO MEASURE ALIGNMENT, SOME  
19 RELATIONSHIP.

20          Q.    AGAIN, WE ARE LOOKING AT DIFFERENT NUMBERS.

21          A.    YES.

22          Q.    OKAY.    YOU ARE NOT USING ALIGNMENT IN THE SENSE, FOR  
23 EXAMPLE, THAT IT IS EXPLAINED IN THE CORNELL DAIRY SECTOR  
24 SIMULATOR OF, WHAT WAS IT, 1998, AS REVISED IN 2011, YOU ARE  
25 NOT REFERRING TO ECONOMIC MODEL ALIGNMENT?

1 A. I'M NOT FOLLOWING YOU.

2 Q. YOU ARE REFERRING TO NUMBERS THAT APPEAR EITHER IN  
3 REGULATION OR IN SOME PUBLICATION, AND COMPARING THE TWO?

4 A. THAT PART I FOLLOWED.

5 Q. BUT YOU ARE NOT USING SOME KIND OF, YOU ARE NOT USING  
6 THE DISCIPLINE OF ECONOMICS FOR WHICH YOU HAVE BEEN QUALIFIED  
7 AS AN EXPERT, TO APPLY ALIGNMENT?

8 A. I WOULD HAVE TO SAY I'M NOT SURE.

9 Q. YOU ARE NOT SURE. IT'S NOT SOMETHING YOU HAVE MODELED?

10 A. WELL, IF MODEL MEANS DO WHAT MISS TINA DID AS AN  
11 EXAMPLE, THAT WOULD BE NO.

12 Q. THAT WOULD BE NO. SOMETHING IN BETWEEN? SOMETHING  
13 MORE THAN JUST COMPARING TWO NUMBERS, HAVE YOU DONE ANYTHING  
14 MORE?

15 A. NO, MY COMPARISON IS THE NUMBERS.

16 Q. SO IF WE'RE LOOKING FOR THE NO LONGER ACHIEVES, ONCE  
17 DID, IT DOESN'T NOW, SO THE BREAKING POINT WOULD BE SOMETIME IN  
18 2007 OR AFTER.

19 A. IN THAT PERIOD AND FOR THAT PARTICULAR ISSUE, THAT  
20 WOULD BE A POINT.

21 Q. OKAY.

22 A. I WOULD POINT OUT THAT THERE ARE A NUMBER OF ISSUES  
23 THAT HAVE BEEN RAISED, THAT'S JUST ONE OF THEM, BUT THERE'S  
24 ALIGNMENTS IN THE CLASSES. THERE'S THE DEALINGS WITH  
25 OUT-OF-STATE MILK, THERE'S THE ALIGNMENT OF PRODUCER-HANDLER



1 REGULATIONS. SO ALL OF THOSE THINGS, PERHAPS ANY ONE OF THEM  
2 INDIVIDUALLY WOULD BE DIFFICULT TO CONVENE ALL OF THIS, BUT  
3 WHEN YOU BEGIN TO PUT THEM ALL TOGETHER, YOU REACH A SPOT  
4 WHERE, MAYBE A TIPPING POINT THAT YOU ASK FOR CHANGE IN  
5 REGULATION.

6 Q. OKAY. WELL, LET'S LOOK AT -- DIGRESS FROM MY NOTES, IF  
7 I CAN DO THIS, CLASS 1 PRICE ALIGNMENT. YOU COMPARED FEDERAL  
8 CLASS I PRICES AS THE ESTABLISHED IN THE 1999 MATRIX, GOING  
9 BACK TO 1993, 1996 PRODUCTION INFORMATION IN THE DAIRY SECTOR  
10 SIMULATOR, YOU REFER TO THE CLASS I MATRIX.

11 JUDGE CLIFTON: THAT IS, LET ME STOP YOU THERE. CAN YOU  
12 REMEMBER TO ASK THAT QUESTION AGAIN? OKAY? I NEED A BREAK.  
13 THIS IS WEARING ME OUT. SO WE CAN EITHER TAKE A 15-MINUTE  
14 BREAK OR WE CAN HAVE LUNCH. IT IS 12:02.

15 MR. ENGLISH, WHAT DO YOU PREFER?

16 MR. ENGLISH: I HAVE NO PREFERENCES, SO IT IS UP TO THE  
17 WITNESS AND --

18 JUDGE CLIFTON: ALL RIGHT. MR. BESHORE, LUNCH? I AGREE  
19 WITH YOU. THIS IS SOMEWHAT TEDIOUS. I'M NOT GOING TO STOP IT,  
20 BUT I CAN'T TAKE IT IN BIG CHUNKS. ALL RIGHT.

21 SO AN HOUR AND FIFTEEN MINUTES. PLEASE BE BACK AND  
22 READY TO GO AT 1:20. 1:20.

23 (WHEREUPON, A LUNCH BREAK WAS TAKEN.)

24 ---000---

25

1 WEDNESDAY, SEPTEMBER 30, 2015 - - AFTERNOON SESSION

2 JUDGE CLIFTON: WE'RE BACK ON RECORD AT 1:22. ARE THERE  
3 ANY MATTERS PRELIMINARY TO RESUMING CROSS-EXAMINATION OF  
4 MR. HOLLON? THERE APPEAR TO BE NONE.

5 MR. VETNE, YOU MAY TAKE YOUR PLACE, AGAIN.

6 MR. VETNE: THANK YOU, YOUR HONOR. JOHN VETNE, HILMAR  
7 CHEESE COMPANY.

8 BY MR. VETNE:

9 Q. I THINK I KNOW WHERE I LEFT OFF. I'M NOT SURE WHAT THE  
10 RECORD SHOWS, BUT I WANT TO ASK YOU A COUPLE OF QUESTIONS ABOUT  
11 EXHIBIT 20, TABLE 1. IN RESPONSE TO SOME QUESTIONS FROM  
12 MR. DEJONG, YOU INDICATED THAT YOU MADE THESE CALCULATIONS TO  
13 ANY SET OF REPORTED TEST INFORMATION?

14 A. DID YOU SAY PURPORTED OR REPORTED?

15 Q. REPORTED TEST INFORMATION FOR PRODUCERS AND  
16 STANDARDIZED IT UP OR DOWN AS NECESSARY, CORRECT?

17 A. CORRECT.

18 Q. OKAY. AND IN STANDARDIZING, YOU DID TWO THINGS; YOU  
19 CONVERTED THE REPORTED MILK TO MILK CONTAINING 3.5 PERCENT  
20 BUTTERFAT, WHICH IS THE STANDARD AT WHICH MANY PRICES ARE  
21 REPORTED, CORRECT?

22 A. YES.

23 Q. SO IN CONVERTING 3.5 BUTTERFAT, IN MOST CASES YOU WOULD  
24 HAVE TO SUBTRACT OUT A VOLUME OF FAT, CORRECT?

25 A. CORRECT.

1 Q. AND THE VOLUME, AN AMOUNT OF VALUE ASSOCIATED WITH THE  
2 FAT IS SUBTRACTED, CORRECT?

3 A. YES.

4 Q. CORRECT?

5 A. YES.

6 Q. OKAY. AND BY SUBTRACTING OUT THAT, THAT MEANS THAT  
7 WHAT IS LEFT OVER HAS MORE SKIM THAN THE PRODUCER MILK  
8 ORIGINALLY HAD, CORRECT?

9 A. CORRECT.

10 Q. SO AN ADJUSTMENT WAS MADE TO INCREASE THE REPORTED  
11 PROTEIN OR REPORTED OTHER SOLIDS FROM WHAT MAY HAVE BEEN  
12 ATTRIBUTED TO PRODUCER MILK IN THE TEST, CORRECT?

13 A. WHATEVER THE TEST WAS COMPARED TO THE STANDARD  
14 ADJUSTMENT WAS MADE BETWEEN THOSE TWO TESTS.

15 Q. JUST LET ME MAKE SURE I UNDERSTAND. IF YOU TAKE OUT  
16 FAT, YOU INCREASE THE SKIM PORTION, CORRECT? WE HAVE DECIDED  
17 THAT. IF MILK COMES IN AT 37, YOU ADJUST IT 35, YOU TAKE OUT  
18 SOME --

19 A. FAT, CORRECT.

20 Q. -- FAT. AND EQUIVALENT HUNDREDWEIGHT OF MILK,  
21 THEREFORE, CONTAINS MORE SKIM MILK, CORRECT?

22 A. IT DOES.

23 Q. AND THEREFORE, IT CONTAINS MORE NONFAT COMPONENTS THAN  
24 THE PRODUCER MILK AT TEST ORIGINALLY HAD, CORRECT?

25 A. YOU MEAN MORE PROTEIN AND OTHER SOLIDS?

1 Q. YES.

2 A. YES.

3 Q. AND SO YOU ADJUST IT, THAT VOLUME, POUNDS OF PROTEIN OF  
4 SOLIDS, WHICH IS STANDARDIZED TO 3.5 PERCENT, AND THEN  
5 ATTRIBUTE IT A VALUE?

6 A. I DID THE SAME THING FOR PROTEIN AND THE SAME THING FOR  
7 OTHER SOLIDS.

8 Q. AND THE VALUE YOU ATTRIBUTED TO THAT PORTION WHEN YOU  
9 STANDARDIZED WAS THE VALUE INCORPORATED IN THE FEDERAL ORDER  
10 SYSTEM FOR THAT?

11 A. YES.

12 Q. IS IT NOT THE CASE THAT IN MINNESOTA, WISCONSIN, THE  
13 UPPER MIDWEST AREA, THERE IS A LOT OF MILK USED FOR  
14 MANUFACTURING FOR WHICH A PRODUCER IS PAID ON SOME BASIS OTHER  
15 THAN FEDERAL ORDER MMR'S?

16 A. I DON'T HAVE ANY HARD DATA ON MORE OR LESS. IN TERMS  
17 OF, THERE ARE PREMIUMS IN THOSE MARKETS, JUST LIKE IN  
18 CALIFORNIA FOR PROTEIN. I'M AWARE OF THAT.

19 Q. ARE YOU AWARE --

20 A. I DON'T HAVE ANY LIKE, VOLUME NUMBERS ON THAT.

21 Q. OKAY. ARE YOU AWARE THAT PAYMENTS ON THE BASIS OF A  
22 CHEESE YIELD FORMULA IS COMMON IN THE UPPER MIDWEST?

23 A. I'M NOT AWARE THAT IT IS COMMON IN THE UPPER MIDWEST.

24 Q. OKAY. ARE YOU AWARE THAT IT IS USED IN SEVERAL  
25 MARKETS?

1 A. MARKETS?

2 Q. MARKETING REGIONS TO WHICH YOU REFERRED.

3 A. ONLY ANECDOTALLY.

4 Q. ANECDOTALLY?

5 A. YES.

6 Q. DOES DFA EVER EMPLOY A CHEESE YIELD FORMULA PAYMENT TO  
7 ITS PRODUCERS?

8 A. I'M NOT AWARE, I'M NOT KNOWLEDGEABLE ABOUT IN EVERY  
9 CASE. THERE MAY BE FROM TIME TO TIME, BUT I REALLY DON'T THINK  
10 WE HAVE ANY IN THE DFA CENTRAL AREA, WHICH WOULD BE THE UPPER  
11 MIDWEST.

12 Q. OKAY. WHAT ABOUT IN THE PACIFIC NORTHWEST, ARE YOU  
13 AWARE OF THE FREQUENCY OF USE OF A CHEESE YIELD FORMULA TO  
14 DAIRY FARMERS IN THAT MARKET?

15 A. NOT ANY DFA. NO, I TAKE THAT BACK. THERE COULD BE,  
16 THERE COULD BE SOME IN IDAHO, BUT I THINK OUR -- OUR PAY PRICE  
17 ARRANGEMENTS ARE IN THE BASIS OF 3.5 PRICING.

18 Q. 3.5 PRICING MEANING THE ADJUSTMENT FOR COMPONENTS IS  
19 BASED ON WHATEVER THE FEDERAL ORDER PRICE REDUCTION IS?

20 A. YES.

21 Q. AND WHEN YOU ARE REFERRING TO PREMIUMS, FOR EXAMPLE, IN  
22 THE UPPER MIDWEST --

23 A. AND OTHER MARKETS.

24 Q. AND EVERYWHERE. BUT IN -- WE'RE COMPARING, IN THIS  
25 CASE, WHAT YOU BELIEVE TO BE AN APPLE IN CALIFORNIA TO AN APPLE

1 IN THE UPPER MIDWEST, DO PREMIUMS FOLLOW THE SAME VALUE PER  
2 COMPONENT AS IN THE FEDERAL ORDER SYSTEM?

3 A. IN SOME CASES, YES, AND IN SOME CASES NO.

4 Q. DO YOU HAVE ANY WAY TO QUANTIFY THE DEPARTURE FROM THE  
5 FEDERAL ORDER PRACTICE IN THE VOLUME OF THE MILK MARKET IN THE  
6 UPPER MIDWEST?

7 A. I DON'T.

8 Q. TO THE EXTENT THAT THERE IS SUCH A DEPARTURE, WHETHER  
9 IN PREMIUMS OR CHEESE YIELD FORMULA, YOU HAVE NO WAY OF  
10 ADJUSTING YOUR MAILBOX PRICE TO REFLECT THAT?

11 A. I DON'T.

12 Q. IN CALIFORNIA, ARE THERE PREMIUMS PAID FOR MILK USED TO  
13 PRODUCE CHEESE?

14 A. YES.

15 Q. ARE THEY COMPARABLE TO THE PREMIUMS IN THE UPPER  
16 MIDWEST?

17 A. IN SOME CASES THEY MAY BE.

18 Q. DO YOU HAVE A CASE IN MIND?

19 A. TO MY KNOWLEDGE, THEY ARE NOT ALL IDENTICAL, SO THERE  
20 MAY BE SOME THAT MATCH UP WITH THOSE IN THE UPPER MIDWEST.

21 Q. BUT DO YOU HAVE ANY SPECIFIC PREMIUM NUMBERS IN  
22 CALIFORNIA THAT YOU CAN COMPARE TO A SPECIFIC PREMIUM NUMBER IN  
23 THE UPPER MIDWEST?

24 A. I DON'T.

25 Q. OKAY. WHEN YOU STANDARDIZED FOR CALIFORNIA, YOU USED

1 PRODUCER MILK AT TEST OF DFA MEMBERS AND ADJUSTED THAT TO THE  
2 SAME 3.5 STANDARD. AM I CORRECT?

3 A. I DID.

4 Q. OKAY. IS THE DFA MEMBERSHIP IN CALIFORNIA DISBURSED  
5 WITHIN CALIFORNIA IN THE SAME RATIO AS ALL PRODUCER MILK IN THE  
6 NORTH VERSUS SOUTH?

7 A. I CAN SAY THAT DFA PRODUCER MILK IN CALIFORNIA IS IN,  
8 ALL OVER THE STATE, BUT I CAN'T, I DON'T KNOW IF IT'S IN THE  
9 SAME RATIO OR PROPORTION.

10 Q. THERE'S QUITE A BIT MORE PRODUCER MILK IN NORTHERN  
11 CALIFORNIA THAN SOUTHERN CALIFORNIA, IS THERE NOT?

12 A. YES. AND BUT I DON'T KNOW OFF THE TOP OF MY HEAD, IF  
13 DFA MILK IS IN THAT PROPORTION OR NOT.

14 Q. OKAY. ARE YOU AWARE THAT THE COMPONENTS OF FAT AND  
15 PROTEIN OF MILK PRODUCED IN SOUTHERN CALIFORNIA TENDS TO BE  
16 BELOW THAT OF STATEWIDE AVERAGE OR NORTHERN CALIFORNIA?

17 A. I'VE NOT SEEN ANY CDFA DATA TO SUPPORT THAT.

18 Q. WITHOUT IT APPEARING IN CDFA DATA, ARE YOU AWARE OF  
19 THAT DIFFERENCE, WHETHER FROM DAIRY HERD IMPROVEMENT, YOU KNOW,  
20 REPORTED, CDFA REPORTED BODY FAT POUNDS FOR NORTHERN CALIFORNIA  
21 AND SOUTHERN CALIFORNIA, DO THEY NOT?

22 A. THEY, WELL, I GUESS I DON'T KNOW FOR SURE IF THEY DO.  
23 I KNOW THEY REPORT BUTTERFAT TESTS, SO -- BUT I -- I'M NOT --  
24 I'M NOT FAMILIAR IF THEY HAVE, YOU KNOW, A BREAK DOWN.

25 Q. OKAY. BUT IF IT'S THERE AND SHOWS A DIFFERENCE BETWEEN

1 THE TWO, YOU HAVEN'T LOOKED AT IT, CORRECT?

2 A. CORRECT.

3 Q. AND IF IT APPEARS WITHIN DFA INTERNAL DATA, YOU HAVE  
4 ALSO NOT LOOKED AT THAT?

5 A. CORRECT.

6 Q. NOW, I WAS GOING TO, BEFORE LUNCH, I REMEMBER WHAT I  
7 WAS GOING TO DO NOW.

8 EXHIBIT 20, TABLE 1B, AND MAP 1(D) ARE BOTH RELATED TO  
9 A SIMILAR CONCLUSION -- CORRECT ME IF I'M WRONG -- THAT YOU  
10 MADE, THAT CALIFORNIA CLASS 1 PRICES ARE NOT NUMERICALLY  
11 ALIGNED WITH STATE CLASS 1 PRICES?

12 A. CORRECT.

13 Q. AND WE DISCUSSED EARLIER AND WITH OTHER QUESTIONERS,  
14 THAT THE FEDERAL CLASS I PRICES WERE DERIVED FROM A PRICE  
15 SURFACE DAIRY SECTOR SIMULATOR THAT WAS INCORPORATED IN THE  
16 ANALYSIS OF THE FINAL FEDERAL ORDER REFORM DECISION IN 1999?

17 A. YES.

18 Q. AND THAT SIMULATOR INCORPORATED PRICES, AND THE MOST  
19 SIMPLEST WAY OF PUTTING IT, TRIED TO ESTABLISH THE VALUE OF  
20 MILK DELIVERED TO ONE LOCATION RELATIVE TO ANOTHER LOCATION.

21 A. I WOULD SAY THAT'S A FAIR ASSESSMENT.

22 Q. OKAY.

23 A. IT MAY BE A SLIMMED DOWN ASSESSMENT.

24 Q. WELL, IT -- IT THE MODEL USED SORT OF A MILK OR  
25 SCENARIO WHERE ALL THE MILK IS MARKETED AS EFFICIENTLY AS



1 POSSIBLE?

2 A. CORRECT.

3 Q. NOW, IN COMPARING -- ONE OF THE FUNCTIONS OF THE  
4 FEDERAL CLASS 1 PRICE IS NOT ONLY TO TO REFLECT IN CLASS I  
5 VALUES THE RELATIVE DIFFERENCE IN VALUE OF MILK DELIVERED TO A  
6 PARTICULAR LOCATION, BUT IT IS ALSO INCORPORATED IN PENNY FOR  
7 PENNY CHANGES IN THE PRODUCER MILK PRICE, THE BLEND PRICE IS  
8 ADJUSTED SIMILARLY, SO THAT A PRODUCER DELIVERING TO ONE  
9 LOCATION GETS THE VALUE OF MILK AT THAT LOCATION AS TO ONE  
10 PRICE?

11 A. YES.

12 Q. WITH RESPECT TO THAT LOCATION FUNCTION, IS THERE  
13 ANYTHING SIMILAR IN CALIFORNIA?

14 A. WELL, I GUESS THE WAY I WOULD ANSWER THAT IS THAT, YES  
15 THE LOCATION SURFACE IS ESTABLISHED, AND THE RATIONALE THAT YOU  
16 PROVIDED IS ONE OF THE RATIONALES. THE FARM BILL I THINK  
17 ESTABLISHED THAT, THE '85 FARM BILL, ALSO SAID THAT YOU DIDN'T  
18 HAVE TO DO THE PENNY-FOR-PENNY METHOD OF PAYING PRODUCERS, SO  
19 YOU COULD HAVE SOMETHING THAT DIFFERED IF YOU CHOSE TO JUSTIFY  
20 IT. NO OTHER ORDER THUS FAR HAS CHOSEN TO DO PRODUCER PRICES  
21 THAT WAY, AND I DON'T THINK THAT THERE IS ANYTHING OTHER THAN  
22 THE TRANSPORTATION PROGRAM IN CALIFORNIA, THAT MOVES MILK  
23 AROUND BASED ON LOCATION. SO I WOULD SAY THAT THE  
24 TRANSPORTATION PROGRAM IN SOME WAY FUNCTIONS AS TO THAT PART OF  
25 THE DIFFERENTIAL THAT MOVES MILK LIKE IT DOES IN THE FEDERAL

1 ORDER.

2 Q. I WAS GOING TO GET THERE.

3 A. DOES THAT SAVE US TIME?

4 Q. ALMOST, BUT I WISH TO EXPRESS MY ADMIRATION FOR YOUR  
5 MEMORY OF THE '85 FARM BILL.

6 A. WAS IT CORRECT?

7 Q. IT WAS CORRECT.

8 A. THANK YOU.

9 Q. PRIOR TO THAT TIME, USDA WAS RELUCTANT TO ADJUST  
10 PRODUCER PRICES IN A MANNER DIFFERENT THAN CLASS I PRICE  
11 ADJUSTMENTS. AND THE '85 FARM BILL MADE IT CLEAR THAT USDA IS  
12 PERFECTLY FREE TO HAVE AN ADJUSTMENT FOR CLASS I PRICES THAT  
13 VARIES FROM PRODUCER PRICES, OR VICE VERSA?

14 A. YES.

15 Q. AND I THINK IT WAS USED ONCE. BUT --

16 A. OKAY. WE CAN HAVE A DISCUSSION AT THE BAR ABOUT THAT.

17 Q. YEAH, WE'LL WORK ON THAT.

18 SO IN COMPARING APPLES TO APPLES, THE FUNCTION OF  
19 VALUING PRODUCER MILK AT ONE LOCATION COMPARED TO ANOTHER IN  
20 THE FEDERAL ORDER, IS A COMBINATION OF STATE CLASS 1 PRICES,  
21 AND BRANCH-TO-PLANT LOCATION ADJUSTMENTS, OR CREDITS, WHICH  
22 THEY CALL FOR RANCH-TO-PLANT. RANCH-TO-PLANT AND MONETARY  
23 BENEFIT FOR MOVING MILK TO FROM A SUPPLY AREA TO A DISTRIBUTING  
24 PLANT WHERE IT SERVES THE POPULATION.

25 A. YOU STARTED OUT, YOU SAID IN THE FEDERAL ORDER AND THEN

1 YOU WENT TO -- DID YOU MEAN IN THE STATE ORDER?

2 Q. IN THE FEDERAL ORDER --

3 A. OKAY.

4 Q. -- BOTH FUNCTIONS ARE SERVED, PRODUCER MILK VALUE  
5 CHANGES AND THE CLASS 1 VALUE CHANGES ARE BOTH CERTIFIED BY  
6 THOSE DIFFERENTIALS AND THE INCORPORATED ADJUSTMENTS IN THE  
7 PRODUCER PRICE.

8 IN THE STATE ORDER, THE PRODUCER COMPONENT OF THAT  
9 CHANGE IN VALUE IS SERVED BY A COMBINATION OF THINGS. ONE IS  
10 THE DIFFERENCE IN CLASS 1 PRICES; AND ANOTHER WOULD BE  
11 CALIFORNIA'S FAIRLY SIGNIFICANT USE OF RANCH-TO-PLANT LOCATION  
12 CREDITS OR ADJUSTMENTS.

13 A. I AGREE WITH YOUR SECOND, THAT THE RANCH-TO-PLANT  
14 LOCATION ALLOWANCES IMPACT THAT. I'M NOT TOTALLY SURE ABOUT  
15 THE FIRST, THE FIRST, THE FACT THAT THERE'S A NORTHERN AND A  
16 SOUTHERN CALIFORNIA PRICE IMPACTING THE HANDLER VALUE.

17 Q. YES.

18 A. OKAY.

19 Q. I'M JUST TALKING ABOUT THE PRODUCER RIGHT NOW. IN THE  
20 FEDERAL EQUATION, THERE ARE PRICE ADJUSTMENTS. IN THE ACT IT  
21 SAYS, PRICES MUST BE UNIFORM SUBJECT TO ADJUSTMENTS FOR, ONE OF  
22 THE THINGS IS LOCATION.

23 A. CORRECT.

24 Q. PRODUCER PRICES MUST BE UNIFORM SUBJECT TO ADJUSTMENTS,  
25 AND ONE OF THE THINGS LOCATION.

1 A. SURE.

2 Q. SO IN THE CALIFORNIA STATE ORDER, THE PRODUCER END OF  
3 THOSE ADJUSTMENTS IS PARTLY ACCOUNTED FOR BY THE TRANSPORTATION  
4 CREDIT AND --

5 A. AGREED.

6 Q. OKAY. AND THERE'S ANOTHER ADJUSTMENT MADE IN THE STATE  
7 ORDER THAT'S NOT ACCOUNTED FOR IN THE STATE CLASS 1 PRICE, AND  
8 THAT IS A REGIONAL QUOTA ADJUSTER?

9 A. YES.

10 Q. OKAY. AND THAT QUOTA ADJUSTER ATTRIBUTES A GREATER  
11 VALUE IN THE DISTRIBUTION OF QUOTA VALUE TO PRODUCERS LOCATED  
12 IN THE SOUTH OF THE STATE WHERE POPULATION IS HIGH AND  
13 PRODUCTION IS RELATIVELY LOWER. CORRECT?

14 A. I'M NOT CERTAIN.

15 Q. YOU ARE NOT CERTAIN?

16 A. I'M NOT CERTAIN.

17 Q. OKAY. SO YOU DON'T KNOW HOW, IF AT ALL, THAT PLAYS  
18 INTO AS CLOSE AS WE CAN GET TO AN APPLES TO APPLES COMPARISON  
19 ON THE PRODUCER END OF THE EQUATION?

20 A. CORRECT.

21 Q. ON PAGE 3 OF YOUR STATEMENT YOU REFER TO A COST OF WHAT  
22 \$1.5 BILLION SINCE 2010. ACCORDING TO PUBLISHED INDUSTRY  
23 ESTIMATES. WHAT PUBLICATIONS?

24 A. I'M SORRY, I WAS STILL BACK ON YOUR OTHER QUESTION  
25 ABOUT MY EYES. TRY ME AGAIN. PAGE WHAT?

1 Q. OKAY.

2 A. 25?

3 Q. NOW I'M LOOKING HERE. RIGHT AT THE TOP OF THE PAGE,  
4 PAGE 3.

5 A. OKAY.

6 Q. FIRST AND SECOND LINE, \$1.5 BILLION SINCE 2010,  
7 ACCORDING TO PUBLISHED INDUSTRY ESTIMATES. PLEASE IDENTIFY THE  
8 PUBLICATION.

9 A. THE MILK PRODUCERS COUNCIL NEWSLETTER.

10 Q. MILK PRODUCERS COUNCIL NEWSLETTER. ARE YOU AWARE OF  
11 HOW THEY MADE THAT CALCULATION? THE SOURCE OF THEIR ESTIMATE?

12 A. I HAVE HAD CONVERSATIONS WITH MR. VANDENHEUVEL, BUT I  
13 DON'T RECALL ALL OF THE DETAILS.

14 Q. AND HE'S GOING TO BE HERE LATER TO TESTIFY?

15 A. HE WILL.

16 Q. WE'LL SAVE THAT. YOU ARE SIMPLY REPORTING WHAT  
17 SOMEBODY ELSE REPORTED?

18 A. YES.

19 Q. THANK YOU.

20 JUDGE CLIFTON: AND FOR THE RECORD, VANDENHEUVEL IS SPELLED  
21 HOW?

22 MR. HOLLON: YOU WOULD HAVE TO ASK JOHN.

23 JUDGE CLIFTON: DO YOU KNOW, MR. VETNE?

24 MR. VETNE: V-A-N-D-E-N-H-E-U-V-E-L, AL -- EL. AND I DON'T  
25 KNOW IN THE H IS CAPITALIZED IN THE MIDDLE. IS IT? NO.

1 JUDGE CLIFTON: THANK YOU.

2 BY MR. VETNE:

3 Q. IN THE SENTENCE THAT FOLLOWS THAT ESTIMATE, YOU SAID  
4 "THE COOPERATIVES'" -- THAT'S S APOSTROPHE -- YOU ARE REFERRING  
5 TO MEMBERS OF EACH OF THE THREE COOPERATIVES THAT ARE  
6 PROPONENTS, CORRECT?

7 A. CORRECT.

8 Q. "DAIRY FARM MEMBERS HAVE CAREFULLY STUDIED THE  
9 OPERATION AND IMPACTS, AND HAVE CONCLUDED," WAS MATERIAL  
10 PROVIDED BY YOU AND THE OTHER PROPONENT COOPERATIVES TO THEIR  
11 MEMBERS THAT WERE PART OF THAT CAREFUL STUDY?

12 A. WE HAD INFORMATION SESSIONS WITH MEMBERS, MULTIPLE  
13 TIMES. WE HAD COLLECTIVE INFORMATION SESSIONS WHERE SOME OF  
14 THE FOLKS YOU SEE HERE, EXPLAINED WHAT WE WERE TRYING TO DO,  
15 AND HOW, AND WHAT SOME OF THE DOLLAR IMPACTS WOULD BE. AND  
16 THOSE DISCUSSIONS WERE HELD WITH DFA MEMBERS, LAND O'LAKES  
17 MEMBERS, AND CDI MEMBERS, COLLECTIVELY AND INDIVIDUALLY, TO MY  
18 KNOWLEDGE.

19 Q. ARE WERE THERE ANY DOCUMENTARY -- WERE ANY DOCUMENTARY  
20 MATERIALS PROVIDED, DO YOU REMEMBER, SO THEY COULD STUDY AT  
21 HOME?

22 A. I CAN'T SPEAK TO EVERYBODY'S SESSIONS. THE INFORMATION  
23 WE PROVIDED WAS A PUBLIC SETTING, AND THEN IF THERE WERE  
24 FOLLOW-UP QUESTIONS THE PEOPLE WERE FREE TO ASK AND FOLLOW UP  
25 AND CALL. AND THERE WERE ASKEDS AND FOLLOW UPS AND CALLS.

1 Q. OKAY. WITHIN YOUR ORGANIZATION, DFA, WAS THAT THERE A  
2 DOCUMENT AND PUBLICATION OR SOMETHING THAT --

3 A. I DON'T KNOW THAT WE MAILED OUT A TEN-PAGE PIERCE AND  
4 IMPACT SUMMARY AND SENT IT TO EVERY MEMBER. WE DID NOT DO  
5 THAT. WE DID, AGAIN, HAVE INFORMATIONAL SESSIONS, WE HAD, YOU  
6 KNOW, MEMBER COMMUNICATIONS THAT OUTLINED CERTAIN POINTS, AND  
7 AGAIN, WE HAD A LOT OF COMMUNICATION FROM INDIVIDUAL MEMBERS  
8 ASKING QUESTIONS.

9 Q. OKAY. AND DURING WHAT PERIOD OF TIME DID THESE  
10 INFORMATION SETTINGS TAKE PLACE?

11 A. I WOULD SAY OVER MUCH OF THE LAST TWO YEARS.

12 Q. OKAY. AND IN THOSE MEMBER SESSIONS WITHIN WHICH DFA  
13 PARTICIPATED, WAS THE STEPHENSON, NICHOLSON STUDY DISCUSSED?

14 A. I'M WAITING FOR YOU -- IF YOU WANT TO -- NO? OKAY.  
15 THEN IT MAY HAVE BEEN DISCUSSED BY REFERENCE, BUT IT WAS NOT  
16 CIRCULATED IN ANY WAY, AND WE USED OUR OWN ANALYSIS,  
17 SPREADSHEET, MODEL, IMPACT, ETCETERA.

18 Q. OKAY. ON THE BOTTOM OF PAGE 3, ABOUT SIX LINES UP, YOU  
19 USE THE TERM "NOT IN ACCORDANCE WITH." "REGULATORY PRICES ARE  
20 NOT IN ACCORDANCE WITH THE FMMO." AM I CORRECT IN  
21 UNDERSTANDING YOU TO MEAN THAT THEY ARE NOT NUMERICALLY THE  
22 SAME?

23 A. CORRECT.

24 JUDGE CLIFTON: MR. HOLLON, EXPAND ON YOUR ANSWER, BECAUSE  
25 AS I LOOK AT THIS STATEMENT, MR. VETNE JUST TOOK LITTLE PIECES

1 OF IT, AND THERE IS NO SENSE IN IT UNLESS YOU EXPLAIN MORE  
2 FULLY.

3 MR. HOLLON: THE SENTENCE SAYS, "WE WILL DEMONSTRATE THE  
4 CALIFORNIA PRODUCER MILK RETURNS IS WELL BELOW THOSE IN  
5 SIMILARLY SITUATED FEDERAL MILK MARKET ORDER PRODUCERS  
6 THROUGHOUT THE COUNTRY, AND THAT MINIMUM REGULATORY PRICES TO  
7 PROCESSORS ARE NOT IN ACCORDANCE WITH FEDERAL MILK MARKET  
8 ORDERS ON THE NATIONAL GRID, WHICH IS DERIVED FROM COMMON  
9 UNIFORM PRICING PROVISIONS APPLICABLE TO ALL FEDERAL MILK  
10 MARKETING ORDER PROCESSORS, AND BASED ON A SERIES OF  
11 MARKET-DRIVEN PRICES THAT REPRESENT NATIONAL VALUES."

12 SO IN ACCORDANCE, WHAT INCORPORATE AT THE FIRST LEVEL,  
13 THE NATIONAL PRICING GRID, YOU HAVE A PRICE IN LOS ANGELES  
14 UNDER THE CALIFORNIA STATE ORDER, YOU HAVE A PRICE IN LOS  
15 ANGELES UNDER THE FEDERAL ORDER. TO THE EXTENT THEY ARE  
16 DIFFERENT, THAT WOULD BE PART OF THE IMPLICATION OF THAT  
17 SENTENCE.

18 WHERE DO THOSE FEDERAL ORDER PRICES COME FROM? FROM  
19 NATIONALLY DERIVED MARKET DRIVEN PRICES, AND FORMULAS IN THE  
20 FEDERAL ORDER. AND BOTH OF THOSE NATIONALLY DERIVED PRICES AND  
21 FORMULAS INCLUDE CALIFORNIA BASE DATA AND INFORMATION.

22 BY MR. VETNE:

23 Q. DOES THAT CHANGE YOUR ANSWER AS TO WHAT YOU INTENDED TO  
24 MEAN BY NOT IN ACCORDANCE WITH, MEANING NOT NUMERICALLY THE  
25 SAME?



1           A. WELL, IN THE WORD ACCORDANCE, THAT PIECE OF IT SAID THE  
2 PRICE HERE AND PRICE THERE, WHEN YOU ATTACH THE REST OF THE  
3 SENTENCE AND THE REST OF THE DETAIL, OBVIOUSLY THOSE OTHER  
4 FACTORS COME INTO PLAY.

5           Q. IT'S WHERE THE GRID COMES FROM. THE REST OF THE  
6 SENTENCE IS WHERE THE GRID COMES FROM, BUT IN ACCORDANCE,  
7 MODIFIES, PRICING GRID?

8           A. THAT IS TRUE.

9           Q. THE BOTTOM OF THE PAGE YOU REFER TO A UNIQUE MARKETING  
10 SITUATION IN CALIFORNIA. FOR PURPOSES OF CONSTRUCTING A  
11 FEDERAL ORDER, WHAT UNIQUE MARKETING SITUATION DO YOU HAVE IN  
12 MIND THAT YOU WANT THE SECRETARY TO LOOK AT, U.S. SECRETARY OF  
13 AGRICULTURE, TO LOOK AT?

14          A. ONE OF THOSE WOULD BE THE EXISTENCE OF THE STATE QUOTA  
15 PROGRAM.

16          Q. I GOT THAT PART. WHAT OTHER PARTS, WHAT OTHER PARTS IN  
17 CALIFORNIA DO YOU THINK THE SECRETARY SHOULD LOOK AT THAT ARE  
18 UNIQUE, AND WHAT -- YEAH, LET ME JUST ASK THAT QUESTION.

19          A. IN THIS CASE, THE PRIMARY SITUATION WOULD BE THE QUOTA  
20 PROGRAM, THAT WOULD ENCOMPASS MUCH OF THE DIFFERENCE.

21          Q. AND IF THERE ARE OTHER THINGS THAT ARE UNIQUE IN  
22 CALIFORNIA, SUCH AS THE VOLUME OF CHEESE PRODUCED, THE VOLUME  
23 OF POWDER PRODUCED, HOW MUCH IS EXPORTED, WHAT GOES IN WHAT  
24 DIRECTION OF THE COUNTRY, TO THE EXTENT THOSE ARE UNIQUE, IT IS  
25 NOT YOUR POSITION THAT THE SECRETARY SHOULD LOOK AT THOSE.

1           A. WELL, I THINK IN SOME OF THE SCENARIOS WHERE WE HAVE  
2 COMPARED, FOR EXAMPLE, MAILBOX MILK PRICES, THEY AREN'T TOTALLY  
3 UNIQUE. BUT NO PLACE ELSE HAS A STATE OPERATED QUOTA SYSTEM,  
4 AND LEGISLATED IN PLACE, AND MAKES DEDUCTIONS FROM THE  
5 MARKET-WIDE POOL. SO THAT'S PRETTY UNIQUE.

6           Q. DID I JUST -- MAYBE I MISUNDERSTOOD YOU. DID I -- I  
7 UNDERSTOOD YOU TO SAY THAT THE MAILBOX MILK PRICES ARE OR ARE  
8 NOT UNIQUE -- MAILBOX MILK PRICES DIFFERENCES?

9           A. MAILBOX MILK PRICES DEMONSTRATE THE COMPARISON OF  
10 SIMILARLY SITUATED, AND YOU WERE DESCRIBING UNIQUE AS THINGS  
11 LIKE HIGH CLASS 3 USE AND HIGH CLASS 4 USE, AND I SAID THOSE  
12 THINGS ARE NOT UNIQUE.

13          Q. OKAY. LOWER MAILBOX MILK PRICES ARE UNIQUE; IS THAT  
14 THAT YOUR TESTIMONY?

15          A. THE VARIATION. NO. THE VARIATION IN MAILBOX MILK  
16 PRICES ARE ONE OF THE THINGS WE ARE POINTING OUT. I THINK YOUR  
17 QUESTION, AGAIN, WAS THE FACT THAT HIGH UTILIZATION OF CHEESE,  
18 BUTTER, POWDER, WHETHER IT IS MARKETED EAST OR WEST, ARE THOSE  
19 THINGS UNIQUE? AND MY ANSWER WAS, I DON'T THINK THOSE THINGS  
20 ARE UNIQUE JUST TO CALIFORNIA.

21                 THEN YOU ASKED, WAS THE -- BEFORE THAT YOU ASKED ME TO  
22 IDENTIFY UNIQUE THING, AND I POINTED OUT THAT THE QUOTA PROGRAM  
23 IS A UNIQUE THING.

24          Q. IS THE THING YOU WANT THE DEPARTMENT TO LOOK AT.

25          A. TO CONSIDER IN THEIR DECISION.

1 Q. OKAY. SO TO THE EXTENT THAT MARKET SUPPLY AND DEMAND  
2 FOR MILK, RAW MILK BY BUYERS IN THE UPPER MIDWEST GENERATES  
3 HIGH PREMIUMS, MARKET SUPPLY AND DEMAND FOR RAW MILK IN  
4 CALIFORNIA MAY NOT GENERATE AS HIGH PREMIUMS, THAT IS NOT ONE  
5 OF THOSE THINGS THAT YOU WANT THE DEPARTMENT TO LOOK AT?

6 A. UM, I DON'T KNOW THAT I HAVE AN ANSWER FOR YOU THERE.  
7 SORRY.

8 Q. OKAY.

9 JUDGE CLIFTON: MIGHT I INQUIRE, MR. HOLLON? BEFORE WHEN  
10 YOU WERE TALKING ABOUT THINGS THAT ARE SOMEWHAT UNIQUE IN  
11 CALIFORNIA COMPARED TO THE FEDERAL MARKETING, MILK MARKETING  
12 ORDERS, I THINK YOU MENTIONED THE PRODUCER-HANDLER, THE METHOD  
13 OF DEALING WITH PRODUCER-HANDLER MILK IN CALIFORNIA. AM I  
14 CORRECT ABOUT THAT?

15 MR. HOLLON: YOU ARE.

16 JUDGE CLIFTON: AND COULD YOU TELL ME WHY IT'S DIFFERENT  
17 FROM THE WAY IT'S HANDLED IN FEDERAL MILK MARKETING ORDERS?

18 MR. HOLLON: IN FEDERAL, THERE'S A COUPLE OF REASONS, I  
19 PROBABLY WON'T GET THEM ALL. BUT A COUPLE OF REASONS ARE THAT  
20 THERE'S A CLEAR DEFINITION OF THREE MILLION POUNDS OF MILK PER  
21 MONTH DISTRIBUTED ON ROUTES INTO MARKETS OR SOLD TO OTHER  
22 PLANTS. AND IF YOUR OPERATION IS MORE THAN THAT, THEN YOU  
23 BECOME REGULATED AND TREATED LIKE ANY OTHER HANDLER, LIKE  
24 MR. BLAUFUSS' COMPANY, DEAN FOODS. YOU'RE TREATED IDENTICALLY  
25 TO THEM.

1           IF YOU ARE SMALLER THAN THAT, IN THE ORDERS, YOU DON'T  
2 HAVE TO ACCOUNT TO THE POOL FOR YOUR VALUES. AND SO OUR  
3 PROPOSAL, THERE'S -- I'M NOT SURE THAT THERE'S MANY HANDLERS IN  
4 THE STATE TODAY, PRODUCER-HANDLERS, THAT MAY OR MAY NOT APPLY  
5 TO IN THE SAME WAY. BUT, EXCUSE ME, ON A FORWARD-LOOKING BASIS  
6 THERE MAYBE SOME, AND THAT THAT DECISION, AND THAT WAS A  
7 HEARING THAT WAS MANY WEEKS. THERE WERE SEVERAL ORDERS THAT  
8 THAT HAD NOBODY REGULATED IN THAT MANNER, BUT SOMEDAY THEY MAY.  
9 SO WE WANTED TO HAVE THOSE REGULATIONS PRESENT IN ALL ORDERS.

10           JUDGE CLIFTON: AND BY CONTRAST, WHAT IS A PRODUCER-HANDLER  
11 IN CALIFORNIA AND WHAT IS THE EXEMPTION, IF ANY?

12           MR. HOLLON: A PRODUCER-HANDLER IN CALIFORNIA IS THE SAME  
13 AS SOMEONE WHO PRODUCES MILK FROM THEIR OWN FARM. AND THEY  
14 ARE, AS I UNDERSTAND IT RIGHT, THEY ARE FULLY REQUIRED, WHETHER  
15 THEY BE BIG OR SMALL, TO ACCOUNT TO THE POOL. AND FOUR OF THE  
16 LARGER PRODUCER-HANDLERS HAVE AN ADDITIONAL EXEMPTION, NOT  
17 ADDITIONAL, AN EXEMPTION THAT MS. HANCOCK HAS OUTLINED A COUPLE  
18 OF TIMES, THAT THEY DO NOT HAVE TO, THEY GET, IN ESSENCE, A  
19 CREDIT FOR THOSE POUNDS, AND THEY DON'T HAVE, THAT MONEY  
20 DOESN'T ACCOUNT IN THEIR POOL OBLIGATION.

21           JUDGE CLIFTON: AND IN YOUR STATEMENT, EXHIBIT 19, HAVE YOU  
22 COMMENTED TO USDA ABOUT HOW TO DEAL WITH THAT DIFFERENCE?

23           MR. HOLLON: IN THIS PROCEEDING OR IN OTHER PROCEEDINGS?

24           JUDGE CLIFTON: IN THIS PROCEEDING?

25           MR. HOLLON: LATER.

1 JUDGE CLIFTON: OKAY.

2 MR. HOLLON: THERE'S A BLOCK OF TESTIMONY DESIGNED JUST FOR  
3 THAT PURPOSE, TO DWELL ON THOSE SITUATIONS.

4 JUDGE CLIFTON: ALL RIGHT. AND I'M THINKING YOU HAD ONE  
5 OTHER CATEGORY WHEN YOU WERE ASKED A SIMILAR QUESTION AS TO  
6 WHAT MR. VETNE IS ASKING YOU TO FOCUS ON, THE DIFFERENCES.

7 MR. HOLLON: I THINK THERE WERE TWO OTHERS. ONE WAS IN  
8 DEALING WITH MILK THAT WAS PRODUCED OUT OF STATE AND MARKETED  
9 IN THE STATE; AND THEN MILK THAT WAS PRODUCED IN THE STATE,  
10 MARKETED OUT OF THE STATE, BUT THEN THE PRODUCTS COME BACK INTO  
11 THE STATE. AND BECAUSE CALIFORNIA IS A STATE, THOSE TYPE OF  
12 TRANSACTIONS CAN'T BE REGULATED BY STATES, BUT FEDERAL ORDER  
13 CAN REGULATE THOSE TRANSACTIONS. AND THEN THE OTHER POINT WAS  
14 THE ABILITY TO HAVE MORE EFFECTIVE RISK, PRICE RISK MANAGEMENT  
15 TOOLS.

16 JUDGE CLIFTON: OH. GOOD. THANK YOU, THAT HELPS.

17 MR. VETNE, BACK TO YOU.

18 BY MR. VETNE:

19 Q. THANK YOU. LET'S GO TO PAGE 4, THIS IS AN EASY ONE.  
20 LAST LINE OF THE FIRST PARAGRAPH.

21 A. "THESE STATISTICS WERE PUBLISHED IN THE NATIONAL  
22 AGRICULTURAL STATISTIC SERVICE."

23 Q. THE VERY LAST LINE, THE LAST DOCUMENT YOU REFER TO?

24 A. DAIRY -- MILK PRODUCTION DISPOSITION AND INCOME, APRIL  
25 2015.

1 Q. YES. DID THE TITLE FOR THE DOCUMENT, DOESN'T IT START  
2 WITH THE WORD MILK?

3 A. IT MAY.

4 Q. OKAY. AND IF SOMEBODY WANTED TO GO TO NASS TO LOOK IT  
5 UP, THEY'D PROBABLY BE LOOKING FOR A DOCUMENT THAT'S SUBTITLED  
6 MILK PRODUCTION DISPOSITION?

7 A. I THINK YOU ARE CORRECT. YOU WERE RIGHT, THAT WAS  
8 EASY.

9 Q. GOING TO THE NEXT PAGE, PLEASE, PAGE 5. BOTTOM OF THE  
10 FIRST FULL PARAGRAPH REFERS TO SHIFTS IN THE NATIONAL  
11 MARKETPLACE. THE FULL SENTENCE READS: "REGULATIONS IN  
12 CALIFORNIA HAVE NOT RESPONDED TO SHIFTS TAKING PLACE IN THE  
13 NATIONAL MARKETPLACE."

14 WHAT SHIFTS HAVE TAKEN PLACE IN THE NATIONAL  
15 MARKETPLACE THAT YOU HAVE IN MIND?

16 A. THE RISE AND FALL, FOR EXAMPLE, OF COMMODITY PRICES TO  
17 THE LEVELS THAT HAD NOT BEEN SEEN BEFORE --

18 Q. I SEE.

19 A. -- WOULD BE ONE.

20 Q. OKAY. ANY OTHERS? WE'RE LOOKING AT SIGNIFICANT  
21 SHIFTS, APPARENTLY THIS IS SOMETHING YOU WANT USDA TO LOOK AT,  
22 SO I'M ALSO INTERESTED IN MARKET BEHAVIOR, NATIONAL MARKETPLACE  
23 YOU THINK ARE IMPORTANT FOR THIS POINT.

24 A. OTHER EXAMPLES WOULD BE CONSOLIDATION IN BOTH MILK  
25 BUYERS AND MILK SELLERS. ANOTHER WOULD BE THE, I HESITATE TO

1 USE THE WORD PROLIFERATION -- BUT THE OTHER WORD THAT'S IN IT  
2 IS PROLIFERATION -- OF REALLY LARGE PLANTS WHICH ACHIEVE  
3 ECONOMIES TO SCALE, BUT MAKE BALANCING THE MARKETPLACE  
4 EXTREMELY DIFFICULT.

5 Q. LET ME STOP YOU THERE, AND DON'T LOSE YOUR TRAIN OF  
6 THOUGHT. BY REALLY LARGE PLANTS YOU MEAN, ARE YOU TALKING  
7 ABOUT FLUID MILK PROCESSING PLANTS OR FLUID MILK AND OTHER  
8 KINDS OF PLANTS?

9 A. ALL KINDS OF PLANTS, BUT PRIMARILY CHEESE AND BUTTER  
10 POWDER PLANTS.

11 Q. VERY LARGE CHEESE AND BUTTER POWDER PLANTS, THAT IS  
12 WHAT YOU ARE REFERRING TO?

13 A. YES. AND THAT'S NOT -- JUST BECAUSE THEY ARE LARGE  
14 DOESN'T MEAN ANYTHING BAD, BUT IT DOES MEAN THAT IF ONE OF THEM  
15 HAS A BREAK DOWN, YOU KNOW, WHILE EVERYBODY LIKES TO RUN THEIR  
16 PLANT 365 DAYS A YEAR, 24 HOURS A DAY, THAT'S USUALLY NOT  
17 POSSIBLE. SO YOU HAVE SOME REQUIREMENTS JUST THE DOWNTIME FOR  
18 MAINTENANCE OR IMPROVEMENTS OF PROJECTS TO ADD CAPACITY. AND  
19 ANYTIME THOSE THINGS HAPPEN, THAT'S A FAR DIFFERENT SCENARIO  
20 THAN IT WAS FIVE YEARS AGO, TEN YEARS AGO, FIFTEEN YEARS AGO.  
21 PLUS, THERE HAVE BEEN A NUMBER OF MARKETS THAT EXPERIENCE PLANT  
22 CLOSURES.

23 Q. OKAY. PLANT CLOSURES, LARGE PLANTS. YOU REFER TO  
24 LARGE PLANTS MAKING IT MORE DIFFICULT TO BALANCE, WHICH IS WHY  
25 I IMMEDIATELY WENT TO FLUID. HOW DOES THE EVOLUTION OF MUCH

1 LARGER, MUCH LARGER AND FEWER MANUFACTURING PLANTS, MAKE IT  
2 MORE DIFFICULT TO BALANCE?

3 A. IF YOU HAVE A PLANT THAT REQUIRES 200 LOADS OF MILK A  
4 DAY, AND THEY SAY, TOMORROW I NEED TO BE CLOSED BECAUSE I'M  
5 TURNING ALL MY POWER OFF TO DO SOMETHING, 200 LOADS OF MILK A  
6 DAY IN ANY MARKET WOULD BE A DIFFICULT ARRANGEMENT TO -- MILK  
7 IS THERE, SO, AGAIN, HAS TO BE BALANCED. SOMEONE TAKES IT,  
8 EITHER YOU HAVE TANKS TO PUT IT IN, TRUCKS TO PUT IT IN, OR  
9 SOMEONE ELSE TO BUY IT.

10 Q. SO WHEN THERE'S -- WHAT YOU ARE SAYING IS THAT  
11 BASICALLY FEWER BUYERS OF MILK FOR MANUFACTURING USES IN TERMS  
12 OF PLANT NUMBERS. IS THAT WHAT YOU ARE SAYING?

13 A. IN TERMS OF PLANT NUMBERS?

14 Q. YES.

15 A. YES. AND IN TERMS OF BEING, IN TERMS OF DIFFERENT  
16 CAPACITIES.

17 Q. AND WHEN FOR WHATEVER REASON THAT PLANT CAN'T OR WON'T  
18 TAKE MILK, YOU HAVE TO TRAVEL MUCH LONGER DISTANCES TO FIND AN  
19 ALTERNATIVE MARKET FOR THAT MILK?

20 A. IN MANY CASES.

21 Q. OKAY. AND HOW DOES THAT PARTICULAR MARKET SHIFT IN THE  
22 NATIONAL MARKETPLACE APPLY TO YOUR CRITICISM IN CALIFORNIA OF  
23 NOT RESPONDING TO?

24 A. AGAIN, YOU HAVE THE COORDINATION OF PRICES, AND THE  
25 THOSE ARE DETERMINED BY, AGAIN, NATIONAL PRODUCT PRICES, PRICE



1 OF FORMULAS, AND TO THE EXTENT THAT THERE'S COST THERE IN THAT  
2 BALANCING DOESN'T ALWAYS LINE UP, AND IF THE PRICES ARE  
3 DIFFERENT TO START WITH, IT MAY MAKE THE ABILITY TO DEAL WITH  
4 THEM EVEN MORE DIFFICULT.

5 Q. IN THE VERY NEXT LINE YOU USE THE WORD "THIS CONDITION,  
6 CONGRESS PROVIDED THE NECESSARY REQUISITE FOR CORRECTING THIS  
7 CONDITION." ARE -- "THIS CONDITION" ARE YOU REFERRING BACK TO  
8 THE PRIOR SENTENCE "REGULATIONS IN CALIFORNIA HAVE NOT  
9 RESPONDED?"

10 A. I'M PROBABLY REFERRING TO A BROADER THOUGHT THERE THAT  
11 BY ALLOWING CALIFORNIA TO BE IN A FEDERAL MILK MARKETING ORDER  
12 AND TO -- I'LL PARAPHRASE -- DEAL WITH QUOTA, THOSE WOULD BE  
13 THE TWO THINGS.

14 Q. OKAY. I MAYBE READ THIS NARROWLY, MORE NARROWLY THAN  
15 YOU INTENDED BY YOUR USE OF THE WORD "THIS CONDITION" RATHER  
16 THAN "THESE CONDITIONS" PLURAL. YOU DID NOT MEAN TO ISOLATE  
17 ONE?

18 A. NO.

19 Q. OKAY. I'M GOING TO PAGE 6.

20 A. CAN I BACK UP AND READ THE PARAGRAPH WHERE YOUR  
21 QUESTION STARTED, "HOWEVER, REGULATIONS IN CALIFORNIA HAVE NOT  
22 RESPONDED." IF YOU BACK UP A SENTENCE AND SAY, "U.S. MILK  
23 MARKETS HAVE BECOME MORE REGIONAL AND NATIONAL IN SCOPE," THAT  
24 ALSO BRINGS, YOU KNOW, ANOTHER PLAY WHERE WE PERHAPS HAVE  
25 CUSTOMERS WITH MULTIPLE PLANTS IN MULTIPLE LOCATIONS SCATTERED

1 AROUND THE COUNTRY, AND THEY, TOO, MAY SAY, "I WANT MORE MILK  
2 IN MY PLANT IN HAWAII THAN IN MY PLANT IN PUERTO RICO." SO YOU  
3 HAVE TO ADJUST TO THAT. THAT SITUATION USED TO BE, PERHAPS THE  
4 PLANT IN THIS COUNTY AND THE PLANT IN THE ADJOINING COUNTY.  
5 AND NOW THAT THAT SCENARIO BECOMES MUCH BROADER GEOGRAPHICALLY  
6 BECAUSE OF LARGER GROUPS OF MULTI-PLANT HANDLER, AND THAT'S  
7 TRUE BOTH, IN ALL CASES.

8 Q. OKAY. AND YOU ARE USING U.S. MILK MARKETS THERE IN A  
9 VERY BROAD SENSE?

10 A. CORRECT.

11 Q. NOT IN THE NARROWER SENSE OF MARKET OF RAW PRODUCERS OF  
12 MILK?

13 A. CORRECT. BUT RAW PRODUCER MILK HAS TO MOVE AROUND TO  
14 SATISFY THOSE REQUESTS AND DESIRES.

15 Q. SO -- OKAY. SO TO ILLUSTRATE, IN ONE MARKET YOU HAVE,  
16 YOU MAY BE ASKED TO NOT SUPPLY MILK FOR FLUID USE AND TO PUT IT  
17 INTO A NEARBY MANUFACTURING FACILITY IN ORDER TO MEET THE  
18 DEMAND FOR THAT CUSTOMER AT A PLANT ACROSS THE COUNTRY FOR MORE  
19 FLUID MILK?

20 A. OR MANUFACTURING MILK.

21 Q. OKAY.

22 A. YES.

23 Q. YES. YES IS ALWAYS A GOOD RESPONSE TO THE QUESTIONS  
24 THAT I ASK. SO --

25 A. I'LL TRY TO KEEP THAT IN MIND.

1 Q. ON THE NEXT PAGE --

2 JUDGE CLIFTON: I HAVE TO SAY, I AM VERY MUCH ENJOYING THE  
3 MUTUAL RESPECT THAT YOU TWO HAVE FOR ONE ANOTHER. AND I'M  
4 ENJOYING THIS LINE OF QUESTIONING. I'M SO GLAD WE TOOK THE  
5 BREAK.

6 MR. HOLLON: SO SHOULD WE WISH YOUR ENJOYMENT BE LESS?  
7 BY MR. VETNE:

8 Q. OKAY. PAGE 6, YOU USED THE TERM MISALIGNMENT, WHICH  
9 COMES UP A COUPLE OF PLACES. DOES MISALIGNMENT HAVE A MEANING  
10 IN THE DISCIPLINE OF AGRICULTURAL ECONOMICS THAT YOU CAN REFER  
11 US TO?

12 A. I DON'T KNOW THAT IT WOULD HAVE ANY MEANING IN  
13 AGRICULTURAL ECONOMICS ANY DIFFERENT THAN IN NORMAL EVERYDAY  
14 USAGE.

15 Q. OKAY. SO NOT IN AGRICULTURAL ECONOMICS, NOT IN THE  
16 DISCIPLINE OF ECONOMICS, GENERALLY YOU MEANT IT AS A COLLOQUIAL  
17 ORDINARY LAY PERSON USE OF THE WORD?

18 A. YOU MAY EXPECT A AND B TO BE EQUAL, AND IF FOR SOME  
19 REASON A AND B ARE NOT EQUAL, YOU MAY DEFINE THEM AS  
20 MISALIGNED. YOU HAVE TO LOOK AT THE CIRCUMSTANCES TO DECIDE,  
21 BUT YOU MAY DECIDE THAT THEY ARE MISALIGNED.

22 Q. SO IN THIS CASE YOU WERE NOT, YOU WERE SIMPLY LOOKING  
23 AT TWO DIFFERENT NUMBERS AND SEEING THAT THEY WERE DIFFERENT  
24 AND CALLING THEM MISALIGNED?

25 A. YES.

1 Q. AND THE FIRST LINE OF THE NEXT PARAGRAPH YOU USE THE  
2 WORD PRICE DISPARITY. THAT'S REALLY THE SAME, SAYING THE SAME  
3 THING, JUST A SYNONYM, ISN'T IT?

4 A. WE USE THIS MEASURE TO DEMONSTRATE THE PRICE DISPARITY  
5 FOR SIMILARLY SITUATED PRODUCERS. SO MEASURING THE DIFFERENCE  
6 IN WHAT WE THINK, IN THIS CASE WE THINK A OUGHT TO EQUAL B.

7 Q. OKAY.

8 A. AND IT DOESN'T, SO WE'RE LOOKING FOR REASONS AND  
9 CAUSES.

10 Q. MY QUESTION WAS SIMPLY, YOUR USE OF PRICE DISPARITY WAS  
11 INTENDED AS A SYNONYM FOR PRICE ALIGNMENT?

12 A. SOMETIMES SIMPLE NEEDS A LITTLE MORE EXPLANATION.

13 Q. AND IT VARIES THE TEXT?

14 A. THAT IS TRUE.

15 Q. WHAT WOULD YOU EXPLAIN A LITTLE BIT, ELABORATE A BIT,  
16 WHAT INPUT RESOURCES CALIFORNIA DAIRY FARMERS GET FOR -- START  
17 IN THE BROADER -- IN COMPETITION WITH THEIR COUNTERPARTS AROUND  
18 THE WORLD?

19 A. THE TWO I HEAR MOST FREQUENTLY OF RECENT DAY, WOULD BE  
20 FORAGES AND CAPITAL.

21 Q. IS THERE A WORLD MARKET FOR FORAGE, NEW ZEALAND,  
22 COMPETE WITH CALIFORNIA?

23 A. I'LL REFER YOU TO, I GUESS WHAT I CALL AN ANECDOTAL  
24 STORY AT THE MOMENT.

25 Q. SURE.

1           A.   DFA HAD SOME BUSINESS RELATIONS IN CHINA.   AND SEVERAL  
2 MONTHS AGO WE HAD A GROUP OF STAFF AND BOARD MEMBERS WHO WERE  
3 WORKING ON THOSE BUSINESS RELATIONSHIPS AND THAT BUSINESS  
4 ARRANGEMENT, AND THEN ONE MEMBER, BRIAN HARDY, FROM NORTHERN  
5 UTAH WAS IN THAT GROUP.   AND WHENEVER YOU GO SOMEWHERE AND  
6 FARMERS GO, YOU GENERALLY VISIT A FARM.   AND SO MR. HARDY WAS  
7 ON THIS FARM, WALKED AROUND THE CORNER TO THE FORAGES LOT, AND  
8 THERE WAS A PALLET OF ALFALFA HAY THAT WAS GROWN ON HIS  
9 NEIGHBOR'S FARM.   BUT WHATEVER THE TRADE TAGS HAVE, WHATEVER  
10 THE INFORMATION HAS, HE WAS ABLE TO LOOK AT IT AND SAY, THAT'S  
11 THROUGH MY NEXT DOOR NEIGHBOR, JOE'S, FARM.

12           JUDGE CLIFTON:   SO HE SAW THAT BAIL OF HAY IN CHINA?

13           MR. HOLLON:   IT WAS A BIG BAIL.   HE SAW A LOT OF HAY IN  
14 CHINA.   BUT THE POINT I WOULD MAKE IS, I THINK THAT WOULD BE AN  
15 EXAMPLE OF THE COMPETITIVE BID FOR A RESOURCE THAT IS LOCAL.  
16 BY MR. VETNE:

17           Q.   OKAY.   AND YOU ALSO USED THE WORD, THEIR COUNTERPARTS  
18 AROUND THE WORLD.   DO YOU KNOW HOW THAT HAY WAS GOING TO BE  
19 USED, WHAT IT WAS GOING TO BE USED FOR IN CHINA?

20           A.   WELL, THEY WERE ON A DAIRY FARM, THAT'S THE BEST I CAN  
21 TELL YOU.   I DON'T THINK THEY WOULD BE BUYING ALFALFA HAY FROM  
22 UTAH FOR BEDDING, SO I THINK IT'S PROBABLY FEED.

23           Q.   WOULD IT BE FAIR TO SAY THAT THERE'S -- AS FAR AS THE  
24 MILK MARKET IS CONCERNED, THAT MILK PRODUCED IN NEW ZEALAND IS  
25 ONE OF THE MORE COMPETITIVE MARKETS IN TERMS OF QUANTITY AND

1 PRODUCT WITH MILK IN CALIFORNIA, AND PRODUCTS PRODUCED IN  
2 CALIFORNIA?

3 A. ARE YOU TALKING ABOUT DAIRY PRODUCTS, BUTTER, POWDER,  
4 CHEESE, WHEY?

5 Q. YES.

6 A. YES.

7 Q. IN WHAT WAY DO CALIFORNIA FARMERS COMPETE FOR LABOR  
8 WITH THEIR COUNTERPARTS AROUND THE COUNTRY AND AROUND THE  
9 WORLD?

10 A. AGAIN, YOU KNOW, I DON'T HAVE AS CLEAR ANECDOTAL STORY,  
11 BUT I WOULD SAY THAT WE HAVE ISSUES WITH MEMBERS VERY CONCERNED  
12 ABOUT ATTRACTING LABOR TO THEIR FARM, AND THOSE ARE IDENTICAL  
13 COMMENTS FROM MEMBERS IN EVERY PART OF THE COUNTRY. ONE OF THE  
14 PRODUCERS THAT WE HAD HERE YESTERDAY, IT WAS VERY DIFFICULT TO  
15 GET HIM TO COMMIT THE TIME TO COME, BECAUSE HE HAS -- HE'S HAD  
16 A DIFFICULT TIME IN HIS AREA BIDDING LABOR AWAY FROM  
17 ALTERNATIVE MARKETS.

18 Q. OTHER ALTERNATIVE MARKETS INCLUDING JOBS, NONDAIRY  
19 JOBS?

20 A. YES. AND I WOULD ALSO SAY THAT THAT EXTENDS UP AND  
21 DOWN THE MILK SUPPLY CHAIN. FOR EXAMPLE, WE HAD A REALLY  
22 INCREASINGLY DIFFICULT TIME ATTRACTING PEOPLE TO DRIVE  
23 TRANSPORT, AND EVEN LOCAL DAY-TO-DAY MILK HAULING, TO BE ABLE  
24 TO ATTRACT PEOPLE TO THOSE WAGES. AND ESPECIALLY JUST IN THE  
25 LAST TWO OR THREE WEEKS, HAD SEVERAL OF OUR DISPATCHER

1 LOCATIONS TALK ABOUT NOT BEING TO MAKE A CERTAIN TRANSACTION  
2 BECAUSE THEY SIMPLY COULDN'T TRANSPORT MILK. AND WHILE A  
3 MEMBER DIDN'T HIRE THAT DRIVER, IT IMPACTED THEIR ABILITY TO  
4 MARKET.

5 Q. SO MARKETING MILK IS -- IS NOT ONLY AFFECTED BY  
6 COMPETITION FROM MILK, IT IS AFFECTED BY COMPETITION FOR  
7 TRUCKING BY EVERY OTHER INDUSTRY. FOR EXAMPLE, THAT NEEDS A  
8 TANKER THAT WILL TRANSPORT LIQUID FOOD PRODUCTS?

9 A. YES.

10 Q. ORANGE JUICE GOES IN THE SAME TANKERS AS MILK.

11 A. WELL, THEY HAVE TO BE WASHED FIRST, BUT, YES.

12 Q. THEY HAVE TO BE WASHED FIRST, YES, OTHERWISE?

13 A. BAD DEAL.

14 Q. BAD DEAL.

15 A. BUT THE HUNDRED POUNDS OF MILK THAT'S SOLD HAS TO BE  
16 THE ABILITY TO ATTRACT THAT RESOURCE.

17 Q. I FORGOT TO ASK A QUESTION GOING BACK TO TABLE 1 IN THE  
18 MAILBOX PRICE. DO YOU KNOW WHETHER THE MAILBOX PRICE -- YOU  
19 DON'T HAVE TO LOOK AT IT FOR THIS -- DO YOU KNOW WHETHER THE  
20 MAILBOX PRICE INCLUDES RECORDED PRICES PAID TO PRODUCERS WHOSE  
21 MILK IN PART OR IN FULL IS NOT POOLED?

22 A. TO MY KNOWLEDGE IT IS.

23 Q. OKAY. SO IT'S -- IT'S A REFLECTION OF MARKET PRICES,  
24 NOT POOL MILK PRICES?

25 A. BOTH.

1 Q. OKAY. NOT -- FOR REFLECTION OF MARKET PRICES, NOT ONLY  
2 POOL MILK PRICES?

3 A. CORRECT. I THINK THE MAILBOX PRICES ARE DERIVED FROM  
4 THE PRODUCER PAYMENT INFORMATION THAT'S SUBMITTED TO THE MARKET  
5 ADMINISTRATOR.

6 Q. RIGHT. SO WHEN A PRODUCER GETS A MILK CHECK FROM A  
7 BUYER, IT WOULD INCLUDE PAYMENT FOR ALL MILK, WHETHER IT IS  
8 POOLED OR NOT?

9 A. YES.

10 Q. ARE YOU FAMILIAR WITH THE PRODUCT MIX OF PRODUCTS THAT  
11 ARE MADE IN THE PACIFIC NORTHWEST MARKET?

12 A. BUTTER, POWDER, CHEESE, AND WHEY.

13 Q. CORRECT. DO YOU KNOW HOW THAT USE PRODUCT MIX COMPARES  
14 WITH CALIFORNIA AND THE RELATIVE VALUES GENERATED BY THOSE  
15 USES?

16 A. SOME KNOWLEDGE OF THE CLASSIFICATION. BEYOND THAT, NO.

17 Q. OKAY. OH, OKAY. BACK TO THE 20 PERCENT USED IN TABLE  
18 1. YOU DIDN'T INCLUDE A REPRESENTATIVE SAMPLE OF WHAT, 75  
19 PERCENT OF THE MILK IN CALIFORNIA THAT IS REPRESENTED BY THE  
20 THREE COOPERATIVE COALITIONS. WHY DID YOU NOT INCLUDE TESTS,  
21 MILK TESTS OF YOUR CO-PETITIONERS MILK SUPPLIES?

22 A. WHILE WE ARE CO-PETITIONERS, WE DON'T SHARE EVERYTHING,  
23 SO SOME OF THAT INFORMATION WOULD BE COMPETITIVE BETWEEN THE  
24 BUSINESSES.

25 Q. DID YOU ASK?



1 A. WE DON'T SHARE EVERYTHING.

2 Q. SOMETIMES I ASK FOR THINGS THAT I KNOW I'M NOT GOING TO  
3 GET, BUT I STILL ASK.

4 A. I'M WELL AWARE OF THAT.

5 Q. SO LET ME ASK YOU --

6 A. I'M GOING TO GIVE YOU THE SAME ANSWER FOR THE THIRD  
7 TIME. I PROBABLY SHOULDN'T HAVE SAID THAT, THAT WOKE A COUPLE  
8 OF PEOPLE UP.

9 Q. YOU KNOW, I'M GETTING FATIGUED. I HAVE COME TO THE END  
10 OF MY NOTES DIRECTLY FROM THAT PART, SO AS LONG AS I HAVE LEAVE  
11 TO COME BACK UP AND MAKE FOR EFFICIENT LAST FEW QUESTIONS, I'LL  
12 DO THAT.

13 JUDGE CLIFTON: THAT SOUNDS FINE, MR. VETNE, THANK YOU. IT  
14 IS TOO EARLY TO TAKE A BREAK. WE HAVE BEEN AT THIS LESS THAN  
15 AN HOUR. I'M NOT KIDDING YOU.

16 MR. ENGLISH: CHIP ENGLISH. AND MAY I START WITH GOOD  
17 NEWS?

18 JUDGE CLIFTON: HAVE YOU HEARD FROM CONGRESS?

19 MR. ENGLISH: WELL, I WOULD SAY THAT, NO, THEY DIDN'T  
20 EXACTLY CALL ME, BUT ALL THE VOTES HAVE PASSED, THE LEGISLATION  
21 IS HEADING TO THE PRESIDENT'S DESK, AND I THINK WE'RE NOW AT  
22 THE 99 PERCENT -- OBVIOUSLY THE BILL COULD, SOMETHING COULD  
23 HAPPEN TO IT BETWEEN THE CAPITAL AND THE WHITEHOUSE, BUT I  
24 THINK THINGS ARE A GOOD SIGN THAT WE'RE GOING TO BE HERE  
25 TOMORROW, BUT HERE IN FRESNO TOMORROW.

1 JUDGE CLIFTON: I'M SO PLEASED.

2 MR. HOLLON: SO WE SHOULD CANCEL OUR FLIGHTS FOR TOMORROW?

3 MR. ENGLISH: YOU DEFINITELY SHOULD CANCEL YOUR FLIGHT.  
4 I'M ACTUALLY STILL HOPING THAT WE CAN GET THIS DONE. WE'LL  
5 SEE.

6 CROSS-EXAMINATION (CONTINUED)

7 MR. ENGLISH:

8 Q. SO WITH THAT IN MIND, I HAVE TRIED TO ORGANIZE THIS,  
9 BUT IN ORGANIZING IT, IT ALSO MEANS I HAVE A SERIES OF CHUNK  
10 QUESTIONS WITH A NUMBER OF SUBJECTS, THAT HOPEFULLY I CAN CLOSE  
11 OUT, AND THEN MOVE FORWARD.

12 YOU -- I HAVEN'T YET DISCUSSED WITH YOU THE PRICE  
13 DIFFERENCES THAT YOU REFER TO IN YOUR TESTIMONY WITH RESPECT TO  
14 CLASS 2 AND 3 CALIFORNIA PRODUCTS, COMPETING IN FEDERAL ORDERS  
15 ESSENTIALLY AGAINST CLASS II.

16 A. I UNDERSTAND.

17 Q. OKAY. HAS YOUR ORGANIZATION, OR TO YOUR KNOWLEDGE, THE  
18 OTHER ORGANIZATIONS WITH WHICH YOU ARE AFFILIATED ON THIS  
19 PROCEEDING, ASKED THE STATE TO INCREASE CLASS 2 AND/OR 3 PRICES  
20 IN THE LAST FIVE YEARS?

21 A. I DON'T RECALL EXPRESSLY, BUT THE ANSWER MAY BE YES,  
22 SEEMS LIKE THERE WAS ONE HEARING IN THE LAST FIVE YEARS WHERE  
23 THE LEVEL OF PRICE WAS DISCUSSED, AND I CAN'T REMEMBER IF IT  
24 EXTENDED TO CLASS 2 OR NOT, OR CALIFORNIA 2 OR 3.

25 Q. HAVE YOU DONE SO IN THE LAST THREE YEARS WHEN THIS

1 WHOLE ISSUE HAS BEEN PERCOLATING ABOUT THE FEDERAL ORDER?

2 A. AGAIN, I DON'T REMEMBER WHEN THAT HEARING WAS HELD.  
3 THOSE HEARING RECORDS WILL DO SO.

4 Q. SO ON MONDAY I ASKED YOU SOME QUESTIONS WITH RESPECT TO  
5 THE NOW FORMER WESTERN ORDER, AND YOU DECLINED TO RESPOND,  
6 WHICH IS WAS YOUR RIGHT, ABOUT WHAT HAPPENED TO THE WESTERN  
7 ORDER. ARE YOU -- DO YOU KNOW WHO NED GALLAGHER IS?

8 A. I DO.

9 Q. IS HE AN EMPLOYEE OF DAIRY FARMERS OF AMERICA?

10 A. HE IS.

11 Q. ARE YOU AWARE THAT IN A HEARING IN THE MIDEAST, THE  
12 TRANSCRIPT WOULD REFLECT THAT HE TESTIFIED IN RESPONSE TO A  
13 QUESTION FROM A MR. AL RICCIARDI, R-I-C-C-I-A-R-D-I WITH  
14 RESPECT TO THE FORMER WESTERN ORDER?

15 A. I'M NOT.

16 Q. WOULD YOU DISAGREE IF HE, IN SWORN TESTIMONY, MADE A  
17 STATEMENT THAT THE WESTERN ORDER FIXES WERE NOT SUFFICIENT, AND  
18 IT WAS DFA MEMBERS WERE BEING HARMED SIGNIFICANTLY, AND WITH  
19 THE BEST INTEREST OF DFA MEMBERS AND OTHERS IN THE MARKET, I'M  
20 ASSUMING THAT IN THE END THE ORDER WAS VOTED OUT, BECAUSE IT  
21 DID NOT ADDRESS APPROPRIATELY THE MARKETING CONDITIONS CAUSING  
22 DISORDERLY MARKETING IN THAT REGION?

23 A. WHAT WAS THE END OF YOUR QUESTION?

24 Q. WOULD YOU DISAGREE WITH HIM, IF HE, IN SWORN TESTIMONY,  
25 MADE THAT STATEMENT?

1 A. NO. HOWEVER, I WOULD SAY THAT THAT DOES NOT INDICATE  
2 THAT DFA VOTED THE ORDER OUT. IT SAID THAT DFA MEMBERS AND  
3 OTHERS AND IN THEIR INTEREST, BUT WOULDN'T WANT YOU TO MAKE  
4 THAT ASSERTION.

5 Q. I DID NOT MAKE THAT ASSERTION, I JUST ASKED YOU IF YOU  
6 AGREED WITH THAT STATEMENT.

7 A. ALL RIGHT.

8 JUDGE CLIFTON: DO YOU HAVE THE SPELLING FOR GALLAGHER FOR  
9 ME?

10 MR. ENGLISH: I WROTE DOWN ED G. IN MY E-MAIL.

11 MR. HOLLON: G-A-L-L-A-G-H-E-R, OR STANDARD SPELLING.

12 JUDGE CLIFTON: THANK YOU. EVERY TIME MS. TAYLOR SAYS  
13 "STANDARD SPELLING" MY MIND GOES T-A-I-L-O-R, I KNOW THAT'S NOT  
14 STANDARD.

15 MR. BESHORE: YOUR HONOR, COULD I ASK MR. ENGLISH, DID YOU  
16 READ THE ENTIRE VERBATIM STATEMENT OF MR. GALLAGHER?

17 MR. ENGLISH: I DIDN'T. LET ME BACK UP, IN FAIRNESS, I  
18 CLOSED THAT E-MAIL, JUST ONE SECOND.

19 PAGE 423 OF THE TRANSCRIPT, SORRY, THE QUESTION FROM  
20 MR. RICCIARDI, BEGINNING ON LINE 6, AND I'LL GET THE SPECIFIC,  
21 WHICH OF THE MIDEAST WAS IT, BECAUSE THE SECOND OF THE TWO.

22 I UNDERSTAND. THE BOTTOM OF THE PAGE, THE FIRST  
23 SENTENCE TO THE LAST PARAGRAPH ON PAGE 1 IT SAYS, "PROponents,"  
24 -- AND THAT WOULD INCLUDE DFA, THAT'S MR. RICCIARDI SPEAKING,  
25 THIS IS NOT TESTIMONY -- "ARE STRONG SUPPORTERS OF FEDERAL MILK

1     MARKETING ORDERS?"

2             "ANSWER:    THAT IS CORRECT.

3             QUESTION:   THAT IS CORRECT.    ALL RIGHT.

4             WOULD THAT INCLUDE THE FORMER WESTERN ORDER?

5             ANSWER:    UNFORTUNATELY, DISORDERLY MARKETING

6             CONDITIONS EXIST IN THE WESTERN ORDER AND

7             THERE WAS A HEARING TO ADDRESS THOSE ISSUES.

8             THERE WAS SOME CHANGES OFFERED.    THE CHANGES

9             DID NOT GO FAR ENOUGH TO ADDRESS THE DISORDERLY  
10            MARKETING CONDITIONS THAT EXISTED.

11            DFA MEMBERS WERE BEING HARMED SIGNIFICANTLY,

12            AND IT WAS THE BEST INTEREST OF THE DFA

13            MEMBERS AND OTHERS IN THE MARKET, I'M ASSUMING,

14            THAT IN THE END OF THE MARKET -- I'M ASSUMING

15            THAT IN THE END, THE ORDER WAS VOTED OUT

16            BECAUSE IT DID NOT ADDRESS APPROPRIATELY

17            THE MARKETING CONDITIONS CAUSING DISORDERLY

18            MARKETING IN THAT REGION."

19            MR. BESHORE:   I THOUGHT I HEARD THE ASSUMING, BUT I WASN'T  
20            SURE ABOUT THAT.

21            MR. ENGLISH:   YEAH, NOT CLEAR WHAT IT WAS MODIFYING, BUT  
22            THAT'S THE STATEMENT.

23            MR. HOLLON:    ALSO, I'M PRETTY SURE AT THAT TIME

24            MR. GALLAGHER WAS NOT A DFA EMPLOYEE, HE WAS DAIRY LEAGUE  
25            EMPLOYEE.

1 BY MR. ENGLISH:

2 Q. BUT DAIRY LEAGUE IS NOW PART OF THE DFA, CORRECT?

3 A. AT THE TIME, THEY WERE NOT PART OF DFA, THEY WERE A  
4 SEPARATE ENTITY.

5 Q. I UNDERSTAND. BUT YOU MERGED AND WE CAN MAKE LEGAL  
6 ARGUMENTS ABOUT WHAT THAT MEANS.

7 A. WELL, THAT'S FINE, BUT THEN, THEY WEREN'T. SO HE  
8 WOULDN'T HAVE BEEN SPEAKING, AGAIN, AS AN EMPLOYEE OF DFA.

9 Q. ONE MOMENT AGO YOU SAID YOU DIDN'T DISAGREE WITH HIS  
10 STATEMENT?

11 A. GRANTED.

12 Q. THANK YOU.

13 JUDGE CLIFTON: AND MR. ENGLISH, CAN YOU IDENTIFY FOR ME,  
14 I'M NOT, I KNOW NOT FROM PAGE 423, BUT FROM SOME OTHER PAGE OF  
15 THAT TRANSCRIPT, THE DATE AND THE CAPTION?

16 MR. ENGLISH: IF YOU WILL GIVE ME A MOMENT, YOUR HONOR, I  
17 HAVE TO GO TO A DIFFERENT IN BOX.

18 FEDERAL MILK ORDER NUMBER 33, PUBLIC HEARING, DOCKET  
19 NUMBER [AO] -- FOR AGREEMENTS AND ORDERS -- -166-A72;DA-05-01,  
20 VOLUME 2. DATED -- JUST A SECOND, JUDGE, THIS WAS NOT YOUR  
21 HONOR, IT WAS A DIFFERENT JUDGE. AND THE JUDGE DID NOT, ON  
22 THAT DAY, IDENTIFY WHAT DAY IT WAS.

23 JUDGE CLIFTON: BUT ON THE COVER SHEET OF THAT --

24 MR. ENGLISH: IT SAYS MARCH 2005 ON THE COVER SHEET.

25 JUDGE CLIFTON: MARCH 2005. THAT'S GOOD ENOUGH. THANK YOU

1 VERY MUCH.

2 BY MR. ENGLISH:

3 Q. NOW, YOU AND I HAVE DISCUSSED SOME DAIRY FARMERS OF  
4 AMERICA PLANS, AND ON MONDAY WE DISCUSSED THE FACILITY, I THINK  
5 YOU USED THE NAME VENTURA, BECAUSE THAT'S WHERE YOU THOUGHT IT  
6 WAS, OR APPROXIMATELY, CORRECT?

7 A. CORRECT.

8 Q. NOW THAT I HAVE LOOKED BACK AT SOME DOCUMENTS, IF I  
9 SAID THAT IT WAS CORONA, C-O-R-O-N-A -- CALIFORNIA FACILITY  
10 WOULD THAT BE --

11 A. NO.

12 Q. -- THAT WOULD NOT BE?

13 A. NO, IT WOULD NOT BE, THOSE TWO WOULD NOT BE THE SAME.

14 Q. THEY ARE NOT THE SAME?

15 A. NO.

16 Q. BUT WHEN I ASKED YOU ABOUT OTHER FACILITIES THAT THE  
17 DFA HAS OWNED IN THE LAST TEN YEARS, YOU DIDN'T TELL ME ABOUT  
18 CORONA DID YOU, OR MAYBE YOU JUST DIDN'T END UP DISCUSSING IT?

19 A. IF YOU HAD ASKED ME, I WOULD HAVE TOLD YOU, SO WE MUST  
20 NOT HAVE DISCUSSED IT.

21 Q. SO AT LEAST UNTIL THE FALL OF 2007, DAIRY FARMERS OF  
22 AMERICA DID HAVE AN AMERICAN CHEESE FACILITY IN CORONA,  
23 CALIFORNIA, CORRECT?

24 A. I DON'T RECALL TO THE EXACT DATE, BUT EVERYTHING ELSE  
25 YOU SAID WAS CORRECT.

1 Q. IF THERE'S A PRESS RELEASE ON DFA LETTERHEAD FROM A DFA  
2 WEBSITE THAT'S DATED AUGUST 8TH, 2007, THAT WOULD SUGGEST THEN,  
3 IT WAS OPEN FOR THE 30 DAYS. ACTUALLY IT SAYS IT WOULD CEASE  
4 PRODUCTION ON, START REDUCING CAPACITY ON AUGUST 31ST, AND  
5 CEASE PRODUCTION BY DECEMBER 31ST, THAT WOULD BE CONSISTENT?

6 A. YES.

7 Q. AND DID THAT FACILITY CLOSE BECAUSE IT WAS INCURRING  
8 LOSSES UNDER THE MARKETING CONDITIONS IN CALIFORNIA?

9 A. I DON'T KNOW THAT I KNOW ALL OF THE REASONS WHY IT  
10 CLOSED, BUT I CAN SAY THAT IT CLOSED.

11 Q. DO YOU KNOW WHO TOM CAMERLO IS?

12 A. I DO.

13 Q. WAS HE, AT THE TIME, CHAIRMAN OF DFA'S BOARD OF  
14 DIRECTORS?

15 A. HE WAS.

16 Q. IF THE PRESS RELEASE FROM DAIRY FARMERS OF AMERICA  
17 DATED AUGUST 8TH, 2007, SAYS, AS A QUOTE FROM HIM, "MARKET  
18 CONDITIONS AND OPERATING RESULTS HAVE HINDERED SUCCESS AT OUR  
19 CORONA PLANT AND IN OUR AMERICAN CHEESE DIVISION. WE  
20 CONSTANTLY LOOK FOR WAYS TO END LOSSES AND STIMULATE  
21 PROFITABILITY." WOULD THAT HELP YOUR RECOLLECTION OF WHAT  
22 HAPPENED IN THAT PLANT?

23 A. NO. BUT I WOULD NOT DISAGREE WITH MR. CAMERLO'S QUOTE,  
24 BUT HE'S NOT AROUND FOR US TO ASK ANYMORE, SO WE'LL HAVE TO  
25 ACCEPT HIS QUOTE AS IT IS.



1 JUDGE CLIFTON: HOW IS HIS LAST NAME SPELLED?

2 MR. ENGLISH: C-A-M-E-R-L-O.

3 BY MR. ENGLISH:

4 Q. AND THAT PLANT WAS CLOSED IN LATE 2007, EVEN THOUGH  
5 CALIFORNIA WAS EXCEED, WAS EXPERIENCING LIMITED PLANT CAPACITY  
6 ISSUES IN THE PROCESSING OF MILK AT THAT VERY TIME, CORRECT?

7 A. CORRECT. ARE YOU LEAVING THE PLANT LIST? THE  
8 QUESTIONS ABOUT THE PLANT LIST?

9 Q. I WAS DONE, BUT IF YOU HAVE SOMETHING TO ADD.

10 A. I DO WANT TO MAKE A CORRECTION. YOU ASKED ME YESTERDAY  
11 ABOUT THE PLANT IN MECHANICSBURG, PENNSYLVANIA AND I HAD  
12 MIDDLEBURY ON MY MIND. THE PLANT IN MECHANICSBURG IS SIMILAR  
13 TO THE PLANT IN VENTURA, MAKES A SIMILAR PRODUCT, AND OUR PLANT  
14 IN MIDDLEBURY IS THE PLANT THAT MAKES MILK POWDERS.

15 Q. IS THAT THE ONLY CHANGE IN YOUR TESTIMONY FOR THOSE  
16 TWO? BECAUSE I ALSO ASKED YOU IF IT WAS IN OPERATION  
17 THROUGHOUT THE YEAR OR IS IT A BALANCING FACILITY? AND YOU  
18 SAID IT WAS IN OPERATION, THE ONE IN PENNSYLVANIA.

19 A. MIDDLEBURY IS OPERATIONAL FULL-TIME AND MAKES MILK  
20 POWDERS AND CREAM, CONDENSED PRODUCTS. MECHANICSBURG MAKES  
21 PRODUCTS SIMILAR TO VENTURA; THE DRINK PRODUCTS, UHD PRODUCTS,  
22 ESL PRODUCTS, ASEPTIC PRODUCTS. SO I WAS THINKING AHEAD WHEN I  
23 PERHAPS SHOULD HAVE BEEN LISTENING MORE INTENTLY.

24 Q. THAT'S QUITE ALL RIGHT, AND I APPRECIATE YOUR  
25 CLARIFICATION. AND SO IF IT'S SIMILAR TO VENTURA, IT MAY NOT

1 ACTUALLY RECEIVE FRESH MILK?

2 A. CORRECT.

3 Q. THANK YOU. LET'S GET BACK TO SOME SORT OF BASIC TERMS,  
4 BECAUSE I THINK WE JUMPED AHEAD WITH YOUR TESTIMONY AND YOUR  
5 VIEW OF DISORDERLY MARKETING.

6 IS IT THE VIEW -- IT IS NOT THE VIEW, I TAKE IT, OF  
7 DAIRY FARMERS OF AMERICA OR CALIFORNIA COOPERATIVES, THAT THERE  
8 IS NOT AN ADEQUATE SUPPLY OF MILK FOR FLUID USE IN CALIFORNIA;  
9 IS THAT CORRECT?

10 A. TRUE.

11 Q. AND CALIFORNIA MAINTAINS A SYSTEM OF CLASSIFIED PRICING  
12 FOR MILK, CORRECT?

13 A. CORRECT.

14 Q. AND CALIFORNIA MAINTAINS A SYSTEM OF POOLING  
15 MARKET-WIDE RETURNS TO DAIRY FARMERS, CORRECT?

16 A. CORRECT.

17 Q. AND LEAVING ASIDE PRICE LEVEL ISSUES THAT YOU HAVE WITH  
18 THE CURRENT SYSTEM AT CDFA OR OPERATING AT CDFA, THE SYSTEM IS  
19 EFFECTIVE IN MAINTAINING ADEQUATE SUPPLY OF MILK, IN HAVING  
20 CLASSIFIED PRICING, AND POOLING THOSE MARKET-WIDE RETURNS,  
21 CORRECT?

22 A. I'M NOT SURE I WOULD SAY IT MAINTAINS AN ADEQUATE  
23 PRICE. IT DOES DO MARKET-WIDE POOLING.

24 Q. I DIDN'T SAY ADEQUATE PRICE. I SAID OTHER THAN YOUR  
25 PRICE ISSUE, I SAID ADEQUATE SUPPLY. IF I DIDN'T, I

1 UNDERSTAND.

2 A. OKAY. BUT IF YOU SAID ADEQUATE SUPPLY, I WOULD SAY  
3 THAT IN ALL CASES ACROSS THE MARKET TODAY, MILK IS A LITTLE  
4 TIGHT IN CALIFORNIA. NOW, IF YOU ARE TALKING ABOUT BECAUSE THE  
5 CLASS 1 USE IS TEN PERCENT, SO THE OTHER 90 PERCENT COULD BE  
6 CALLED ON, BUT CLASS 1, I WOULD AGREE WITH THAT.

7 Q. OKAY. AND WOULD YOU AGREE THAT CALIFORNIA'S SYSTEM,  
8 AGAIN, I UNDERSTAND YOU HAVE A -- COMPLAINING MAY NOT BE A FAIR  
9 WORD -- BUT YOU ARE RAISING THE ISSUE OF ORDERLY MARKETING AS  
10 IT RELATES TO PRICE ALIGNMENT ISSUES AND THE FACT THAT SOME  
11 REGULATED PRICES FROM FEDERAL ORDERS ARE HIGHER THAN  
12 CALIFORNIA, AND I UNDERSTAND THAT. SO I'M WEEDING THAT OUT.

13 A. AND WE ARE RAISING OTHER ISSUES OTHER THAN JUST THAT,  
14 SO LET'S NOT LEAVE THOSE OUT.

15 Q. SO WHAT ARE THOSE OTHER ISSUES AGAIN?

16 A. WE WENT OVER THESE A FEW MINUTES AGO WITH MR. VETNE.  
17 THERE WAS ISSUE WITH OUT-OF-STATE MILK; OF COURSE THE ISSUE OF  
18 PRICES ACROSS ALL CLASSES; THERE'S THE ISSUE OF  
19 PRODUCER-HANDLERS; THERE'S THE ISSUE OF RISK MANAGEMENT. SO  
20 AGAIN, THERE'S A SIZEABLE NUMBER OF ISSUES THAT, PERHAPS ANY OF  
21 THEM TAKEN ALONE, EXPLAIN BEFORE MIGHT NOT GENERATE THE  
22 DEPARTMENT'S WILLINGNESS, BUT WHEN YOU PUT THEM ALL TOGETHER,  
23 IT GENERATES ENOUGH THAT WE'RE HERE.

24 Q. BUT YOUR COVER LETTER THAT YOU SUBMITTED TO THE  
25 DEPARTMENT BACK IN FEBRUARY, WAS PRETTY MUCH FOCUSED ON THE

1 CLASS 3 WHEY FACTOR, WASN'T IT?

2 A. I WOULD POINT OUT THAT YOUR COVER LETTER THAT YOU  
3 SUBMITTED HAS ALSO ADDED SOME DETAIL TO IT, SO I DON'T THINK  
4 YOU TO TAKE ME TO TASK -- AND THOSE ISSUES WERE MENTIONED IN  
5 THE COVER LETTER.

6 Q. YOU JUST RAISED THE ISSUE OF RISK MANAGEMENT, SO LET ME  
7 JUMP TO THAT FOR A MOMENT.

8 A. BEFORE YOU START, I WILL SAY I WOULD NOT BE QUALIFIED  
9 AS AN EXPERT IN RISK MANAGEMENT, I WILL BE GLAD TO SAY THAT.

10 Q. BUT YOU TESTIFIED --

11 A. I DID.

12 Q. ON PAGE 25, FOR THREE PARAGRAPHS SO I THINK IT IS FAIR  
13 FOR ME TO ASK.

14 A. I AGREE. BUT THERE MAY BE SOME QUESTIONS THAT YOU ARE  
15 GOING TO ASK THAT I'M GOING TO SAY THAT I'M JUST SIMPLY NOT  
16 QUALIFIED TO ANSWER, BUT I'M CERTAINLY WILLING TO TRY.

17 Q. WOULD THE AFOREMENTIONED MR. GALLAGHER BE SOMEONE WHO  
18 WOULD NORMALLY DEAL WITH RISK MANAGEMENT AT SUCH A LEVEL FOR  
19 DFA?

20 A. HE WOULD BE. AS WITH OTHER OF MY CO-WORKERS, BUT YES,  
21 MR. GALLAGHER. ALTHOUGH, AT THE TIME YOU MENTIONED HIM, I  
22 DON'T THINK HE WOULD HAVE BEEN DEALING WITH THOSE FOR DFA.

23 Q. NO. BUT TODAY, ISN'T IT TRUE, AND HE HAS DISCUSSED  
24 THIS PUBLICLY, THAT DFA HAS CREATED AN OVER BASE CONTRACT THAT  
25 USES A SOPHISTICATED TOOL, EFFECTIVELY CALLED A SYNTHETIC OVER

1 BASE CONTRACT?

2 A. HE MAY WELL HAVE SAID THAT, I'M NOT FAMILIAR WITH THAT  
3 QUOTE. BUT AS YOU OUTLINED, HE'S THE PERSON INVOLVED IN  
4 MARKETING THAT. AND I WOULD SAY THAT WE, WHILE WE MAY HAVE  
5 THAT TOOL, WE DON'T HAVE A LOT OF TAKERS, FOR REASONS THAT  
6 MR. JARED FERNANDEZ OUTLINED IN HIS TESTIMONY.

7 Q. AND HE INDICATED THAT HE HADN'T QUITE THOUGHT OF THE  
8 CHEESE, THE CHEDDAR CHEESE, WHEY, AND BUTTER IN THE SAME WAY  
9 THAT I OUTLINED IT, CORRECT?

10 A. CORRECT. BUT HE ALSO INDICATED HE HAD BEEN DOING IT  
11 FOR SOMETIME.

12 Q. SO LET ME DO SOME MORE COMPARING AND CONTRASTING OF  
13 FEDERAL ORDER IN CALIFORNIA FOR A MOMENT.

14 DO YOU KNOW THAT IN CALIFORNIA, IF A REPORTING HANDLER  
15 FURTHER SELLS MILK TO ANOTHER HANDLER, THAT THE -- THAT THAT  
16 TRANSACTION OF THE HANDLER TO HANDLER SALE IS SUBJECT TO  
17 MINIMUM REGULATED PRICES?

18 A. I DON'T KNOW.

19 Q. BUT YOU KNOW THAT UNDER FEDERAL ORDERS, THAT IS NOT  
20 TRUE, CORRECT? THAT THE SECOND SALE OF THE MILK IS NOT SUBJECT  
21 TO REGULATION, CORRECT?

22 A. I THINK THAT'S CORRECT.

23 Q. IS IT POSSIBLE THAT USING MINIMUM REGULATED PRICES, IF  
24 THEY ARE UNACHIEVABLE IN TERMS OF WHAT THE MANUFACTURER CAN  
25 RETURN, WOULD THAT CAUSE DISORDERLY MARKETING?

1 A. IN ONE INSTANCE? OVER A MONTH?

2 Q. A PERIOD OF TIME. IF THERE'S MILK -- IF THERE'S MILK  
3 OUT THERE, BUT THE MINIMUM PRICES THAT MUST BE PAID FOR THE  
4 MILK ARE UNACHIEVABLE, CAN THAT CAUSE DISORDERLY MARKETING?

5 A. I WOULD HAVE TO SAY THAT OVER THE TIME YOU DO YOUR  
6 BUSINESS YOU WOULD HAVE TO DETERMINE IF THE BUSINESS DIDN'T  
7 MAKE IT, THEN YOU MIGHT, YOU COULD SAY THEY DIDN'T. BUT TO  
8 POINT OUT, CHRISTMAS EVE, THAT'S IT, I WOULD SAY NO.

9 Q. HOW ABOUT OVER A PERIOD OF A COUPLE OF MONTHS?

10 A. SOMETIMES EVEN NOT THAT. I MEAN, WE'VE JUST GONE  
11 THROUGH A PERIOD WHERE SEVERAL ENTITIES HAD DIFFICULT TIMES  
12 WITH POWDER PRICES, AND SO DOES THAT MEAN THAT THE WHOLE SYSTEM  
13 IS DISORDERLY? I WOULD SAY PERHAPS NOT.

14 Q. HOW ABOUT SIX MONTHS?

15 A. WELL, I GUESS WE COULD KEEP GOING UNTIL THE LINE GETS  
16 DRAWN. I DON'T HAVE AN EXACT.

17 Q. YOU DON'T HAVE A LINE?

18 A. I DON'T HAVE AN EXACT LINE.

19 Q. YOU HAVE NO LINE AT ALL?

20 A. I HAVE NO LINE.

21 Q. ON PAGE 17 OF EXHIBIT 19, NEAR THE END OF THE LARGE  
22 PARAGRAPH UNDER THE HEADING, PRICE MISALIGNMENT FOR  
23 MANUFACTURER CLASS MARKETS. YOU SAY, "REGIONAL POPULATION  
24 DENSITY DOES NOT MATCH POPULATION DENSITY DATA."

25 A. WHAT PAGE ARE YOU ON?

1 Q. PAGE 17 OF EXHIBIT 19.

2 A. OKAY.

3 Q. SO THERE'S A LARGE PARAGRAPH UNDER B, PRICE ALIGNMENT,  
4 MISALIGNMENT FOR MANUFACTURING CLASS MARKETS, AND THE SECOND TO  
5 THE LAST SENTENCE FOR LINES FROM THE BOTTOM OF THAT PARAGRAPH,  
6 YOU SAY --

7 A. I SEE IT, YES.

8 Q. YOU SAY, "REGIONAL POPULATION DENSITY DOES NOT MATCH  
9 PRODUCTION DENSITY DATA. THUS, PRODUCT MUST MOVE BETWEEN  
10 REGIONS TO SATISFY DEMAND."

11 A. YES.

12 Q. AND YOU SAY, "MANUFACTURED DAIRY PRODUCTS CAN EASILY BE  
13 PRODUCED IN ONE REGION OF THE UNITED STATES AND MARKETED IN  
14 ANOTHER." IS THAT CORRECT?

15 A. YES.

16 Q. NOW, THERE ARE COSTS TO MOVE THAT PRODUCT, CORRECT?

17 A. THERE ARE.

18 Q. WOULD YOU AGREE THAT AREAS MAKING A SURPLUS OF PRODUCTS  
19 THAT ARE FURTHER FROM THE LARGEST POPULATION CENTERS,  
20 SPECIFICALLY THE EAST COAST, WOULD HAVE TO PAY MORE IN FREIGHT  
21 TO SERVICE THAT MARKET?

22 A. YES.

23 Q. GOING BACK TO RISK MANAGEMENT ONE MORE TIME. AND I'M  
24 SORRY, I JUST, I AM TRYING TO ORGANIZE THIS STUFF, BUT -- HAVE  
25 YOU DONE AN ANALYSIS ON THE RELATIONSHIP OF MAILBOX PRICES TO

1 THE CME MILK HEDGING TOOLS ACROSS THE STATES?

2 A. I HAVE NOT. THE ANSWER WOULD STILL BE THE SAME, BUT  
3 WOULD YOU REPEAT THAT AGAIN? I WOULD LIKE TO WRITE THAT  
4 QUESTION DOWN. JUST TELL ME THE TWO THINGS THAT YOU ARE ASKING  
5 TO CORRELATE.

6 Q. THE RELATIONSHIP OF MAILBOX PRICES TO CME MILK HEDGING  
7 TOOLS ACROSS STATES.

8 A. OKAY. THANK YOU.

9 Q. YOU'RE WELCOME. NOW, YOU TESTIFIED THAT THE THREE  
10 COOPERATIVES MAKING THIS PROPOSAL REPRESENT, I HAVE SEEN TWO  
11 DIFFERENT NUMBERS. I'VE SEEN ONE NUMBER IN YOUR TESTIMONY,  
12 I'VE SEEN OTHER NUMBERS IN SOME OF THE DOCUMENTS. IS IT 75 OR  
13 80 PERCENT, OR IS IT SOMEWHERE BETWEEN THOSE TWO NUMBERS?

14 A. YES, SOMEWHERE BETWEEN THOSE TWO NUMBERS.

15 Q. OKAY. DOES THAT MARKET SHARE PERMIT COOPERATIVES WHO  
16 WIELD ENOUGH MARKET POWER TO DICTATE PRICES LIKE CMPC?

17 A. I DON'T KNOW THAT CMPC DICTATES MARKET PRICES.

18 Q. ANNOUNCED MARKET PRICES.

19 A. ANNOUNCED MARKET PRICES LIKE CMPC?

20 Q. YES.

21 A. THERE'S NO COMMON MARKETING PRICING AGENCY IN  
22 CALIFORNIA.

23 Q. I'M SORRY?

24 A. THERE IS NOT A COMMON MARKETING PRICE AGENCY IN  
25 CALIFORNIA THAT FUNCTIONS LIKE CMPC, TO MY KNOWLEDGE.



1 Q. I'M CONFIDENT MY CLIENT IS NOT ASKING THAT.

2 A. MAYBE YOU SHOULD DESCRIBE IT FURTHER, THEN.

3 Q. THE CLASS 4A AND 4B ARE MINIMUM PRICES, CORRECT?

4 A. CORRECT.

5 Q. AND THE COOPERATIVES IN CALIFORNIA, AS IN THE UPPER  
6 MIDWEST, ARE FREE TO CHARGE WHATEVER PRICE THEY CHOOSE ABOVE  
7 THE MINIMUM PRICE, AREN'T YOU? YOU COULD DO THAT?

8 A. YOU CAN DO THAT, YES.

9 Q. SO WHY DON'T YOU CHARGE MORE FOR MILK?

10 A. I DON'T KNOW THAT THERE'S NOT SOME PREMIUM CHARGES. I  
11 DON'T KNOW THE DETAILS OF LAND O'LAKES AND CDI, BUT DFA HAS  
12 SUPPLY AGREEMENTS WITH DIFFERENT BUYERS THAT WILL BUY  
13 ARRANGEMENT PRICES.

14 Q. BUT YOU'RE NOT CHARGING PRICES THAT RETURN MAILBOX  
15 PRICES AS IN THE UPPER MIDWEST, ARE YOU? I MEAN, THAT'S  
16 OBVIOUS YOU ARE TALKING ABOUT MAILBOX PRICE DIFFERENCE, AND YOU  
17 CLEARLY NOT CHARGING PREMIUMS THAT WOULD RESULT IN THE PRICES  
18 THAT MATCH THE UPPER MIDWEST MAILBOX PRICES, CORRECT?

19 A. THAT'S TRUE.

20 Q. ISN'T THE REASON FOR THAT, THAT THE MARKET SIMPLY WON'T  
21 BEAR IT IN CALIFORNIA?

22 A. THE REASON WHY WE DON'T CHARGE THOSE PRICES?

23 Q. YES.

24 A. AGAIN, THOSE PRICES ARE NEGOTIATED INDIVIDUALLY,  
25 CUSTOMER TO CUSTOMER TO CUSTOMER, SO I THINK THAT'S REALLY ALL

1 I CAN SAY ABOUT THOSE ARRANGEMENTS.

2 Q. ISN'T IT SUPPLY AND DEMAND?

3 A. THEY ARE NEGOTIATED IN EACH CUSTOMER BASED ON THOSE  
4 RELATIONS AND RELATIONSHIPS. I THINK THAT'S ALL I CAN SAY  
5 ABOUT --

6 Q. YOU CAN'T, AS AN ECONOMIST, OPINE THAT THOSE PRICES  
7 REPRESENT THE LEVEL OF WHICH PRICES WILL MATCH SUPPLY AND  
8 DEMAND IN CALIFORNIA?

9 A. I WOULD AGREE THAT SUPPLY AND DEMAND ARE FACTORS IN  
10 THESE PRICES.

11 Q. BUT YOU WON'T GO SO FAR AS TO SAY SUPPLY AND DEMAND  
12 PROVIDES A LIMIT ON WHAT THAT PRICING IS?

13 A. AGAIN, THOSE PRICES ARE NEGOTIATED INDIVIDUALLY WITH  
14 THOSE CUSTOMERS. SOME OF THEM ARE LOCAL, SOME OF THEM ARE  
15 NATIONAL, SOME OF THEM ARE REGIONAL, SO THEY ALL HAVE DIFFERENT  
16 TERMS, CONDITIONS, AND GEOGRAPHIES.

17 Q. NOW, I DON'T WANT TO GET INTO A SEMANTICS DISPUTE OVER  
18 WHAT YOU CALL INCLUSIVE POOLING AND ME CALLING MANDATORY  
19 POOLING. ALL RIGHT? SO IF WE AVOID THAT --

20 A. FAIR ENOUGH.

21 Q. -- DISCUSSION. OKAY.

22 IS IT REASONABLE, AS AN ECONOMIST, IS IT REASONABLE TO  
23 ASSERT THAT A MINIMUM REGULATED PRICE SHOULD BE THE SAME IN A  
24 REGULATED MARKET WHERE INCLUSIVE/MANDATORY PARTICIPATION  
25 EXISTS, VERSUS VOLUNTARY PARTICIPATION?

1 A. TRY THAT AGAIN.

2 Q. IS IT REASONABLE TO ASSERT THAT A MINIMUM REGULATED  
3 PRICE SHOULD BE THE SAME IN TWO MARKETS; ONE MARKET WHERE THERE  
4 IS INCLUSIVE POOLING, WHATEVER YOU WANT TO CALL IT; AND THE  
5 OTHER MARKET WHERE THE POOLING IS VOLUNTARY BY MANUFACTURER OF  
6 PRODUCTS.

7 A. I WOULD SAY --

8 JUDGE CLIFTON: I'M GOING TO ASK YOU TO -- I WANT TO TAKE A  
9 BREAK RIGHT NOW. I WANT YOU TO ASK EXACTLY THAT QUESTION WHEN  
10 WE COME BACK, MR. ENGLISH, AND MR. HOLLON, YOU MAY THINK ABOUT  
11 IT WHILE WE'RE ON BREAK.

12 LET'S COME BACK AT 3:00. IT IS NOW 2:45. BE BACK  
13 READY TO GO AT 3:00.

14 (WHEREUPON, A BREAK WAS TAKEN.)

15 JUDGE CLIFTON: BACK ON RECORD. IT IS NOW 3:00.

16 MR. ENGLISH, YOU MAY RESUME.

17 MR. ENGLISH: BEFORE THE BREAK YOU SUGGESTED THAT I REPEAT  
18 THE IDENTICAL QUESTION, AND I NODDED TO THE COURT REPORTER, AND  
19 I HOPE THAT NOD WAS PICKED UP BY HER. SO IF YOU CAN REPEAT  
20 BACK MY LAST QUESTION BEFORE THE BREAK.

21 (THEREAFTER, THE REQUESTED TESTIMONY  
22 WAS READ BY THE COURT REPORTER.)

23 MR. HOLLON: ARE YOU SATISFIED THAT'S A FAIR REPRESENTATION  
24 OF YOUR QUESTION?

25 MR. ENGLISH: I SUSPECT IT IS WORD FOR WORD WHAT I SAID, SO

1 I CAN ALWAYS REPHRASE IT, BUT YES.

2 MR. HOLLON: GOOD ENOUGH. AND I ASSUME THAT YOU ARE  
3 TALKING ABOUT IN FEDERAL MILK MARKETING ORDERS, BECAUSE THAT'S  
4 WHAT I'M TALKING ABOUT.

5 BY MR. ENGLISH:

6 Q. FEDERAL MILK MARKETING ORDERS HAVE VOLUNTARY POOLING OF  
7 CLASS III AND CLASS IV MILK, CORRECT?

8 A. CORRECT.

9 Q. SO, YES.

10 A. SO YOUR QUESTION IS THOSE AND BROADER. AND IN FEDERAL  
11 MILK MARKETING ORDERS, THOSE ARE NATIONWIDE, THOSE PRICES ARE  
12 NATIONWIDE, THOSE TERMS ARE NATIONWIDE. THOSE ARE MINIMUM  
13 PRICES DETERMINED BY UNREGULATED TRANSACTIONS, SURVEYED OVER A  
14 MONTH, DETERMINED IN ADVANCE OF THEM BEING ANNOUNCED, AND EACH  
15 OF THOSE ORDERS HAVE POOLING STATISTICS, POOLING TERMS, WHETHER  
16 THEY BE INCLUSIVE OR VOLUNTARY, THAT ARE SET AS THE APPROPRIATE  
17 LIMITS FOR THAT ORDER.

18 AND SO THE ORDER WE'RE PROPOSING FOR CALIFORNIA WOULD  
19 HAVE INCLUSIVE POOLING, AND THUS, PRICING TERMS THAT WE THINK  
20 MINIMUM WOULD APPLY. SO AT THE END, YES, I WOULD SAY THEY ARE  
21 REASONABLE.

22 Q. SO EVEN THOUGH THE POOLING DECISION BY THE OPERATION IN  
23 THE UPPER MIDWEST IS MADE AFTER THE FACT SO IT KNOWS WHAT THE  
24 PRICE RELATIONSHIPS ARE AT THE TIME IT MAKES THE DECISION OF  
25 HOW MUCH MILK TO POOL. CORRECT?

1 A. CORRECT.

2 Q. BUT IF YOUR CALIFORNIA ORDER IS ADOPTED THE WAY YOU  
3 HAVE CONSTRUCTED IT, COMPETITOR OPERATIONS IN CALIFORNIA WOULD  
4 NOT GET THAT SAME CHOICE AFTER THE END OF THE MONTH, AS TO  
5 WHETHER OR NOT TO POOL MILK AT THOSE PRICES. CORRECT?

6 A. CORRECT. AND I WOULD ALSO SAY THAT THOSE DECISIONS ARE  
7 MADE, NOT AT PRICES BELOW THE MINIMUM OR AT PRICES ABOVE THE  
8 MINIMUM.

9 Q. NONETHELESS, WHEN --

10 A. THAT'S A BIG ONE NONETHELESS.

11 Q. WELL, IT'S A BIG NONETHELESS BECAUSE IT HAS TO DO WITH  
12 REGULATED MINIMUM PRICES FOR MANUFACTURED PRODUCTS ARE HIGH,  
13 AND IT GIVES THOSE PLANTS AND OPERATE RELATIVE TO THE CLASS 1,  
14 CORRECT?

15 A. NO.

16 Q. IT NONETHELESS GIVES THEM THE OPPORTUNITY TO CHOOSE  
17 WHEN TO POOL THEIR MILK, CORRECT?

18 A. CORRECT.

19 Q. OKAY. BUT YOU WOULD DENY THAT OPPORTUNITY FOR  
20 COMPETITOR OPERATIONS IN A CALIFORNIA ORDER, CORRECT?

21 A. CORRECT. AND I WOULD ALSO TELL YOU THAT THAT VARYING  
22 DECISION IS NOT UNIFORM. THE DECISION AND THE STANDARDS ARE  
23 NOT UNIFORM ACROSS THE COUNTRY. SO IF, FOR EXAMPLE, YOU WERE  
24 SOMEONE IN ORDER 1, THAT DECISION WOULD HAVE TREMENDOUSLY  
25 IMPACTS THAN IF YOU WERE IN ORDER 30, OR IN THE SOUTHWEST

1 ORDER. SO YOU DON'T HAVE THE SAME UNIFORM DECISION MAKING  
2 PROCESS FACTOR IN ORDERS NOW.

3 Q. BUT YOU HAVE NO EXISTING FEDERAL ORDER WHERE THE  
4 DECISION FACTOR IS THE NULL SET, THAT YOU DON'T GET TO CHOOSE  
5 TO POOL OR NOT POOL, CORRECT?

6 A. CORRECT.

7 Q. AND IT IS YOUR ECONOMIC OPINION THAT THAT IS A  
8 REASONABLE RESULT, TO HAVE THE SAME REGULATED PRICE UNDER THOSE  
9 CIRCUMSTANCES?

10 A. YES. UNDER THE CIRCUMSTANCES AS I DESCRIBED THEM.

11 JUDGE CLIFTON: AND ALTHOUGH THIS QUESTION BEGAN,  
12 MR. ENGLISH, WITH YOU SAYING YOU DON'T WANT TO QUIBBLE OVER  
13 WHETHER USING THE TERM MANDATORY OR INCLUSIVE, I MUST SAY, I  
14 UNDERSTAND THE TERM MANDATORY POOLING. AND IF INCLUSIVE  
15 POOLING MEANS THE SAME THING, WE NEED TO ESTABLISH THAT.

16 DO YOU UNDERSTAND THEM, MR. HOLLON, TO BE EQUIVALENT?

17 MR. HOLLON: YES.

18 MR. ENGLISH: THANK YOU.

19 BY MR. ENGLISH:

20 Q. IF YOU ARE A BUSINESS AND YOU ARE PRESENTED A PRICE FOR  
21 COMMODITY THAT IS HIGHER THAN WHAT THE MARKET CAN BEAR, WOULD  
22 YOU BUY IT?

23 A. I THINK YOU NEED A BROADER SET OF TIME AND FRAME. GIVE  
24 YOU, AGAIN, THE EXAMPLE I USED WHILE AGO. IN OCTOBER,  
25 NOVEMBER, A LOT OF MILK BUYERS IN THE COUNTRY BOUGHT USED TO

1 MAKE POWDER. WHEN THEY ULTIMATELY SOLD IT, IT DIDN'T RETURN  
2 WHAT THEY BOUGHT IT FOR. AND SO THEY MAY HAVE HAD CONTRACTS  
3 WITH CUSTOMERS, THEY MAY HAVE HAD SUPPLY RELATIONSHIPS. SO  
4 THAT'S THE BROAD RANGE. AND I WILL AGREE THAT IF YOU ARE  
5 LOOKING ON PAGE 38 OF ECONOMICS 101, THE ANSWER WOULD BE NO.  
6 BUT FOR THE PURPOSE WE'RE SITTING HERE TODAY, YOU CAN'T MAKE  
7 THOSE TWO COMPARISONS AND EXPECT THEM TO BE UNIVERSAL AND  
8 STICK. MAKES FOR AN EASY QUESTION COMING FROM YOUR MIC TO  
9 MINE, BUT WHEN YOU TRY TO APPLY THEM TO THE SITUATION AT HAND,  
10 YOU CAN'T DO IT THAT WAY.

11 Q. WELL, TALK ABOUT THE SITUATION AT HAND, YOU HAVE  
12 REFERENCED IT TWICE. MOST OF THOSE ENTITIES THAT HAD THAT  
13 PROBLEM, AND I THINK THAT WAS A REAL PROBLEM, I THINK IT IS A  
14 REAL PROBLEM WITH RESPECT TO LOSSES ON NONFAT DRY MILK. MOST  
15 OF THOSE ENTITIES ARE COOPERATIVES, CORRECT?

16 A. CORRECT.

17 Q. AND COOPERATIVES, UNDER FEDERAL MILK MARKETING ORDERS,  
18 HAVE THE RIGHT TO REBLEND THE PROCEEDS, THE GAINS AND THE  
19 LOSSES FOR BOTH THE MILK SALES AND MANUFACTURING OPERATIONS,  
20 THEY HAVE THE RIGHT TO REBLEND THOSE LOSSES AMONG THEIR  
21 PRODUCERS, CORRECT?

22 A. CORRECT.

23 Q. AND THAT, IN FACT, IS WHAT HAPPENED IN A NUMBER OF  
24 INSTANCES, WITHOUT MEANING NAMES, ENTITIES BASICALLY HAD TO  
25 TAKE DEDUCT FROM THEIR MEMBERS CHECKS FOR THAT PURPOSE,

1 CORRECT?

2 A. CORRECT.

3 Q. NOW, IN THE FEDERAL MILK MARKETING ORDER, CAN  
4 PROPRIETARY HANDLERS REBLEND THEIR PROCEEDS WHEN IT COMES TO  
5 THE PRICES FOR THE MILK?

6 A. THEY CANNOT REBLEND THEIR PROCEEDS IN TERMS OF PRICE  
7 THEY PAY TO THE DELIVER OF THE MILK. THEY CAN ONLY REBLEND  
8 THEM ON THEIR OWNERS, WHICH IS, IN MY VIEW, NO DIFFERENT THAN  
9 THE OWNERS OF THE COOPERATIVES WHO REBLEND. BUT I WILL AGREE  
10 WITH YOU, THAT AGAIN, THE REGULATIONS REQUIRE THAT THEY CAN'T  
11 DO THAT TO THE MILK THAT THEY BOUGHT.

12 Q. AND AT LEAST IN CALIFORNIA, IT'S THE PROPRIETARY  
13 HANDLERS WHO MAKE MOST OF THE CHEESE, CORRECT?

14 A. CORRECT.

15 Q. SO ON THE OTHER HAND, YOUR COOPERATIVE IS IN THE CHEESE  
16 BUSINESS HERE IN CALIFORNIA, CORRECT?

17 A. SAY THAT AGAIN?

18 Q. YOUR COOPERATIVE, DAIRY FARMERS OF AMERICA, IS IN THE  
19 BUSINESS OF MANUFACTURING CHEESE FROM RAW MILK IN CALIFORNIA,  
20 CORRECT?

21 A. IT IS. ALL THE REGULATIONS THAT WE'RE PROPOSING IN  
22 THIS HEARING WOULD APPLY JUST THE SAME TO OUR BUSINESS INTEREST  
23 IN THE STATE, AS THEY WOULD TO ANYONE ELSE'S.

24 Q. IS YOUR PLANT MAKING A NET PROFIT OF MORE THAN 18 CENTS  
25 PER POUND OF CHEESE?



1           A. I DO NOT KNOW. AND IF I DID, I PROBABLY WOULDN'T  
2 REVEAL IT.

3           Q. IN YOUR PLANT OPERATIONS IN CALIFORNIA, CAN YOU  
4 GENERATE RETURNS IN YOUR PROPOSAL?

5           A. I'M NOT DIRECTLY AWARE OF THE CALCULATIONS, SO I HAVE  
6 TO ADMIT, I DO NOT KNOW THE ANSWER TO THAT.

7           Q. WHEN YOU STATE THE CALIFORNIA MILK RETURNS ARE BELOW  
8 SIMILARLY SITUATED FEDERAL MILK MARKETING ORDER PRODUCERS  
9 THROUGHOUT THE COUNTRY, ARE YOU DEFINING RETURNS AS GROSS  
10 REVENUES OR NET MARGINS?

11          A. WHERE ARE YOU READING FROM?

12          Q. I AM INTERPRETING. I MAY BE INTERPRETING, ARE YOU NOT  
13 DISCUSSING YOUR COMPARISON FOR RETURNS, THE MAILBOX PRICE,  
14 WHATEVER, ARE YOU COMPARING GROSS REVENUES OR NET MARGINS?

15          A. I THINK WE'RE COMPARING THE MAILBOX MILK PRICE TO  
16 MAILBOX MILK PRICE. SO HOWEVER YOU WISH TO CHARACTERIZE THAT,  
17 THAT'S WHAT OUR COMPARISON FOR THAT PURPOSE WAS.

18          Q. THAT'S NOT NET MARGINS, IS IT?

19          A. NO.

20          Q. YOU MAY WANT TO GET YOUR PEN OUT.

21          A. MY PEN OUT?

22          Q. PEN OR PENCIL. A HYPOTHETICAL, IF ONE FARM HAS A COST  
23 OF PRODUCTION OF \$16 PER HUNDREDWEIGHT, AND RECEIVES A PRICE OF  
24 \$18 PER HUNDREDWEIGHT, AND ANOTHER FARM HAS A COST PRODUCTION  
25 OF \$22 PER HUNDREDWEIGHT AND RECEIVES A PRICE OF \$20 PER

1 HUNDREDWEIGHT, WHICH FARM ECONOMICALLY HAS THE GREAT, WHICH  
2 FARM HAS THE GREATER ECONOMIC INCENTIVE TO PRODUCE MORE MILK?

3 A. I WOULD SAY IN THAT CASE THEY WOULD HAVE THE SAME  
4 INCENTIVE IF THAT WAS THEIR MARGIN.

5 JUDGE CLIFTON: NO, NO, NO, NO. BREAK THOSE NUMBERS DOWN  
6 AGAIN.

7 MR. HOLLON: 18 MINUS 16 IS 2, AND 22 MINUS 20 IS 2.

8 JUDGE CLIFTON: BUT THE 22 WAS ON THE LEFT AND THE 20 WAS  
9 ON THE RIGHT. ASK HIM AGAIN, IF YOU WILL, MR. ENGLISH.

10 MR. ENGLISH: YES, THANK YOU, YOUR HONOR.

11 BY MR. ENGLISH:

12 Q. SO THE ONE FARM HAS A COST PRODUCTION OF \$16, AND  
13 RECEIVES A PRICE OF 18. AND THE OTHER FARM HAS A COST  
14 PRODUCTION OF 22, BUT RECEIVES A PRICE OF 20.

15 A. FARM NUMBER 1.

16 Q. THANK YOU. TURNING TURN TO EXHIBIT 20 ONE LAST TIME, I  
17 HOPE. I THINK, IN ESSENCE, YOU HAVE GOTTEN AT THIS, BUT I WANT  
18 THE RECORD TO BE REALLY CLEAR.

19 SO I'M LOOKING AT TABLE 1J, PAGES 1, 2, 3, AND 4. AND  
20 THIS IS A FOLLOW-UP TO THE QUESTIONS FROM MR. DEJONG, IN WHICH  
21 YOU, I THINK, ACKNOWLEDGE THAT YOU WERE TRYING TO RUN SORT OF  
22 THE SAME ANALYSIS, WHETHER OR NOT THE WHEY FACTOR CHANGED  
23 DURING THE TIMEFRAME, CORRECT?

24 A. THE ONLY TIME PERIOD THAT I ACTUALLY QUOTED A VALUE  
25 DIFFERENCE WAS AUGUST OF '12 TO JULY OF '15. THE FIRST TWO

1 COLUMNS LABELED NATIONAL DAIRY PRODUCT SALES REPORT WHEY, AND  
2 DAIRY MARKET INDUCED WESTERN WHEY, MOSTLY 26 TO 25TH, RUN THE  
3 ENTIRE TIME. AND THE PURPOSE OF SHOWING THOSE WAS TO SHOW THAT  
4 THERE WASN'T, THERE WAS VERY LITTLE VARIATION BETWEEN THOSE TWO  
5 PRICES. SO NOT MUCH VARIATION IN WHEY PRICES PRODUCED LARGE  
6 VARIATION IN THE WHEY CONTRIBUTION NUMBERS, AS I HAVE  
7 CALCULATED THEM. AND SHOWING FROM AUGUST OF '12 TO JULY '15,  
8 NOT ACCOUNTING FOR, I FORGOT WHAT THE EXCEPTION WAS FOR  
9 MR. DEJONG, GIVE ME A HELP.

10 MR. DEJONG: WHAT WAS THE QUESTION?

11 MR. HOLLON: WHAT WAS THE 8 CENTS THAT I REFERRED TO YOU --  
12 OH, THE MULTIPLYING BY 96 AND A HALF PERCENT, WAS DOLLARS,  
13 ROUGHLY \$1.71 PER HUNDREDWEIGHT.

14 BY MR. ENGLISH:

15 Q. SO WHEN WE SEE THOSE BLANK COLUMNS, YOU HAVE GOT -- YOU  
16 HAVE GOT EIGHT COLUMNS, CORRECT?

17 A. YES.

18 Q. THE LAST TWO COLUMNS ARE ENTIRELY BLANK FOR PAGES 1, 2,  
19 3, AND FIRST SEVEN MONTHS OF 2012 ON PAGE 4.

20 A. CORRECT.

21 Q. OKAY. THEY ARE BLANK BECAUSE YOU DIDN'T MAKE THOSE  
22 CHANGES, NOT BECAUSE THERE WEREN'T NUMBERS THAT COULD HAVE  
23 CALCULATE TO GO IN THERE, CORRECT?

24 A. FOR THE PURPOSE OF THIS, IF I HAD RUN THE WHEY  
25 CONTRIBUTION CALIFORNIA STATE ORDER IN THE SAME WAY AS THE LAST

1 30 PLUS LINES, THERE COULD HAVE BEEN NUMBERS IN THERE.

2 Q. BUT IF YOU RUN THE NUMBERS, THERE WOULD HAVE BEEN  
3 DIFFERENT CALCULATIONS. IF YOU HAD DONE -- POINT IS, YOU  
4 WEREN'T DOING THAT CALCULATION. I JUST WANT TO MAKE SURE  
5 NOBODY IN THIS RECORD THINKS THAT THAT CALCULATION WAS RUN FOR  
6 THOSE MONTHS WHERE IT'S BLANK?

7 A. CORRECT.

8 Q. AND SO FOR INSTANCE, IF IN THE YEAR OF 2007, THE WHEY  
9 PRICE CONTRIBUTION FOR CALIFORNIA CREATED SIGNIFICANT LOSSES  
10 FOR CALIFORNIA PLANTS THAT'S JUST NOT SHOWING UP, BECAUSE YOU  
11 DIDN'T DO THAT CALCULATION?

12 A. CORRECT. I DID NOT.

13 Q. YOUR HONOR, I HAVE PROVIDED TO USDA, TO YOURSELF,  
14 MR. HOLLON AND THE COURT REPORTER, A DOCUMENT TO BE MARKED ON  
15 THE LETTERHEAD OF MID AMERICA DAIRYMEN, DATED, WEDNESDAY,  
16 APRIL 3, 1996. SIGNED BY JOHN WILSON AND ADDRESSED TO  
17 MR. RICH MCKEE, USDA/AMS DAIRY DIVISION.

18 A. BEFORE YOU GO TO THERE, THE LAST QUESTION YOU ASKED ME,  
19 YOU SAID DID NOT SHOW, OR IF IT SHOWED, I THINK -- I'M GONNA  
20 PARAPHRASE -- SIGNIFICANT LOSSES TO THESE PLANTS. THIS  
21 COMPARISON DOESN'T SAY ANYTHING ABOUT PLANTS, IT JUST ADDRESSES  
22 THE CONTRIBUTION TO THE MILK PRICE. SO NO MATTER WHAT THE  
23 NUMBER WAS IN THERE, YOU WOULD NEED ADDITIONAL INFORMATION TO  
24 SAY IT WOULD HAVE CREATED A LOSS TO A PLANT, INCLUDING WHAT  
25 DIFFERENT PLANTS MAKE, SELL, AND RETURN.

1 Q. AND I ACCEPT THAT. THE BOTTOM LINE IS, YOU DIDN'T SHOW  
2 ANY ANALYSIS OF THAT AT ALL?

3 A. I DIDN'T.

4 Q. ALL RIGHT. COULD I HAVE THIS MARKED, YOUR HONOR?

5 JUDGE CLIFTON: WILL THIS BE EXHIBIT 33?

6 MS. FRISIUS: IT WILL BE.

7 JUDGE CLIFTON: THANK YOU. LET'S MARK THIS ONE AS  
8 EXHIBIT 33.

9 (THEREAFTER, EXHIBIT NUMBER 33 WAS MARKED  
10 FOR IDENTIFICATION.)

11 JUDGE CLIFTON: IS THERE ANYONE WHO NEEDS A COPY OF  
12 EXHIBIT 33 THAT DOESN'T HAVE IT? IF SO, RAISE YOUR HAND.  
13 THANK YOU FOR DISTRIBUTING THOSE.

14 MR. ENGLISH: YOUR HONOR, I'LL IMMEDIATELY ACKNOWLEDGE  
15 THERE WAS A PRINTING ISSUE. I'M NOT LOOKING FOR THE MAP, IT IS  
16 ON PAGE 2 OF THE LAST PAGE, I'M NOT SURE WHAT THE PRINTING  
17 ISSUE WAS, THIS IS MATERIAL THAT THE DEPARTMENT RECENTLY PUT UP  
18 ON ITS WEBSITE WITH RESPECT TO COMMENTS THAT WERE SUBMITTED FOR  
19 FEDERAL MILK MARKETING ORDER REFORM. AND I'M LOOKING, NOT AT  
20 THE MAPS, BUT OBVIOUSLY, WE HAVEN'T NECESSARILY BEEN GIVEN  
21 THAT.

22 JUDGE CLIFTON: SO YOU HAVE LEFT OFF MY HOME, MR. ENGLISH,  
23 AND YOURS AS WELL.

24 MR. ENGLISH: UNINTENTIONALLY. I COULD TELL YOU THAT  
25 INITIALLY WHEN WE PULLED THIS DOWN, THE FORMATTING WAS EVEN

1 MORE COMPLEX. WE HAVE BEEN WORKING WITH IT SINCE WE GOT IT,  
2 BUT I'LL LET MR. BESHORE, IF HE WANTS TO BE HEARD ON THE  
3 SUBJECT.

4 MR. BESHORE: NO, I'M JUST OBSERVING THAT IT, WHAT I  
5 RECEIVED IS A SIX OR SEVEN-PAGE DOCUMENT, BUT IT SEEMS TO HAVE  
6 TWO LETTERS ATTACHED TOGETHER, FOUR MONTHS OR SO APART, AND I  
7 DIDN'T KNOW IF THAT WAS THE INTENTION. BUT THAT'S A LITTLE  
8 CONFUSING, PERHAPS.

9 MR. ENGLISH: THEY ARE GROUPED TOGETHER THAT WAY ON THE  
10 WEBSITE, AND WE DID NOT MANIPULATE THE DOCUMENT IN ANYWAY. SO  
11 I AGREE IT IS A LITTLE BIT CONFUSING. THE FIRST PAGE IS DATED  
12 APRIL 3RD, 1996. THE THIRD PAGE IS DATED, FRIDAY, AUGUST 9,  
13 1996. AND I WOULD SAY THAT IT IS MY UNDERSTANDING THAT THE  
14 DEPARTMENT HAD TO RETRIEVE THESE DOCUMENTS OFF OF A DIFFERENT  
15 COMPUTER MEDIUM, AND HAD TO RESTORE THEM. AND THAT IN THAT  
16 RESTORATION PROCESS, I SUSPECT THAT, YOU KNOW, THINGS MAY HAVE  
17 HAPPENED. I MEAN, I WOULD ALSO NOTE, MR. BESHORE, THAT THE  
18 FIRST DOCUMENT WHICH I DO -- I SUSPECT IT MAY BE TWO DOCUMENTS,  
19 BUT AGAIN THIS IS HOW IT'S GROUPED. THAT OFF THE TOP OF THE  
20 PAGE DATED WEDNESDAY, APRIL 3RD, 1996, THERE IS AN FOR-33,  
21 WHICH I SUSPECT IS A NUMBERING SYSTEM FROM THE DEPARTMENT FOR  
22 FEDERAL ORDER REFORM, AND SO THAT WAS DOCUMENT 33. AND WHEN  
23 YOU TURN TO PAGE 3 THAT IS DATED FRIDAY, AUGUST 9, 1996, IT HAS  
24 FOR-111, WHICH I SUSPECT MEANS IT WAS FEDERAL ORDER REFORM  
25 DOCUMENT NUMBER 111.

1 I'M CERTAINLY HAPPY TO HAVE THE DEPARTMENT EXPLAIN, BUT  
2 WE ARE DEEPLY GRATEFUL THE DEPARTMENT WAS ABLE TO RETRIEVE AND  
3 RESTORE DOCUMENTS THAT CAME FROM A DIFFERENT MEDIUM. AND WE  
4 SIMPLY, WE DIDN'T WANT THE OPPOSITE ACCUSATION THAT SOMEHOW WE  
5 HAD TORN THE DOCUMENT APART, BECAUSE THIS IS HOW IT CAME OFF  
6 THE INTERNET.

7 MR. RICHMOND: YEAH. BILL RICHMOND, USDA. MR. ENGLISH'S  
8 DESCRIPTION OF THE LABELING SYSTEM OF THIS DOCUMENT IS INDEED  
9 CORRECT.

10 JUDGE CLIFTON: THANK YOU.

11 BY MR. ENGLISH:

12 Q. SO MR. HOLLON, THE, BOTH LETTERS -- ALTHOUGH I REALLY  
13 WANT TO FOCUS ON FOR-111, WHICH STARTS ON PAGE 3. BOTH LETTERS  
14 ARE SIGNED BY JOHN WILSON, VICE PRESIDENT OF FLUID MILK  
15 MARKETING, ECONOMIC ANALYSIS. WHO IS HE?

16 A. HE IS AN EMPLOYEE OF DAIRY FARMERS OF AMERICA.

17 Q. DO YOU REPORT TO HIM?

18 A. I DO.

19 Q. AND YOU WERE AT MID-AMERICA DAIRYMEN IN 1996?

20 A. NO.

21 Q. SORRY, YOU WERE WITH ASSOCIATE MILK PRODUCERS?

22 A. I WAS.

23 Q. NONETHELESS, MID-AMERICA DAIRYMEN IS A PART OF WESTERN  
24 DAIRY FARMERS OF AMERICA TODAY, CORRECT?

25 A. IT IS.

1 Q. COULD YOU READ THE LAST SENTENCE ON THE FIRST PAGE OF  
2 THE AUGUST 9TH, 1996, LETTER, RICH MCKEE, FROM JOHN WILSON AS  
3 THE DOCUMENT LABELED FOR-111?

4 A. "CLASS III AND CLASS IV PRICES IN THE MIDWEST SHOULD BE  
5 HIGHER THAN THE WEST COAST."

6 Q. YOUR HONOR, I WOULD MOVE THE ADMISSION OF EXHIBIT 33.

7 MR. BESHORE: MAY I INQUIRE FOR WHAT PURPOSE IT WOULD BE  
8 ADMITTED?

9 JUDGE CLIFTON: WELL, HE LOVES THAT SENTENCE THAT WE JUST  
10 HAD READ.

11 MR. BESHORE: I OBJECT TO ITS ADMISSION FOR THE USE OF, YOU  
12 KNOW, THAT SENTENCE IN THIS HEARING. AND IT IS ON THE BASIS OF  
13 RELEVANCE, WHICH, YOU KNOW, MAYBE THERE'S SOME RELEVANCE  
14 PARAMETERS IN THIS HEARING, I GUESS THAT'S PERHAPS SOME DEBATE.

15 BUT IN ORDER FOR THIS TO HAVE ANY RELEVANCE IN THIS  
16 HEARING, YOU MUST ATTRIBUTE THE STATEMENT OF A PREDECESSOR OF A  
17 PARTY ABOUT PRICES IN THE FEDERAL ORDER REFORM PROCESS IN 1996.  
18 I THINK THAT'S VERY DUBIOUS ON EVIDENTIARY GROUNDS. YOU HAVE  
19 GOT THE ADDITIONAL, THE ADDITIONAL ISSUE HERE OF TIMING, AND  
20 TENUOUSNESS TO ANY, FOR PROBATIVE, FOR, YES, FOR PROBATIVE  
21 PURPOSES. TENUOUSNESS OF THIS 1996 LETTER, EVEN IF IT HAD BEEN  
22 WRITTEN BY MR. HOLLON, WHICH IT WASN'T, IN THIS HEARING. SO IT  
23 DOESN'T, IT ONLY ADDS BULK AND NO WEIGHT OF ANY SUBSTANCE.

24 JUDGE CLIFTON: YOU HAVE JUST STATED THE MAGIC WORD,  
25 MR. BESHORE, AND THAT IS THE WEIGHT TO WHICH IT IS ENTITLED.



1 IT'S 19-YEARS OLD, I DON'T KNOW IF THAT STATEMENT HAS ANY  
2 RELEVANCE TODAY, BUT I'LL ADMIT IT. EVERYONE CAN TAKE IT FOR  
3 WHATEVER WEIGHT IT'S WORTH.

4 MR. ENGLISH: SORT OF LIKE THE DATA FROM 1996, YOUR HONOR?

5 JUDGE CLIFTON: NO.

6 MR. VLAHOS: IT IS CALLED GRATUITOUS.

7 MR. ENGLISH: IT IS CALLED ACCURATE. I MEAN, WE ARE FACED,  
8 YOUR HONOR, WITH -- YOU HAVE JUST SAID WHAT THE WEIGHT IS, AND  
9 I, YOU KNOW, MAYBE YOU ARE RIGHT. BUT, YOU KNOW, WHAT WE'RE  
10 FACED WITH HERE IS, YOU KNOW, IF AN IDEA THAT WE'RE GOING TO  
11 RELY ON DISORDERLY MARKETING BASED UPON DATA FROM 19 YEARS AGO,  
12 IF ONE HAS WEIGHT, THE OTHER HAS WEIGHT

13 JUDGE CLIFTON: YOU COULD BE RIGHT. SOMETIMES, THOUGH --  
14 SOMETIMES DATA STILL HAS SOME VALUE TO SHOW CHANGES, TRENDS AND  
15 SO FORTH, WHEREAS OPINIONS MAY HAVE TO BE BROUGHT UP-TO-DATE.  
16 IN ANY EVENT, FORTUNATELY IT IS NOT FOR ME TO DECIDE.

17 MR. ENGLISH: THAT'S FINE, YOUR HONOR.

18 JUDGE CLIFTON: I DO ADMIT IT INTO EVIDENCE EXHIBIT 33,  
19 OVER OBJECTION.

20 (THEREAFTER, EXHIBIT NUMBER 33 WAS  
21 RECEIVED INTO EVIDENCE.)

22 JUDGE CLIFTON: WAS THAT YOUR ONLY QUESTION OF MR. HOLLON  
23 WITH REGARD TO THIS DOCUMENT?

24 MR. HOLLON: OH, I MAY HAVE MORE AT ANOTHER TIME WITH  
25 RESPECT TO OTHER TESTIMONY, BUT WITH RESPECT TO HIS TESTIMONY

1 NOW, YES.

2 MR. HOLLON: WHAT WAS THIS NUMBER?

3 MR. ENGLISH: 33.

4 MR. HOLLON: IT'S ALREADY NUMBERED.

5 BY MR. ENGLISH:

6 Q. DO YOU AGREE, MR. HOLLON, WITH THE FOLLOWING STATEMENT:

7 "THROUGHOUT THE OPERATION OF A FEDERAL MILK MARKETING  
8 ORDER SYSTEM, THE SECRETARY HAS USED CLASSIFIED PRICING  
9 PRIMARILY FOR THE PURPOSE OF OBTAINING SUPPLY OF MILK FOR FLUID  
10 USE?"

11 A. NO.

12 Q. DO YOU AGREE WITH THE FOLLOWING STATEMENT:

13 "WHILE THE SECRETARY COULD HAVE INCLUDED IN THE FEDERAL  
14 ORDER REGULATORY SYSTEM, ALL MILK AND ALL HANDLERS THEREOF, HE  
15 WISELY DEVELOPED THE FEDERAL MILK MARKETING ORDER SYSTEM TO  
16 INCLUDE ONLY MILK SUITABLE FOR HUMAN CONSUMPTION IN THE FLUID  
17 FORM, DELIVERED BY DAIRY FARMERS FOR THEIR COOPERATIVES, OTHER  
18 HANDLERS ASSOCIATED WITH THE FLUID MARKET?"

19 A. NO.

20 Q. DO YOU AGREE WITH THE FOLLOWING STATEMENT:

21 "THE POSITION OF THE FEDERAL ORDER SYSTEM WAS DESIGNED  
22 TO OBTAIN A SUPPLY OF MILK FOR FLUID USE, HAS BEEN CLEARLY  
23 STATED BY THE AGRICULTURAL MARKETING SERVICE, UNITED STATES  
24 DEPARTMENT OF AGRICULTURE, IN THEIR WIDELY-CIRCULATED BROCHURE  
25 REFERRED TO AS, 'QUESTIONS AND ANSWERS ON FEDERAL MILK

1     MARKETING ORDERS.' "

2           A.    I SUPPOSE I SHOULD ASK YOU AT LEAST TO TELL ME WHO YOU  
3     ARE QUOTING IN EACH OF THOSE.

4           Q.    I THINK I'M ENTITLED TO ASK THE WITNESS, WHETHER YOU  
5     AGREE OR NOT, AND MAYBE I'LL TELL YOU WHEN I'M DONE.

6           JUDGE CLIFTON:   WOULD YOU ASK THAT ONE AGAIN, PLEASE?

7           MR. ENGLISH:    OF COURSE.

8     BY MR. ENGLISH:

9           Q.    THE POSITION -- WOULD YOU AGREE WITH THE FOLLOWING  
10    STATEMENT:

11                   "THE POSITION OF THE FEDERAL ORDER SYSTEM IS DESIGNED  
12    TO OBTAIN A SUPPLY OF MILK FOR FLUID USE, HAS BEEN CLEARLY  
13    STATED BY THE AGRICULTURAL MARKETING SERVICE, UNITED STATES  
14    DEPARTMENT OF AGRICULTURE, IN THEIR WIDELY-CIRCULATED BROCHURE  
15    REFERRED TO AS, QUOTE, 'QUESTIONS AND ANSWERS ON FEDERAL MILK  
16    MARKETING ORDERS.' "

17           JUDGE CLIFTON:   WILL YOU READ TO HIM THE PORTION OF THAT  
18    DOCUMENT THAT YOU ARE REFERRING TO?

19           MR. ENGLISH:    I AM QUOTING, I'M ASKING A QUESTION, YOUR  
20    HONOR, FROM A TRANSCRIPT.   AND I'M QUOTING DIRECTLY FROM THAT  
21    TRANSCRIPT, AND I DON'T HAVE THAT WITH ME RIGHT NOW.   I'M SURE  
22    I CAN GET IT.   I'M ASKING WHETHER WITH HE AGREES WITH THE  
23    STATEMENT.

24           JUDGE CLIFTON:   WELL, HOW CAN HE AGREE WITH IT UNTIL HE  
25    KNOWS WHAT IT SAYS IN THE QUESTION AND ANSWER SECTION, OR WHAT

1 IT USED TO SAY, IF IT'S DIFFERENT TODAY?

2 BY MR. ENGLISH:

3 Q. ARE YOU FAMILIAR WITH THAT DOCUMENT, MR. HOLLON?

4 A. I'M NOT CERTAIN. IF I SAW IT, I MAY BE FAMILIAR.

5 MR. ENGLISH: GIVE ME A MOMENT, YOUR HONOR, I'M GOING TO BE  
6 HAVING SOME ASSISTANCE. YOUR HONOR, I'LL MOVE ON. I'LL MOVE  
7 ON.

8 JUDGE CLIFTON: THAT'S GREAT. THANK YOU.

9 BY MR. ENGLISH:

10 Q. DO YOU AGREE WITH THE FOLLOWING STATEMENTS:

11 STATEMENT, SINGULAR -- "NUMEROUS DECISIONS SPECIFICALLY  
12 STATE THIS SAME PURPOSE WITH RESPECT TO FLUID USE."

13 MR. BESHORE: I OBJECT TO THAT QUESTION, IT IS VAGUE. SAME  
14 PURPOSE AS WHAT?

15 JUDGE CLIFTON: COME TO THE MIC, PLEASE.

16 MR. BESHORE: THAT QUESTION IS UNANSWERABLY VAGUE, BECAUSE  
17 IT HAS AN UNSTATED REFERENCE. SAME PURPOSE, WHATEVER THAT IS.

18 JUDGE CLIFTON: I AGREE WITH YOU, MR. BESHORE. IF YOU WANT  
19 TO FIND A DECISION AND QUOTE IT AND ASK HIM IF HE AGREES WITH  
20 THE STATEMENT IN THAT, AS QUOTED IN THAT DECISION.

21 MR. ENGLISH: AND, YOUR HONOR, I THINK I'M ENTITLED TO ASK  
22 WHETHER HE AGREES WITH A STATEMENT. I MEAN, I WILL EXPLAIN  
23 WHAT IT IS IN A MOMENT, I MEAN, BUT THIS IS A SWORN STATEMENT  
24 IN A HEARING.

25 JUDGE CLIFTON: ALL RIGHT. AFTER HE'S EXPLAINED IT, YOU

1 MAY RESPOND TO HIS QUESTION.

2 MR. HOLLON: THANK YOU.

3 BY MR. ENGLISH:

4 Q. I THINK YOU TOLD ME YESTERDAY YOU KNOW WHO GEORGE JUNG  
5 IS?

6 A. I DO.

7 Q. WAS HE, AT ONE TIME, THE VICE PRESIDENT OF RAW MILK  
8 MARKETING FOR THE EASTERN GROUP, MID-AMERICAN DAIRYMEN?

9 A. I DON'T KNOW IF HE WAS THAT OR NOT. HE WASN'T IN  
10 AMERICA DAIRYMEN. ACTUALLY, I DON'T KNOW THAT EITHER.

11 Q. YOUR HONOR, I AM READING FROM A TRANSCRIPT.  
12 UNITED STATES DEPARTMENT OF AGRICULTURE, AGRICULTURAL MARKETING  
13 SERVICE, IN RE: MILK IN THE CAROLINAS AND CERTAIN OTHER  
14 MARKETING AREAS, HEARING ON PROPOSED AMENDMENTS TO TENTATIVE  
15 MARKETING AGREEMENTS AND ORDERS, DOCKET NUMBER A95-22. A  
16 HEARING HELD BEFORE THE HONORABLE DOROTHEA BAKER,  
17 ADMINISTRATIVE LAW JUDGE, ON SEPTEMBER 19TH, 1995, AT 9:00  
18 A.M., AT THE GRANADA SUITE HOTEL, 1302 WEST EAST TREE STREET,  
19 ATLANTA, GEORGIA.

20 AND I'M READING FROM THE TESTIMONY OF MR. GEORGE JUNG.

21 MR. BESHORE: THAT'S HELPFUL. WHAT'S THE PURPOSE? SAME  
22 PURPOSE?

23 JUDGE CLIFTON: HE LIKES THE QUOTES.

24 MR. VLAHOS, DID YOU HAVE SOMETHING TO ADD?

25 MR. VLAHOS: ONLY THAT I DIDN'T CATCH THE LAST NAME. I

1 NEED THE SPELLING OF THAT.

2 MR. ENGLISH: JUNG, J-U-N-G.

3 JUDGE CLIFTON: I DON'T THINK THIS IS USEFUL. I KNOW YOU  
4 LIKE THE QUOTES, YOU CAN QUOTE THEM IN YOUR BRIEF, BUT IT'S  
5 1995, IT'S CAROLINAS, I DON'T KNOW --

6 MR. ENGLISH: IT WAS 1995, BUT YOUR HONOR, THIS IS A  
7 WITNESS TESTIFYING ABOUT -- THIS IS A WITNESS FROM AN ENTITY  
8 THAT IS PART OF DFA TODAY, TESTIFYING ABOUT THE PURPOSES OF THE  
9 ACT. AND I THINK THAT THAT IS HIGHLY RELEVANT AND ENTIRELY  
10 APPROPRIATE TO CROSS-EXAMINE THIS WITNESS WHO IS TAKING  
11 POSITIONS THAT MAY BE DIFFERENT FROM THAT.

12 JUDGE CLIFTON: WELL, LET'S ASSUME THAT THERE'S SOME  
13 EVIDENCE IN THIS HEARING THAT SAYS ALL AREAS OF THE COUNTRY ARE  
14 ADEQUATELY SUPPLIED WITH FLUID MILK. DOES THAT MEAN THAT ALL  
15 PURPOSES HAVE BEEN FULFILLED AND THERE'S NO FURTHER PURPOSE FOR  
16 FEDERAL MILK MARKETING ORDERS?

17 MR. ENGLISH: NO, BUT IT SEEMS TO ME THAT THE UNDERLYING  
18 QUESTION HERE GOES TO THE QUESTION OF DISORDERLY MARKETING AND  
19 WHAT IT APPLIES TO. AND THERE HAS BEEN TESTIMONY HERE ABOUT  
20 THE APPROPRIATE PRICE LEVEL OF CLASS 4B IN CALIFORNIA, VERSUS  
21 CLASS III, AND IT IS OUR POSITION THAT THAT DOES NOT, AND  
22 CANNOT CONSTITUTE A DISORDERLY MARKETING CONDITION, WHEN THE  
23 PURPOSE OF THE ACT, AS ACKNOWLEDGED BY DFA'S PREDECESSOR  
24 ORGANIZATION, MID-AMERICA DAIRYMEN, IS TO BRING FORTH AN  
25 ADEQUATE SUPPLY OF MILK FOR FLUID USE. AND FOR THIS WITNESS TO

1 DISAGREE WITH THOSE STATEMENTS, WHEN THOSE STATEMENTS HAVE BEEN  
2 MADE IN PRIOR TESTIMONY WHEN IT WAS IN THE INTERESTS OF  
3 MID-AMERICA DAIRYMEN/DFA TO MAKE THOSE STATEMENTS, I THINK IS  
4 HIGHLY PROBATIVE OF THE CREDIBILITY OF THIS WITNESS.

5 JUDGE CLIFTON: GOODNESS GRACIOUS, MR. ENGLISH.

6 MR. ENGLISH: WELL, WE'RE GOING TO HAVE A LOT OF ARGUMENT.

7 MR. BESHORE: YOUR HONOR, DFA HAS LITERALLY -- THERE HAVE  
8 LITERALLY BEEN HUNDREDS OF SMALL DAIRY FARMER COOPERATIVES THAT  
9 HAVE, BY VOTE OF THE MEMBERS, MERGED TO BECOME DAIRY FARMERS OF  
10 AMERICA TODAY, LITERALLY HUNDREDS, DEPENDING HOW FAR YOU WANT  
11 TO GO BACK.

12 IF WE, IN THIS HEARING, ARE BOUND BY EVERY STATEMENT  
13 MADE BY ANY OFFICER OF ANY OF THOSE ORGANIZATIONS AT ANY TIME,  
14 IT'S LUDICROUS. AND, YOU KNOW, THIS TESTIMONY, AT THAT  
15 HEARING, BECAUSE IT WAS MADE BY SOMEONE FROM A COOPERATIVE  
16 WHICH LATER BECAME PART OF DFA, DAIRY FARMERS OF AMERICA, FOR  
17 WHICH BY WHOM MR. HOLLON IS EMPLOYED AND WHO IS A PROPONENT IN  
18 THIS HEARING, FOR THAT TO BE ATTRIBUTABLE TO DFA, I THINK IS  
19 NONSENSE.

20 JUDGE CLIFTON: IN ADDITION, MR. ENGLISH, EVEN IF THAT'S A  
21 PRIMARY PURPOSE, THERE'S SO MUCH MORE INVOLVED IN THIS HEARING  
22 THAN MAKING SURE THERE'S AN ADEQUATE SUPPLY OF FLUID MILK IN  
23 CALIFORNIA. I MEAN, THERE'S JUST SO MUCH INVOLVED.

24 I THINK IT'S NOT PROBATIVE TO DETERMINE WHETHER OR NOT  
25 MR. HOLLON AGREES WITH THE STATEMENTS. I THINK IT'S NOT EVEN

1 PROBATIVE TO DWELL ON THE STATEMENTS THEMSELVES. YOU ARE NOT  
2 PERSUADING ME OF ANYTHING. DO YOU WANT TO PERSIST IN THIS LINE  
3 OF QUESTIONING?

4 MR. ENGLISH: WELL, I'M NOT AS CONCERNED ABOUT PERSUADING  
5 YOU, BUT I WILL CERTAINLY NOTE MY EXCEPTION, AND THINK THAT IT  
6 IS ABSOLUTELY IMPERATIVE. WE CAN TALK ABOUT A LOT OF THINGS IN  
7 THIS HEARING, YOUR HONOR, BUT THE SECRETARY HAS 80 YEARS OF  
8 HISTORY, MAYBE 90 NOW, 80 YEARS OF HISTORY, OF WHAT THE  
9 SECRETARY HAS SAID MATTERS. AND IT'S NOT A MODEST LITTLE COOP  
10 THAT WAS WOUND UP IN A DFA, WE'RE TALKING ABOUT MID-AMERICAN  
11 DAIRYMEN, WHICH, BY THE WAY, WAS LOCATED IN KANSAS CITY,  
12 MISSOURI, WHERE THE HEADQUARTERS OF DFA IS TODAY.

13 MR. HOLLON: THAT'S NOT TRUE.

14 MR. ENGLISH: AND SO WE ARE LOOKING AT THE STATEMENTS OF A  
15 VERY SIGNIFICANT ENTITY, AND A SENIOR EMPLOYEE, MADE ON BEHALF  
16 OF AN ENTITY WHICH HAPPENED TO BE CONSISTENT WITH SECRETARY'S  
17 STATEMENTS WITH RESPECT TO WHAT MATTERS. AND THIS WITNESS, AND  
18 AS FASCINATING AND OBVIOUSLY IMPORTANT AS THEIR TESTIMONY WAS  
19 YESTERDAY THE DAIRY FARMERS, ARE TALKING ABOUT AN ENTIRELY  
20 DIFFERENT SUBJECT. AND IT IS IMPERATIVE THAT WE COME BACK TO  
21 WHAT THE PROGRAM IS ABOUT.

22 WE'RE GOING TO HAVE A HEARING, YOUR HONOR, OBVIOUSLY.  
23 WE RESPECTFULLY DISAGREE IN OUR LETTER TO THE DEPARTMENT. WE  
24 THOUGHT THE DEPARTMENT SHOULD ADDRESS THE ISSUE OF DISORDERLY  
25 MARKETING UNDER 900.3. WE DON'T BELIEVE THERE IS DISORDERLY



1 MARKET.

2 I'M CONCLUDING MY EXAMINATION OF MR. HOLLON BY POINTING  
3 OUT THAT UNTIL TODAY AND THIS PROCEEDING, THIS TESTIMONY OF  
4 MR. JUNG HAD, BY THE WAY GOES TO SALT LAKE CITY AND OTHER  
5 PLACES, HE'S CONSISTENT WITH THE DEPARTMENT, AND NOW -- NOW,  
6 FOR A CALIFORNIA FEDERAL MILK ORDER HEARING, THEY WANT THE  
7 RULES TO CHANGE. AND I THINK IT IS IMPORTANT FOR THIS RECORD  
8 TO KNOW THAT THAT'S NOT WHAT THIS ORGANIZATION, MID-AMERICA  
9 DAIRYMEN, WHICH IS A MAJOR PART OF DFA, HAS HISTORICALLY  
10 UNDERSTOOD THE PROGRAM TO BE.

11 I WILL NOT PERSIST. I DO EXCEPT TO THE CONCEPT THAT I  
12 SHOULD STOP, BUT I WILL ACCEDE TO THE REQUEST. I RESPECTFULLY  
13 DISAGREE. AND I'M DONE.

14 JUDGE CLIFTON: THANK YOU, MR. ENGLISH. I ACCEPT  
15 EVERYTHING YOU SAID AS ARGUMENT, AND YOU MAY REPEAT IT IN YOUR  
16 BRIEFS. IT'S GOOD SUBJECT MATTER FOR ARGUMENT. I DO NOT THINK  
17 IT IS FRUITFUL TO USE IT FOR CROSS-EXAMINATION OF MR. HOLLON.  
18 I NOTE YOUR EXCEPTION FOR THE RECORD.

19 MR. HOLLON: SO IS THIS EXHIBIT IN OR OUT? YOU DIDN'T  
20 ACCEPT IT, DOES THAT MEAN --

21 MR. ENGLISH: I THOUGHT I MOVED 33.

22 JUDGE CLIFTON: I ADMITTED INTO EVIDENCE, EXHIBIT 33, OVER  
23 OBJECTION. BUT NOW WE'RE TALKING, NOT ABOUT A DOCUMENT, BUT  
24 ABOUT READING FROM A TRANSCRIPT FROM --

25 MR. ENGLISH: 1995.

1 JUDGE CLIFTON: 1995. YEAH. I KIND OF AGREE WITH  
2 STATEMENTS THAT HAVE BEEN SUGGESTED BY A NUMBER OF PEOPLE THAT  
3 MORE RECENT HISTORY IS MORE USEFUL WITH REGARD TO THIS. IF  
4 WE'RE TALKING, THOUGH, ABOUT AN 80-YEAR POLICY, I UNDERSTAND  
5 THAT YOU WOULD GO BACK 19 YEARS.

6 MR. HOLLON: COULD WE ASK ABOUT THE DATES OF THE OTHER TWO  
7 QUOTES?

8 MR. ENGLISH: ALL THE QUOTES WERE FROM THE SAME TRANSCRIPT,  
9 THE SAME TESTIMONY.

10 MR. HOLLON: THANK YOU.

11 MR. ENGLISH: AND, YOUR HONOR, I WILL SIT DOWN, BUT I  
12 ABSOLUTELY AGREE, WE SHOULD BE LOOKING AT RECENT DATA.

13 JUDGE CLIFTON: I THINK SO, TOO. MR. VLAHOS?

14 MR. VLAHOS: JUST FOR THE RECORD, I WOULD NOTE THAT THERE  
15 IS A DIFFERENT KIND OF OLD DATA. THERE'S OLD DATA THAT RELATES  
16 TO THINGS IN THE PAST THAT ARE NO LONGER THERE, THERE IS DATA  
17 THAT IT MAYBE SOMEWHAT OLDER VINTAGE BUT ARE ACTUALLY INVENTED  
18 IN CURRENT FEDERAL MILK MARKETING ORDERS. SO EVEN THOUGH THE  
19 ORDERS MAY BE BASED ON OLD DATA, THEY ARE IN MILK MARKETING  
20 ORDERS THAT EXIST TODAY.

21 JUDGE CLIFTON: THANK YOU.

22 MR. ENGLISH: I'LL BE BRIEF, YOUR HONOR. WE'RE IN A  
23 PROMULGATION HEARING, AND DATA THAT NEEDS TO BE SUBMITTED,  
24 NEEDS TO BE CURRENT DATA. AND YOU KNOW, I'M NOT GOING TO GO  
25 BACK AND GIVE OTHER DOCUMENTS, FOR NOW, SINCE THAT'S NOT YOUR

1 PREFERENCE. BUT THIS IDEA THAT ALIGNMENT TRUMPS CURRENT  
2 MARKETING CONDITIONS IS ALSO NOT USDA POLICY.

3 JUDGE CLIFTON: I -- COME BACK TO THE MICROPHONE. THAT  
4 ALIGNMENT TRUMPS CURRENT MARKETING CONDITIONS?

5 MR. ENGLISH: THAT ALIGNMENT IS THE BE ALL AND END ALL.  
6 THAT THAT CAN TRUMP THE USE, INSTEAD, OF CURRENT MARKETING  
7 CONDITIONS SUCH AS STUDIES DONE IN 2011 USING 2006 DATA.

8 NOW, IT'S ARGUMENT -- I'M SAYING IT IS ARGUMENT, BUT  
9 I'M RESPONDING TO MR. VLAHOS' STATEMENT DIRECTLY. HE MADE THE  
10 ARGUMENT AND I'M RESPONDING TO THE ARGUMENT.

11 THE PROBLEM IS THAT THE DATA THAT IS EMBEDDED IN THE  
12 EXISTING FEDERAL MILK MARKETING ORDERS IS OLD DATA. EVEN AS  
13 YOU HAVE INDICATED, THE TESTIMONY FROM MR. JUNG IS OLD  
14 TESTIMONY, EVEN THOUGH IT IS WITHIN A YEAR OF THE DATA.

15 WE ARE TRYING TO ESTABLISH A BRAND NEW FEDERAL MILK  
16 MARKETING ORDER. AND WE DO BELIEVE THAT A PRINCIPAL FALLACY IN  
17 THE DISORDERLY MARKETING ARGUMENT PRESENTED IN THE LAST THREE  
18 DAYS OR, IF I MAY -- IS THAT THE ALIGNMENT ISSUE EFFECTIVELY  
19 GOVERNS, BECAUSE USDA IN FEDERAL ORDER REFORM, MADE DECISIONS  
20 ABOUT A CLASS 1 PRICE SURFACE THAT IS BASED ON DATA FROM 1996,  
21 AND THERE IS CLEARLY NEWER DATA AVAILABLE THAT HAS NOT BEEN  
22 MADE AVAILABLE, NOT TESTIFIED TO BY PROPONENTS.

23 JUDGE CLIFTON: MR. BESHORE?

24 MR. BESHORE: ALL I WANT TO DO HERE IS NOTE THAT I DON'T  
25 AGREE WITH ANYTHING MR. ENGLISH SAID. I'M NOT GOING TO ARGUE

1 IT NOW, WE'LL BRIEF IT, WE'LL HAVE TESTIMONY. WE WANT TO GET  
2 ON WITH THE HEARING AND WE CAN ARGUE THAT UNTIL THE COWS COME  
3 HOME, I GUESS.

4 JUDGE CLIFTON: MR. VETNE? DID YOU WANT TO ADD TO THE --  
5 I -- I KNOW WE'RE HERE TO TAKE EVIDENCE, NOT JUST ARGUMENT.  
6 DID YOU WANT TO SAY ANYTHING BYWAY OF ARGUMENT OR DO YOU HAVE  
7 QUESTIONS MR. HOLLON?

8 MR. VETNE: THESE ARE THE REST OF MY QUESTIONS, YOUR HONOR.

9 JUDGE CLIFTON: COME FORWARD, PLEASE. YOU DON'T HAVE TO  
10 PERSUADE ME THAT YOU ARE ALLOWED TO ASK HIM QUESTIONS, I JUST  
11 WANTED TO KNOW WHAT YOU WERE, WHAT YOUR PURPOSE WAS.

12 MR. VETNE: OKAY. IT'S A GOOD THING I SAT -- IT IS A GOOD  
13 THING I SAT DOWN.

14 JUDGE CLIFTON: STATE YOUR NAME AGAIN.

15 MR. VETNE: JOHN VETNE, V-E-T-N-E, REPRESENTATIVE FOR  
16 HILMAR CHEESE.

17 CROSS-EXAMINATION (CONTINUED)

18 BY MR. VETNE:

19 Q. AT THE BEGINNING OF OUR DISCUSSION, YOURS AND MINE, I  
20 ASKED YOU SOME QUESTIONS ABOUT BACKGROUND AND WHAT YOU  
21 REVIEWED. I FORGOT TO ASK YOU THIS. THERE WAS A SCHOLARLY  
22 PAPER PREPARED IN 1962 CALLED, REFERRED TO AS THE NOURSE  
23 REPORT, THE REPORT OF THE MILK ORDER STUDY COMMITTEE TO THE  
24 SECRETARY OF AGRICULTURE. ARE YOU FAMILIAR WITH THAT  
25 PUBLICATION?

1 A. I AM FAMILIAR WITH IT AND I HAVE HEARD YOU SPEAK OF IT  
2 MANY TIMES.

3 Q. HAVE YOU EVER READ IT?

4 A. I'VE NOT READ IT FROM COVER TO COVER, BUT I HAVE READ  
5 PIECES OF IT FOR SUPPORT.

6 JUDGE CLIFTON: IS THAT --

7 MR. VETNE: NOURSE, N-O-U-R-S-E.

8 BY MR. VETNE:

9 Q. AND ARE YOU AWARE THAT THE SECRETARY HAS, I DON'T KNOW  
10 IF HE USED THIS WORD, BUT HE'S REFERRED TO AS SORT OF THE BIBLE  
11 GUIDEBOOK FOR FEDERAL MILK MARKETING ORDER STRUCTURE, FOLLOWING  
12 '62 WHEN IT WAS PUBLISHED?

13 A. SORRY, I RESERVE THE BIBLE FOR SOME OTHER THINGS.

14 Q. I SAID THE GUIDEBOOK?

15 A. THERE'S BEEN MANY REFERENCES FOR IT.

16 Q. OKAY. ARE YOU AWARE OF A CALIFORNIA PUBLICATION BY  
17 UC DAVIS IN 1992 CALLED MAINTAINING THE COMPETITIVE EDGE IN  
18 CALIFORNIA'S DAIRY INDUSTRY?

19 A. I'M NOT.

20 Q. YOU ARE NOT?

21 A. WHO WAS THE AUTHOR OF THAT.

22 Q. IT WAS UC DAVIS, THE AUTHOR WAS BEES B-E-E-S BUTLER.

23 A. OKAY. THANK YOU.

24 Q. LJ BUTLER, BEES WAS HIS NICKNAME. AND HE PUBLISHED  
25 UNDER HIS NICKNAME. SO LIKE MAC "THE KNIFE", HE WAS LJ "BEES."

1 I THINK IT WAS IN RESPONSE TO SOME QUESTIONS BY MARVIN,  
2 BUT IT MAY HAVE BEEN CHIP EARLY ON. IN YOUR SELECTION OF  
3 MAILBOX PRICES TO COMPARE, YOU EXPLAINED WHY YOU CHOSE THOSE  
4 MARKETS AND YOU EXPLAINED WHY YOU DID NOT CHOOSE AT LEAST ONE  
5 MAILBOX PRICE, WHICH WAS NEW MEXICO. DO YOU RECALL?

6 A. I DO.

7 Q. THAT'S A COUPLE OF DAYS AGO. I HAVE A HARD TIME, IT  
8 WAS TWO DAYS AGO. AND YOUR ANSWER, AS I RECALL, YOU DIDN'T  
9 WANT TO COMPARE THOSE BECAUSE THERE WASN'T ENOUGH CAPACITY IN  
10 NEW MEXICO TO MAKE A COMPARABLE?

11 A. I THINK I GAVE SEVERAL REASONS. ONE IS THAT I FELT  
12 LIKE THE MARKET CONDITIONS WEREN'T SIMILAR, THAT MILK FROM  
13 NEW MEXICO TRANSPORTED A LONG DISTANCE AWAY TO MARKET SOME OF  
14 ITS PRODUCTS, AND THAT THE PLANT CAPACITY IN THE MARKET WAS  
15 INADEQUATE A SIGNIFICANT AMOUNT OF THE TIME.

16 Q. THAT'S IT, IN THE MARKET. WHEN YOU, IN YOUR ANSWER,  
17 WHEN YOU SAID THE MARKET, DID YOU MEAN TO INCLUDE PLANTS BOTH  
18 WITHIN NEW MEXICO AND IN ADJOINING TEXAS?

19 A. NO.

20 Q. OKAY. CAN YOU ADD THAT TO YOUR MIND, AND IF YOU  
21 INCLUDE MANUFACTURING PLANTS WITHIN TEXAS, IS THERE A CAPACITY  
22 SUFFICIENT TO HANDLE THE MILK THAT'S PRODUCED IN NEW MEXICO?

23 A. NO.

24 Q. SO NEW MEXICO IS UNIQUE AND DIFFERENT IN THAT YOU HAVE  
25 MILK PRODUCTION IN SEARCH OF CAPACITY, AND IN CONTRAST IN THE

1 UPPER MIDWEST THERE IS CAPACITY IN SEARCH OF MILK PRODUCTION?

2 A. SOMETIMES.

3 Q. WOULD THOSE BE TWO GENERALIZATIONS THAT CHARACTERIZE  
4 THE MARKET, EVEN THOUGH THERE MAYBE A MOMENTARY DEPARTURE HERE  
5 AND THERE?

6 A. WELL, I THINK I GAVE YOU A COUPLE OF SITUATIONS ABOUT  
7 THE NEW MEXICO, AND YOU SUGGESTED ONE THAT SOMETIMES THE UPPER  
8 MIDWEST IS, MARKETS CAPACITY IN SEARCH OF MILK.

9 Q. CAPACITY IN SEARCH OF MILK, YES.

10 A. SOMETIMES THAT IS TRUE.

11 Q. ISN'T IT TRUE MORE OFTEN THAN NOT FOR THE UPPER MIDWEST  
12 AND THE OPPOSITE IS TRUE MORE OFTEN THAN NOT FOR NEW MEXICO?

13 A. YES.

14 Q. AND IN RESPONSE TO A QUESTION FROM CHIP ENGLISH, YOU  
15 WERE DISCUSSING CLASS 1 STRUCTURE IN RENO AND SACRAMENTO. AND  
16 I WROTE DOWN THAT YOUR ANSWER WAS THAT, YES, THEY INDEED  
17 OPERATE IN THE SAME REGULATORY ENVIRONMENT. DO YOU RECALL  
18 THAT?

19 A. I THINK THEY ARE. MR. ENGLISH, I THINK, LISTED SEVERAL  
20 SO, NO HE DIDN'T LIST SEVERAL. I THINK THAT WAS ONLY IN THE  
21 PRICING ENVIRONMENT, THAT THERE WAS A PRICE ESTABLISHED BY THE  
22 NEVADA ADMINISTRATIVE CODE AND THERE'S A PRICE ESTABLISHED BY  
23 THE CALIFORNIA STATE ORDER. AND TO THAT EXTENT, THEY ARE IN A  
24 SIMILAR MARKET.

25 Q. OKAY. I WROTE IN QUOTES IN MY OWN NOTES FROM YOUR

1 TESTIMONY, YOUR RESPONSE, THAT THEY ARE IN THE SAME REGULATORY  
2 ENVIRONMENT, ALTHOUGH THE QUESTION RELATED TO CLASS PRICES.  
3 YOUR RESPONSE USED THE WORDS REGULATORY ENVIRONMENT, IF MY  
4 NOTES ARE CORRECT.

5 A. DO YOU WANT TO TELL ME WHAT YOU THINK YOUR NOTES MEAN  
6 AND I'LL TELL YOU IF I AGREE WITH IT?

7 Q. NO, I DON'T. BUT I DO WANT TO ASK YOU ABOUT REGULATORY  
8 ENVIRONMENT, IF THAT WAS YOUR ANSWER. THEY ARE NOT IN THE SAME  
9 REGULATORY ENVIRONMENT TO THE EXTENT THAT THE PRICE PAYABLE TO  
10 PRODUCERS, A BLEND PRICE, ARE SIMILAR, CORRECT?

11 A. I THINK I UNDERSTOOD MR. ENGLISH'S QUESTION TO BE  
12 RELATED TO THE NEVADA AGRICULTURE CODE SETS THE PRICE IN  
13 NORTHERN NEVADA, IN THE SAME, AT THE SAME AS THE NORTHERN  
14 CALIFORNIA PRICE. TO THAT EXTENT, THEY WERE IN THE SAME  
15 REGULATORY ENVIRONMENT.

16 Q. OKAY. AND IF YOU EXPAND THE CONCEPT OF REGULATORY  
17 ENVIRONMENT AS I AM NOW, TO COMPARE PRICES, BLEND PRICES,  
18 PAYABLE TO PRODUCERS AS A RESULT OF THE TRANSACTION, THE  
19 REGULATORY ENVIRONMENTS IN PRODUCER PRICES ARE NOT THE SAME?

20 A. YES, THAT'S RIGHT. THERE IS NO REGULATORY ENVIRONMENT  
21 IN NEVADA TO SET PRODUCER PRICES. THERE'S NO POOLING IN  
22 NEVADA.

23 Q. THERE'S NO POOLING, BUT, IN FACT, PRODUCERS RECEIVE THE  
24 AGGREGATE OF CLASS VALUES AT WHATEVER PLANT THEY MARKET TO.

25 A. IF -- YES. IF ALL THAT THEY MARKET TO IS THAT PLANT,



1 THAT, YES.

2 Q. OKAY. AND THAT'S VERY DIFFERENT FROM CALIFORNIA?

3 A. IN THE SENSE THAT IT'S A PLANT BLEND AS OPPOSED TO A  
4 POOL BLEND?

5 Q. YES.

6 A. YES.

7 Q. THAT IS VERY DIFFERENT FROM THE UPPER MIDWEST?

8 A. YES.

9 Q. OR ANY FEDERAL MARKET, FOR THAT MATTER?

10 A. YES.

11 Q. AND IF, WERE YOU TO TAKE AND SORT OF FOLLOW THE SAME  
12 APPROACH THAT YOU USED IN THE EXHIBIT 20, TABLE 1, AND PREPARE  
13 A MAILBOX PRICE COMPARISON OF THE NORTHERN CALIFORNIA AND RENO,  
14 NEVADA, YOU WOULD FIND HUGELY, HUGELY HIGHER PRICES IN RENO,  
15 EVEN THOUGH THE CLASSIFIED REGULATORY ENVIRONMENT IS THE SAME?

16 A. I DON'T KNOW WHAT YOU WOULD FIND. I HAVEN'T TRIED TO  
17 DO IT.

18 Q. YOU HAVE NO IDEA. ARE THERE PRODUCERS IN NORTHERN  
19 NEVADA OTHER THAN THOSE THAT BELONG TO DFA?

20 A. I DON'T THINK SO. YES, THERE ARE.

21 Q. THERE'S ONE FARM, ONE OWNED BY A GUY THAT HAS THREE  
22 FARMS AND ONE OF THEM IS INDEPENDENT. THAT'S WHAT I UNDERSTOOD  
23 FROM YESTERDAY'S TESTIMONY.

24 A. THAT MAY WELL BE TRUE.

25 Q. SO YOU DO KNOW THE BLEND PRICE REGULATORY ENVIRONMENT

1 IN NEVADA, AND YOU ARE ABLE TO COMPARE THAT TO THE QUOTA OR  
2 OVER BASE REGULATORY ENVIRONMENT IN CALIFORNIA?

3 A. YES.

4 Q. WILL YOU DO SO?

5 A. I HAVE NO PLANS TO DO THAT.

6 Q. OKAY. OH -- TWO LITTLE THINGS HERE. YOU REFERRED TO A  
7 TEXAS PLANT OWNED BY DFA THAT MAKES HISPANIC CHEESE, AND YOU  
8 MADE THE COMMENT IN RESPONSE TO A QUESTION THAT THE PLANT  
9 STRUGGLES WITH REGULATED MINIMUM PRICES. THAT'S -- I WROTE IN  
10 QUOTE, CORRECT? DID I GET AS ACCURATELY AS I COULD OF WHAT YOU  
11 SAID. DOES THAT MEAN THAT THE PLANT SOMETIMES FINDS IT IS  
12 ECONOMICALLY DIFFICULT TO SELL PRODUCT AND RECOVER, AFTER COSTS  
13 OF MANUFACTURING, CLASS III PRICE?

14 A. NO, THAT'S NOT WHAT THAT COMMENT MEANT, AND I'M NOT  
15 QUITE SURE YOU GOT IT TRANSCRIBED EXACTLY RIGHT EITHER.

16 Q. ALL RIGHT. DOES THAT PLANT RECEIVE MILK MARKETED TO  
17 THE PLANT AT BELOW CLASS PRICES?

18 A. NO.

19 Q. DOES THAT PLANT EVER RECEIVE MILK THAT HAS BEEN  
20 DEPOOLED BY THE MARKETING ORGANIZATION?

21 A. I DON'T KNOW.

22 Q. DOES THAT PLANT RECEIVE MILK FROM SOURCES OF SUPPLY  
23 OTHER THAN DAIRY FARMERS OF AMERICA?

24 A. NO.

25 Q. DOES IT HAVE A POLICY AGAINST RECEIVING MILK FROM

1 SOURCES WHO SUPPLY, OTHER THAN DAIRY FARMERS OF AMERICA?

2 A. NOT TO MY KNOWLEDGE.

3 Q. OKAY. IF THOSE FOUR FARMERS IN THE EASTERN NEW MEXICO  
4 HAVE TROUBLE FINDING A HOME FOR THE MILK, WOULD THERE BE A HOME  
5 AT THAT PLANT, EVEN THOUGH THEY ARE NOT DFA MEMBERS?

6 A. MAYBE FOR ONE OF THOSE FARMS.

7 Q. OKAY. AND THEN FINALLY, BACK TO A DEFINITIONAL  
8 QUESTION. ON PAGE 18, AS WELL AS ON PAGE -- SORRY, 18, AS WELL  
9 AS PAGE 23 OF YOUR TESTIMONY, YOU USED THE TERM MARKET  
10 FUNDAMENTALS. AND JUST SO WE UNDERSTAND IN GREATER CONTEXT ON  
11 PAGE 18, YOU REFER TO CLASSIFICATION. "CLASS 2 CLASSIFICATION,  
12 THERE ARE DISORDERLY MARKETING IMPLICATIONS RESULTING FROM  
13 REGULATORY DIFFERENCES WHICH DO NOT REFLECT MARKET  
14 FUNDAMENTALS." THAT'S ONE INSTANCE.

15 MAYBE THEY MEAN THE SAME THING IN BOTH CASES. THE  
16 OTHER TIME YOU USED MARKET FUNDAMENTALS --

17 JUDGE CLIFTON: LET'S HAVE HIM TAKE A LOOK AT THIS FIRST.

18 BY MR VETNE:

19 Q. OKAY, PAGE 18.

20 A. OKAY.

21 Q. CAN YOU READ THAT? WELL, OKAY, LET'S BECAUSE WE CAN  
22 THERE MIGHT BE DIFFERENT MEANING LATER ON.

23 WHAT DO YOU MEAN BY THE TERM MARKET FUNDAMENTALS AS YOU  
24 USE IT HERE? IS THAT SOMETHING THAT YOU INSERTED AS PART OF  
25 YOUR DISCIPLINE IN ECONOMICS OR DAIRY ECONOMICS OR WHAT DID YOU

1 MEAN?

2 A. WELL, IN THIS PARTICULAR SENTENCE IT'S REFERRING TO A  
3 SITUATION WHERE THE CALIFORNIA STATE ORDER CLASS 2 PRICE IS  
4 SOME NUMBER, AND THE FEDERAL ORDER CLASS II PRICE FOR A PRODUCT  
5 IS SIMILAR TO, SAY A PRODUCT THAT USES CONDENSED SKIM MILK AND  
6 RESULTS IN THE SAME CLASSIFICATION OR VITALLY DIFFERENT, SO,  
7 AND OUR PARTICULAR VISION OF THIS APPLICATION, I THINK I  
8 MENTIONED WE BASE COMPETITIVE FACTORS FROM BUYERS WHO TELL US,  
9 IN A CERTAIN MONTH I CAN BUY THIS LOAD OF CONDENSED SKIM FROM A  
10 CALIFORNIA SOURCE CONSIDERABLY LESS," AND THOSE MONTHS  
11 GENERALLY CORRESPOND TO WHEN THE CALIFORNIA CLASS 2 PRICE IS  
12 CONSIDERABLY LESS THAN THE FEDERAL ORDER PRICE. SO THAT WAS  
13 INTENT OF THAT SENTENCE.

14 Q. OKAY. I RECALL YOUR ILLUSTRATING THAT, WHICH ARE THE  
15 DISORDERLY MARKETING IMPLICATIONS?

16 A. IS THIS ANOTHER ONE OF THOSE QUESTIONS THAT YOU REFER  
17 TO IN YOUR LAST TIME AS SORT OF FISHING?

18 Q. NO.

19 A. OKAY.

20 Q. NO. YOUR RESPONSE JUST NOW WENT BACK TO AN  
21 ILLUSTRATION --

22 A. YES.

23 Q. -- OF THE IMPLICATION. WHAT I'M LOOKING FOR IS TO  
24 UNDERSTAND YOUR USE OF THE WORD MARKET FUNDAMENTALS. WHAT ARE  
25 YOU REFERRING TO? THERE MUST BE SOME STANDARD OR SOURCE?

1           A.   YOU WOULD EXPECT IN THAT CASE THAT THE CLASS 2 PRICE  
2   WOULD BE THE SAME IN BOTH CASES.   AND SO THE BUYER THEN, WOULD  
3   FACE THE SAME MINIMUM PRICE AS THEY MAKE THEIR DECISION, NOT A  
4   DIFFERENT PRICE RESULTING FROM THE REGULATORY DIFFERENCE.

5           Q.   OKAY.   SO YESTERDAY ACTUALLY I ASKED MS. ACMOODY A  
6   SIMILAR QUESTION ABOUT HER USE OF EXACTLY THE SAME TERM, MARKET  
7   FUNDAMENTALS, AND SHE SAID SHE WAS REFERRING TO THE FEDERAL  
8   PRICING STRUCTURE.   IS THAT THE SAME AS YOUR USE OF THE TERM  
9   HERE?

10          A.   I'M NOT SURE OF YOUR QUESTION.

11          Q.   THE QUESTION IS, BY MARKET FUNDAMENTALS, DO YOU MEAN  
12   FEDERAL REGULATED CLASS II PRICING SYSTEM?

13          A.   I THINK I'M DESCRIBING HERE THAT THERE'S A DIFFERENCE  
14   IN THE TWO.

15          Q.   AND YES, YOU ARE.   AND YOU ARE DESCRIBING HERE THAT  
16   THERE'S A DIFFERENCE IN THE TWO, AND YOUR CONCLUSION IS THAT  
17   THERE'S SOME DEVIATION FROM MARKET FUNDAMENTALS, WHAT IS THE  
18   FUNDAMENTAL FROM WHICH THERE IS DEVIATION?

19          A.   THE BUYER WOULD BE MAKING A DECISION BASED ON THE  
20   DIFFERENCE IN CLASS PRICES AND NOT OTHER CHARACTERISTICS THAT  
21   ARE NOT RELATED TO THE CLASS PRICE.

22          Q.   IN THIS CASE, MARKET FUNDAMENTALS REFERS TO THE  
23   MARKETING DECISION MAKING OF THE SELLING, SELLERS AND BUYERS,  
24   GOING BACK TO DISORDERLY MARKETING IMPLICATIONS?

25          A.   WELL, THE FACTORS THAT PLAY INTO THEIR DECISION MAKING.

1 Q. OKAY. GOOD. AND THEN PAGE 23, LET'S SEE IF THERE'S A  
2 SIMILAR MEANING FOR THE SAME TERM. YOU USE IT AGAIN ABOUT  
3 TWO-THIRDS OF THE WAY DOWN, THE LAST SENTENCE IN THE PARAGRAPH  
4 THAT ENDS ON THE BOTTOM OF PAGE 23. "THE DIFFERENCE IN PRICING  
5 MAY CAUSE MARKETPLACE DECISIONS THAT ARE SOLELY DUE TO  
6 DIFFERENT REGULATIONS AND NOT TO MARKET FUNDAMENTALS." IS YOUR  
7 USE THE TERM MARKET FUNDAMENTALS INTENDED TO CONVEY THE SAME  
8 MEANING AS IT DID PREVIOUSLY ON PAGE 18?

9 A. YES.

10 Q. AND IN THIS CASE, DO YOU MEAN MARKETING FUNDAMENTALS TO  
11 REFER TO THE DECISION MAKING PROCESS OF A, IN THE MARKETPLACE  
12 OF A MARKETER, SELLER OR BUYER, UNDISTORTED BY REGULATORY  
13 DIFFERENCE? SORT OF PARAPHRASING.

14 A. I THINK I'M GOING TO STICK WITH MY FIRST ANSWER OF YES  
15 AND STOP THERE.

16 Q. OKAY. IN THAT CASE, MY ONE PAGE IS DONE, YOUR HONOR.  
17 THANK YOU.

18 JUDGE CLIFTON: THANK YOU, MR. VETNE.

19 WHAT OTHER CROSS-EXAMINATION IS THERE OF MR. HOLLON?  
20 IS THERE ANY? OH, MS. HANCOCK, YES.

21 MS. HANCOCK: NICOLE HANCOCK.

22 CROSS-EXAMINATION

23 BY MS. HANCOCK:

24 Q. GOOD AFTERNOON, MR. HOLLON.

25 A. GOOD AFTERNOON.

1 Q. I WANT TO TALK TO YOU JUST BRIEFLY ABOUT HOW THE  
2 COOPERATIVES' PROPOSAL ADDRESSES OUT-OF-STATE MILK. CAN YOU  
3 TELL ME WHAT YOU UNDERSTAND TO BE THE HANDLING FOR OUT-OF-STATE  
4 MILK IN THE COOPERATIVES' PROPOSAL?

5 A. TODAY, THE CALIFORNIA STATE ORDER CANNOT PRICE OR POOL  
6 THAT MILK, AND IN THE PROPOSAL WE MADE, FEDERAL ORDER WOULD  
7 ALLOW THAT MILK TO BE PRICED AND POOLED. SO IN THE CASE OF  
8 YOUR CLIENT, TODAY THERE'S NO REGULATORY OVERSIGHT, IF YOU  
9 WILL, OF THAT TRANSACTION, AND THEY MAKE THEIR TRANSACTION AND  
10 CLASS PRICES ARE NOT ACCOUNTED FOR IN THE POOL.

11 AND IN THE CASE OF OUR PROPOSAL, IF THAT SAME  
12 TRANSACTION STAYS IN PLACE, THAT MILK WOULD BE POOLED, WOULD BE  
13 REGULATED, WOULD BE PRICED, AND YOUR CLIENT WOULD GET THE BLEND  
14 PRICE ANNOUNCED BY THE ORDER OF THE, THE BLEND PRICE ANNOUNCED  
15 BY THE ORDER.

16 Q. AND WHEN YOU SAY CLIENT, JUST SO THE RECORD IS CLEAR, I  
17 HAVE TWO CLIENTS THAT I'M REPRESENTING IN THIS PROCEEDING, YOU  
18 ARE REFERRING TO PONDEROSA?

19 A. YES, MA'AM.

20 Q. AND SO PONDEROSA, UNDER THE COOPERATIVES' PROPOSAL,  
21 WOULD RECEIVE THE BLEND PRICE?

22 A. YES.

23 Q. AND THAT WOULD BE WHEN THE USDA PUT ON THEIR FINANCIAL  
24 EVALUATIONS, THAT WOULD BE WHAT THEY CALCULATED AS THE  
25 NON-QUOTA POOL PRICE; IS THAT RIGHT?

1           A. I GET MIXED UP BETWEEN QUOTAS AND NON-QUOTAS, SO LET'S  
2 SAY IT WOULD BE THE BLEND PRICE AFTER A DEDUCTION HAD BEEN MADE  
3 FOR QUOTA; IS THAT FAIR?

4           Q. THAT'S MY UNDERSTANDING. I JUST WANT TO CONFIRM THAT'S  
5 YOUR UNDERSTANDING AS WELL.

6           A. YES, WE'RE ON THE SAME.

7           Q. OKAY. SO OVERALL IT WOULD INCREASE THE DOLLARS THAT  
8 ARE PAID INTO THE POOL AS COMPARED TO WHAT IS PAID INTO THE  
9 POOL NOW?

10          A. YES.

11          Q. AND -- AND THEN IN YOUR CALCULATIONS, IN COMPARING THE  
12 POTENTIAL PRICES THAT WOULD RESULT UNDER THE COOPERATIVE  
13 FEDERAL ORDER AS COMPARED TO WHAT'S HAPPENING NOW UNDER THE  
14 CALIFORNIA STATE ORDER, PART OF THAT INCREASE IN PRICE WOULD BE  
15 ATTRIBUTED TO THE OUT-OF-STATE MILK THEN BEING CONTRIBUTED TO  
16 THE POOL?

17          A. CORRECT.

18          Q. BUT IN ALL FAIRNESS, IT IS A VERY SMALL PERCENTAGE  
19 COMPARED TO THE OVERALL INCREASE; IS THAT RIGHT?

20          A. IN TERMS OF PERHAPS DOLLAR IMPACT TO THE POOL WITH THE  
21 3.5 BILLION POUND POOL, PERHAPS YES.

22                 IN COMPARISON TO THE DOLLARS THAT IT BRINGS IN, THERE  
23 WERE, I WOULD SAY MORE THAN MINIMUM. BEST I CAN TELL, THE MILK  
24 IS NOT PRICED NOW, AND IT IS PRICED THEN, SO YOU HAVE GOT A  
25 DIFFERENCE IN POUNDS TIMES, SOMETIMES A COUPLE OF DOLLARS A



1 HUNDREDWEIGHT.

2 Q. DID YOU CALCULATE HOW MUCH OF THE INCREASE WAS  
3 ATTRIBUTED TO THE OUT-OF-STATE MILK THAT WOULD BE PUT INTO THE  
4 POOL?

5 A. I DIDN'T.

6 Q. AND UNDER THE COOPERATIVE PROPOSAL, DO YOU HAVE AN  
7 UNDERSTANDING OF WHETHER THOSE OUT-OF-STATE PRODUCERS COULD  
8 PARTICIPATE IN THE QUOTA PROGRAM?

9 A. THEY CANNOT.

10 Q. AND THEY CANNOT PARTICIPATE NOW; IS THAT RIGHT?

11 A. CORRECT.

12 Q. BUT THEY CAN'T PARTICIPATE IN THE POOL AT ALL?

13 A. I'M SORRY, SAY THAT AGAIN?

14 Q. UNDER THE CURRENT SYSTEM, THEY ALL PARTICIPATE IN THE  
15 POOL, BUT THEY ALSO CAN'T PARTICIPATE IN THE QUOTA.

16 A. CORRECT.

17 Q. BUT UNDER THE PROPOSAL, EVEN THOUGH THEY WOULD BE  
18 PAYING JUST THE NON-QUOTA PRICE, THEY STILL CAN'T RECEIVE ANY  
19 QUOTA?

20 A. CORRECT.

21 Q. AND THEY DON'T GET -- THEY WOULDN'T QUALIFY FOR ANY  
22 TRANSPORTATION CREDITS?

23 A. CORRECT.

24 Q. OKAY. ARE THERE ANY OTHER BENEFITS THAT IN-STATE  
25 PRODUCERS RECEIVE THAT AN OUT-OF-STATE PRODUCER WOULD NOT

1 RECEIVE?

2 A. I DON'T THINK SO.

3 Q. WHAT ABOUT DIFFERENTIALS?

4 A. WE WOULD PROPOSE A SINGLE PRICE ACROSS THE WHOLE POOL  
5 SO THEY WOULD GET THE SAME NON-QUOTA BLEND PRICE THAN AN  
6 IN-STATE PRODUCER WOULD GET.

7 Q. IT WOULD JUST BE A NEUTRAL EFFECT THERE?

8 A. NEUTRAL -- NOT FOLLOWING YOU THERE, TRY IT AGAIN.

9 Q. WELL, IT WOULDN'T AFFECT THEM ONE WAY OR THE OTHER.  
10 THEY -- THAT WOULDN'T HAVE AN IMPACT ON THE OUT-OF-STATE  
11 PRODUCERS?

12 A. RIGHT. TRANSPORTATION WOULD APPLY HERE, AND IT  
13 WOULDN'T APPLY THERE, THAT'S AN IMPACT. BUT AGAIN, THE SAME  
14 PRICE IN EITHER SITUATION, AND TO USE YOUR TERM, WOULD NOT BE  
15 IMPACT.

16 Q. OKAY. THAT'S ALL THE QUESTION I HAVE. THANK YOU.

17 JUDGE CLIFTON: MR. MILTNER?

18 MR. MILTNER: THANK YOU, YOUR HONOR. RYAN MILTNER WITH  
19 SELECT MILK PRODUCERS, M-I-L-T-N-E-R.

20 CROSS-EXAMINATION

21 BY MR. MILTNER:

22 Q. MR. HOLLON, I HAVE A COUPLE OF QUESTIONS I WANTED TO  
23 FOLLOW UP ON WHAT MS. HANCOCK HAD JUST QUESTIONED YOU ABOUT.

24 BEFORE WE GET TOO FAR INTO THAT, WILL ONE OF YOUR  
25 FUTURE STATEMENTS BE ADDRESSING SPECIFICALLY THE ISSUES RELATED

1 TO QUOTA AND HOW THAT IS ALLOCATED AND DISTRIBUTED UNDER THE  
2 CALIFORNIA SYSTEM?

3 A. IT WILL.

4 Q. OKAY. SO MAYBE I'LL DEFER SOME OF THIS UNTIL THEN SO  
5 WE CAN HEAR SOME MORE FROM YOU ON THAT?

6 A. IT WON'T BE MY STATEMENT, BUT IT WILL BE A STATEMENT OF  
7 SOMEONE, AND I'M VERY GLAD FOR YOU TO DEFER THOSE QUESTIONS.

8 Q. I WILL DEFER MOST OF THAT, THEN.

9 THE OTHER QUESTIONS I HAD RELATED BACK TO A BACK AND  
10 FORTH YOU HAD, I FORGET IF IT WAS MR. ENGLISH OR MR. VETNE,  
11 DEALING WITH THE NEVADA DAIRY COMMISSION.

12 IN THE CURRENT SITUATION WHERE CALIFORNIA OPERATES A  
13 STATE ORDER AND NEVADA IS EXCLUDED FROM THE FEDERAL SYSTEM,  
14 WHAT IS THE RELEVANCE OF THE NEVADA DAIRY COMMISSION AND ITS  
15 PRICE ANNOUNCEMENTS ON THE MARKET FOR MILK IN THE BORDER AREAS?

16 A. THEY SET THE NORTHERN NEVADA PRICES THE SAME AS THE  
17 NORTHERN CALIFORNIA PRICE.

18 Q. WITH THE ADOPTION OF A CALIFORNIA FEDERAL ORDER, WHAT  
19 DO YOU ANTICIPATE WILL BE THE IMPACT OF THE DAIRY COMMISSION  
20 AND ITS PRICE ANNOUNCEMENTS ON THAT COMPETITIVE RELATIONSHIP IN  
21 THOSE BORDER AREAS?

22 A. I WOULD SUSPECT THEY WOULD ANNOUNCE THE SAME AS THE  
23 APPROPRIATE FEDERAL ORDER PRICE, BUT THERE'S NO, AGAIN, NO  
24 MARKET-WIDE POOL THERE, SO THAT IMPACT ON PRODUCERS IS A LITTLE  
25 BIT DIFFERENT. BUT THE CODE ACTUALLY SAYS, I'M GOING TO

1 PARAPHRASE, BUT IN THE EVENT THAT SOMETHING CHANGES, WE'LL  
2 CHANGE, WE'LL RESERVE THE RIGHT TO LOOK AT THE PRICE  
3 RELATIONSHIP AGAIN.

4 Q. IF I'M MISQUOTING THIS, PLEASE LET ME KNOW. I DON'T  
5 BELIEVE THAT I AM, BUT IN YOUR PRIOR COLLOQUY YOU SAID THAT THE  
6 NEVADA DAIRY COMMISSION ATTEMPTS TO ESTABLISH MINIMUM PRICES.  
7 AND I WONDERED IF THAT WAS PERHAPS A WORD THAT YOU INTENDED OR  
8 DIDN'T INTEND TO USE, AND IF -- IF YOU DID INTEND IT, ATTEMPTED  
9 TO ESTABLISH MINIMUM PRICES, DID THEY, HAVE THEY FAILED OR ARE  
10 THEY LESS THAN EFFECTIVE AT DOING SO?

11 A. NO, THEY ESTABLISH MINIMUM PRICES PER THEIR CODE EACH  
12 MONTH.

13 Q. I WILL DEFER THE REST OF MY QUESTIONS UNTIL WE ADDRESS  
14 THOSE TOPICS IN GREATER DETAIL. THANK YOU, YOUR HONOR.

15 MS. HANCOCK: NICOLE HANCOCK. I JUST WANTED TO CLARIFY  
16 THAT LAST QUESTION.

17 BY MS. HANCOCK:

18 Q. YOU WEREN'T SAYING THAT THE NEVADA DAIRY COMMISSION  
19 SETS THE PRICES FOR THE SOUTHERN NEVADA, WERE YOU?

20 A. I'M NOT FAMILIAR THAT THEY DO. I THINK THE CODE  
21 EXPRESSLY SAYS NORTHERN NEVADA AND THE NORTHERN CALIFORNIA  
22 CALIFORNIA PRICE.

23 Q. AND IN SOUTHERN NEVADA THERE'S NO ORDER COVERING CLARK  
24 COUNTY; IS THAT RIGHT? I THINK THAT'S WHAT YOU TESTIFIED  
25 EARLIER.

1           A.    I THINK THAT'S RIGHT IN THE NEVADA CODE, AND I DON'T  
2 THINK IT MENTIONS SOUTHERN NEVADA.

3           Q.    NO FEDERAL ORDER I THINK I SHOULD SAY.

4           A.    YES.

5           Q.    OKAY.    THANK YOU.

6           JUDGE CLIFTON:   IS THERE OTHER CROSS-EXAMINATION OF  
7 MR. HOLLON?

8           MR. RICHMOND:   BILL RICHMOND, USDA.   THANK YOU, MR. HOLLON,  
9 THANK YOU, YOUR HONOR.

10           I THINK BEFORE WE -- WE OBVIOUSLY HAVE A SIGNIFICANT  
11 NUMBER OF QUESTIONS FOR THE WITNESS, BUT I THINK IT WOULD  
12 REALLY HELP US KIND OF ORGANIZE OUR LINE OF QUESTIONING IF THE  
13 WITNESS OR THE WITNESS'S ATTORNEY COULD PERHAPS WALK US THROUGH  
14 THE POTENTIAL OUTLINE OR POTENTIAL PLAN FOR HOW THE REMAINDER  
15 OF THE TESTIMONY MAY BE BROKEN UP, IF THAT'S POSSIBLE.

16           JUDGE CLIFTON:   IN OTHER WORDS, IF THERE ARE GOING TO BE  
17 OTHER SPEAKERS ON OTHER TOPICS, AND YOU KNEW THAT, YOU MIGHT  
18 SAVE SOME OF YOUR QUESTIONS FOR THOSE SPEAKERS.

19           MR. RICHMOND:   YES.

20           JUDGE CLIFTON:   I THINK THAT'S AN EXCELLENT IDEA.  
21 MR. BESHORE, IS THIS -- WELL, LET ME SEE HOW MUCH TIME WE HAVE  
22 LEFT.   OKAY.   IT'S 4:10, WE'RE GOING TO STOP NO LATER THAN  
23 4:45, SO WE STILL HAVE HALF AN HOUR UNLESS WE TAKE A BREAK.

24           DO YOU WANT, MR. BESHORE, NOW TO GIVE US AN OUTLINE?  
25 WHAT WOULD YOU LIKE TO DO?   PLEASE COME TO THE MICROPHONE.

1 MR. BESHORE: I WOULD BE HAPPY TO PROVIDE SOME INFORMATION  
2 NOW IN TERMS OF WHAT THE REST OF OUR CASE LOOKS LIKE.

3 IN THE ORDER -- THE ORDER OF PRESENTATION HAS BEEN,  
4 CONTINUES TO BE SUBJECT TO THE AVAILABILITY OF WITNESSES, AND  
5 HOW THINGS PROGRESS, AND THAT SORT OF THING. BUT LET ME  
6 JUST -- LET ME GO THROUGH SOME OF IT.

7 SO AFTER MR. HOLLON IS COMPLETED, WE HAVE A WITNESS WHO  
8 IS GOING TO ADDRESS PRIMARILY THE UNIFORM PROCESSES THAT WE  
9 PROPOSE TO PUT IN THIS ORDER AS INCLUDING THE 60, 61, 62 WHICH  
10 ARE NOT PRECISELY UNIFORM, BUT INCLUDE THE PPD CALCULATION AND  
11 PRICE ANNOUNCEMENTS. OKAY?

12 SUBSEQUENT TO THAT, THE WITNESS, ASSUMING AGAIN, THAT  
13 AVAILABILITY AND TIMING, ETCETERA, WE HAVE TWO WITNESSES WHO  
14 WOULD BE FOCUSED PRIMARILY ON THE QUOTA PROGRAM ISSUES. AND,  
15 IN ADDITION, THAT WOULD INVOLVE TESTIMONY CONCERNING HOW THE  
16 QUOTA INFORMATION AND ADMINISTRATION PROCESS WORKS IN TERMS OF,  
17 PROPOSED TO WORK, IN TERMS OF CDFA AND USDA. AND THAT INVOLVED  
18 THE REPORTING PROCESS, AND THOSE SORT OF RELATED ADMINISTRATIVE  
19 ISSUES. AND THE TESTIMONY, OF COURSE, WOULD ADDRESS THE  
20 IMPORTANCE OF QUOTA TO THE CALIFORNIA DAIRY FARMERS WHO OWN IT.  
21 AND THE IMPORTANCE OF ITS CONTINUATION.

22 SO WE HAVE, AT SOME POINT, AVAILABILITY, A WITNESS WHO  
23 WILL TALK GENERALLY TO THE HISTORY OF -- HISTORY OF THE ACT AND  
24 ORDERS, AND PARAGRAPH FUNCTIONS AND THE ACT, AND SOME OF THE  
25 BROAD CONCEPTUAL ISSUES THAT HAVE BEEN RAISED FROM THE

1 PERSPECTIVE OF MANY, MANY YEARS OF INVOLVEMENT.

2 WE HAVE THEN, A PRESENTATION ON THE POOLING PROGRAM  
3 THAT WE PROPOSE. WE HAVE GOT ANOTHER PRESENTATION ON THE  
4 PRICE, FOCUSED ON JUST THE PRICES, IN PARTICULAR THE -- WELL,  
5 ALL THE PRICES, BASICALLY. FOCUSED ON THE PRICES.

6 MAYBE SOME ADMINISTRATIVE ISSUES AROUND THOSE  
7 PARTICULAR PROVISIONS IN THE REGULATIONS AND PROGRAMMING  
8 PRICES. THEN WE HAVE A PIECE ON THE TRANSPORTATION POOL, AND A  
9 PIECE ON THE PRODUCER-HANDLER PROVISION THAT'S KIND OF DANGLING  
10 OUT THERE, BECAUSE ANYWHERE ELSE.

11 SO THAT'S, IN THAT ORDER IS HOW WE HAVE PRESENTLY HAVE  
12 OUR PRESENTATION LINED UP.

13 JUDGE CLIFTON: AND YOU ACTUALLY DID SAY TRANSPORTATION  
14 POOL?

15 MR. BESHORE: THAT'S WHAT I CALL IT, YEAH. TRANSPORTATION  
16 CREDIT SYSTEM WITHIN THE PROPOSED ORDER, YEAH. TRANSPORTATION  
17 POOL IS PROBABLY NOT THE RIGHT WORDING, AND, YOU KNOW, I WOULD  
18 PROBABLY BE BETTER IF WE WEREN'T ON THE RECORD FOR THIS, BUT  
19 TRANSPORTATION CREDIT PROVISION, THEY SPEAK FOR THEMSELVES. IT  
20 IS A TYPE OF HANDLING CERTAIN TRANSPORTATION EXPENSES THROUGH  
21 THE POOL.

22 JUDGE CLIFTON: OKAY. NOW, DID YOU FINISH?

23 MR. BESHORE: YES.

24 JUDGE CLIFTON: HOW LONG, IF THERE, IF THERE WERE NO MORE  
25 CROSS-EXAMINATION OF MR. HOLLON, HOW LONG DO YOU THINK YOUR

1 REDIRECT OF MR. HOLLON WOULD TAKE?

2 MR. BESHORE: YOU KNOW, TEN MINUTES OR SO. MR. HOLLON IS  
3 INCLUDED AMONG THE SUBSEQUENT PRESENTATIONS. HE'S GOING TO BE  
4 BACK AND I'M NOT GOING TO, YOU KNOW, I'M NOT GOING TO GO INTO  
5 THINGS THAT YOU COVERED LATER. I DON'T HAVE LONG, LONG  
6 REDIRECT I HAVE SOME REDIRECT.

7 JUDGE CLIFTON: ALL RIGHT. AND ARE YOU PREPARED TO DO IT  
8 TODAY IF THERE'S TIME?

9 MR. BESHORE: IF THERE'S TIME, AND FOR EVERYBODY ELSE, A  
10 COUPLE MINUTES THERE, SURE. WE'RE GONNA CRAMP OUR ENDING TIME  
11 PERHAPS, BUT I'M PREPARED, YES.

12 JUDGE CLIFTON: OKAY. MR. RICHMOND, GIVEN THAT, WHAT --  
13 WHAT WOULD YOU LIKE TO QUESTION MR. HOLLON NOW?

14 MR. RICHMOND: I THINK GIVEN OUR TIME RESTRAINTS, WE'RE  
15 PERFECTLY FINE WITH MR. BESHORE PROCEEDING. THAT'S FINE FOR  
16 US.

17 JUDGE CLIFTON: WELL, WE DON'T REALLY HAVE TIME  
18 CONSTRAINTS, UNLESS WE FORCE OURSELVES INTO THEM. IN OTHER  
19 WORDS, IF IT IS YOUR TURN TO ASK QUESTIONS, IF YOU WANT TO ASK  
20 THEM NOW YOU CAN.

21 MR. RICHMOND: GREAT.

22 JUDGE CLIFTON: IF YOU DON'T WANT TO, I MEAN, MR. HOLLON IS  
23 GOING TO BE HERE TOMORROW. SO IF YOU DON'T WANT TO ASK THEM  
24 NOW, LET ME KNOW.

25 MR. RICHMOND: I THINK WHAT WE PREFER TO DO IS JUST TRY TO



1 GO BACK TO THE BEGINNING AND SUMMARIZE MR. HOLLON'S TESTIMONY,  
2 AND PERHAPS THIS COULD BE PART OF MR. BESHORE'S REDIRECT.  
3 REALLY THE ONLY QUESTION I HAVE AT THIS POINT IS, I WANTED TO  
4 GIVE MR. HOLLON --

5 MR. HOLLON: YOU WANT TO KNOW WHAT HORIZONTAL EQUITY IS,  
6 RIGHT?

7 MR. RICHMOND: NO, WE'RE NOT GOING TO TALK ABOUT THAT AT  
8 ALL. ALL I WANTED TO DO IS, I THINK WE HAVE A GOOD  
9 UNDERSTANDING OF THIS INTRODUCTORY EXHIBIT AND THE WAY IT  
10 ATTEMPTS TO EXPLAIN THE ISSUE FROM THE BEGINNING, AND PROVIDE  
11 THIS OVERARCHING KIND OF TROUBLED SPACE EXPLANATION OF THE  
12 ISSUE OF THE DISORDER, THE REASON THAT WE'RE HERE.

13 AND SO I JUST WANTED KNOW, TO GIVE THE WITNESS THE  
14 CHANCE TO DESCRIBE TO US, IF HE WISHES, IN JUST FREE-SPEAKING  
15 TERMS, WHY WE'RE HERE, WHAT THIS IS ALL ABOUT, AND WHAT THE  
16 DESIRED OUTCOME OF THE COOPS REALLY IS AND WHY. REALLY JUST A  
17 SUMMARY OF EVERYTHING THAT WE HAVE TALKED ABOUT SO FAR.

18 JUDGE CLIFTON: ALL RIGHT. BEFORE YOU ANSWER, MR. HOLLON,  
19 MR. VLAHOS?

20 MR VLAHOS: JOHN VLAHOS. YOUR HONOR, JUST A POINT OF  
21 CLARIFICATION. AS MR. BESHORE HAS LAID OUT, THE SUBJECT  
22 MATTERS TO BE COVERED BY WITNESSES AND WHAT WILL BE WITNESSES  
23 ON VARIOUS ISSUES, I PRESUME THE SAME WILL BE ASKED OF ALL  
24 PARTIES WHO ARE PRESENTING EVIDENCE, PARTICULARLY PROPONENTS,  
25 BUT ALSO OPPONENTS WILL LAY OUT THEIR BLOCKS OF TESTIMONY ARE

1 AND, IF POSSIBLE, THE ORDER.

2 JUDGE CLIFTON: SO YOU ARE ASKING FOR THAT?

3 MR. VLAHOS: ASKING FOR RECIPROCITY.

4 JUDGE CLIFTON: RECIPROCITY WE HAVE NOW. I'LL PLAY THAT BY  
5 EAR.

6 MR. VLAHOS: THANK YOU.

7 JUDGE CLIFTON: IF I UNDERSTAND YOUR QUESTION, AND I THINK  
8 IT IS GOOD THAT HE DO THAT FOR YOU BEFORE MR. BESHORE'S  
9 REDIRECT, BECAUSE THEN MR. BESHORE CAN MOP UP. BUT BEFORE YOU  
10 GET TO THE BROAD PICTURE, I WOULD LIKE MR. HOLLON TO EXPLAIN  
11 THE ERRORS THAT WERE REVEALED IN CROSS-EXAMINATION, AND HOW  
12 THEY CREPT INTO THIS DOCUMENT. YOU TALKED ABOUT DOWNLOAD, BUT  
13 I DIDN'T UNDERSTAND WHAT THAT MEANT.

14 MR. HOLLON: ON PAGE, ON TABLE 1B4, COLUMN H AND K FOR THE  
15 MONTHS OF FEBRUARY 2012, THROUGH, I THINK, JANUARY OF 2013, AND  
16 WHATEVER MONTHS NEED TO BE, THOSE PRICES ARE NOT THE CORRECT  
17 PRICES. SO HOWEVER I GOT THEM FROM THE CDFA DATABANK, WHETHER  
18 I COPIED THEM WRONG, IT'S HARD FOR ME TO IMAGINE THEY WERE  
19 WRONG ON THE SITE, BUT IF THEY WERE WRONG ON THE SITE, THOSE  
20 PRICES ARE NOT CORRECT.

21 SO THAT MEANS THAT COLUMN I, L, M, AND N WOULD ALSO BE  
22 REVISED. SO AS A MATTER OF ME GOING BACK AND PUTTING IN THE  
23 RIGHT NUMBERS, AND THEN THOSE WOULD CALCULATE. AND ON TABLE  
24 1B5, A PORTION OF THE AVERAGES FOR THAT WOULD HAVE OVERLAPPED  
25 ON THOSE PERIODS. IF YOU LOOK ALL THE WAY OVER ONTO THE LEFT,

1 THERE CALENDAR DATES THAT SAYS AVERAGE FOR EXAMPLE, THE VERY  
2 BOTTOM ONE SAYS AUGUST OF 2012 TO CURRENT MEDIAN, SO THAT  
3 NUMBER WOULD BE INCORRECT TO THE EXTENT THEY WERE INCORRECT  
4 ABOVE. SO THAT BEHOOVES ME TO CORRECT THOSE. AND THAT WOULD  
5 ALSO IMPLY THAT WHERE THOSE SAME THINGS HAPPEN ON TABLE 1C,  
6 THERE WOULD BE SOME ADJUSTMENTS IN THOSE NOTES. AND THOSE  
7 CORRECTIONS WOULD -- WOULD NOT, IN ANYWAY, IMPACT TABLE 1A1.  
8 SO THOSE WERE MY ERROR, AND I WILL CORRECT THOSE SPREADSHEETS.

9 JUDGE CLIFTON: NOW, LET'S TALK ABOUT HOW WE WILL LABEL  
10 THOSE AS EXHIBITS SO THAT A PERSON LOOKING AT THE RECORD,  
11 LOOKING AT EXHIBIT 20 WILL KNOW TO LOOK FURTHER.

12 I, NORMALLY I DON'T ASSIGN THINGS EXHIBIT 20(A) AND  
13 EXHIBIT 20(B) UNLESS I STARTED WITH EXHIBIT 20(A). BUT I THINK  
14 IN THIS CASE, I WANT TO ASSOCIATE YOUR CORRECTIONS WITH THE  
15 EXHIBIT 20. SO I THINK I'M GOING TO ASK YOU, MR. HOLLON, WHEN  
16 YOU ARE READY TO GIVE US THE CORRECTION SHEETS, TO INDICATE  
17 THAT THESE ARE TO SUPPLEMENT EXHIBIT 20, THAT THEY PROVIDE  
18 CORRECTIONS FOR EXHIBIT 20, AND I WANT SOMEONE TO REMIND ME, I  
19 WOULD LIKE TO DESIGNATE THOSE AS EXHIBIT 20(A) SO THAT THEY  
20 WILL BE TOGETHER IN THE NUMERIC ORDER OF THE DOCUMENTS.

21 I THINK THAT WOULD BE THE BEST WAY TO HANDLE THAT IN  
22 THIS CASE. WILL YOU BE ABLE TO WORK ON THAT WHILE YOU ARE HERE  
23 AT THIS HEARING?

24 MR. HOLLON: I WILL.

25 JUDGE CLIFTON: GREAT. OKAY. THAT'S GOOD. ALL RIGHT.

1 MR. RICHMOND? DO YOU WANT HIM TO START WITH WHY WE'RE HERE?

2 MR. RICHMOND: BILL RICHMOND. I THINK THAT -- WE WOULD  
3 WILL REALLY APPRECIATE IT FOR THE RECORD, JUST TO SPEAK FREELY  
4 AND TO GIVE US A NICE BASIC SUMMARY OF THIS DOCUMENT. YOU HAVE  
5 DONE A GREAT JOB IN YOUR TESTIMONY SO FAR, AND I THINK WE ALL  
6 TOTALLY UNDERSTAND THE REASON YOU ARE HERE, BUT THIS IS YOUR  
7 CHANCE TO KIND OF BRING YOUR TESTIMONY FULL CIRCLE AND MAKE  
8 SURE WE UNDERSTAND WHAT WE NEED TO UNDERSTAND.

9 MR. HOLLON: ALL RIGHT. I WILL TRY TO DO THAT.

10 I THINK, AS WE HAVE OUTLINED TODAY, WE HAVE -- WE HAVE  
11 COMPARED AND CONTRASTED ANNOUNCED PRICES IN THE CALIFORNIA  
12 SYSTEM AND THE FEDERAL SYSTEM, AND NOTED WHERE THERE ARE  
13 DIFFERENCES, AND NOTICED IN OUR REVIEW, THAT THOSE DIFFERENCES  
14 DON'T RESULT IN UNIFORM PRICES TO HANDLERS IN SIMILAR  
15 CONDITIONS.

16 WE HAVE ALSO ATTEMPTED TO MAKE A COMPARISON OF PRODUCER  
17 PRICES USING THE MAILBOX MILK PRICE FORMAT, AND WE FEEL LIKE  
18 THAT IS A VALID FORMAT TO USE, AND THAT IT COMPARES DATA ACROSS  
19 THE BROAD SPECTRUM FROM AREAS THAT WE THINK HAVE SIMILAR  
20 CHARACTERISTICS, NOTING THAT NO AREA IS PERFECTLY IDENTICAL.

21 WE ALSO HAVE POINTED OUT IN OUR OPENING STATEMENT, AND  
22 WILL BE POINTED OUT IN OTHER STATEMENTS, THAT THE ORDER SYSTEM  
23 HAS REGIONALIZED PRICES FOR CLASS 1, AND SINGLE UNIFORM NATION-  
24 WIDE PRICES FOR THE OTHER CLASSES, AND THAT THOSE DIFFERENCES  
25 ARE ROOTED IN ORDER POLICY AND DIRECTIVE, SUBSTANTIATED BY THE

1 UNDERLYING LEGISLATION, AND THOSE PRICES COLLECT MARKET  
2 INFORMATION ALL OVER THE COUNTRY FROM UNREGULATED TRANSACTIONS,  
3 AND ARE USED TO PUBLIC THE CLASS PRICES THAT GENERATE THE CLASS  
4 PRICES WE PREPARED, AND THAT ULTIMATELY GENERATE THE MAILBOX  
5 MILK PRICES IN SOME FORM THAT WE OUTLINED.

6 BUT IT'S OUR VIEW THAT BECAUSE OF THE DIFFERENCES  
7 BETWEEN THE WAY THE STATE ORDER WORKS AND THE FEDERAL ORDER  
8 WORKS, CALIFORNIA PRODUCERS AREN'T GETTING THE BENEFITS OF THAT  
9 NATIONAL SYSTEM, AND WE WOULD LIKE TO HAVE THEM. AND SO WE ARE  
10 HERE TO LAY OUT THAT DATA, AND, YOU KNOW, REQUEST THAT THE  
11 SECRETARY CONSIDER PUTTING IN A FEDERAL ORDER IN CALIFORNIA.

12 THERE WILL BE, I THINK AS I INDICATED EARLIER, THERE'S  
13 PROBABLY NOT A SINGLE SMOKING GUN, AND ONE DISADVANTAGE, IF YOU  
14 WILL, TO ANY OTHER ORDER OF HEARING I HAVE BEEN IN, ALMOST ANY  
15 OTHER ORDER HEARING I HAVE BEEN INVOLVED IN, THERE'S SIMPLY A  
16 WIDE RANGE OF PROPOSAL. I MEAN, WE WILL END UP TALKING ABOUT  
17 EVERY PROVISION. SO THAT CREATES, YOU KNOW, A LONG AND ARDUOUS  
18 PROCESS, BUT THIS NEEDS TO BE DONE.

19 WE FEEL LIKE THE POLICY OF HAVING NATIONWIDE CLASS  
20 PRICES AND THE PRICE FORMULAS, YIELD FACTORS, MAKE ALLOWANCES,  
21 THOSE THINGS HAVE BEEN DETERMINED FOR THOSE PRODUCTS, BUT  
22 THERE'S ALSO ORDER PROVISIONS THAT ARE UNIQUE TO EACH ORDER,  
23 AND THAT'S COMMON IN THE SYSTEM. THE PERFORMANCE STANDARDS IN  
24 CALIFORNIA ORDER -- OR PICK ANOTHER ONE, IN THE FLORIDA ORDER  
25 ARE NOT SIMILAR TO IN THE SOUTHEAST ORDER OR THE NORTHEAST

1 ORDER, AND REFLECT CONDITIONS THAT ARE IN THAT MARKETPLACE.

2 THE MOST UNIQUE THING ABOUT THE CALIFORNIA MARKETPLACE  
3 IS THE QUOTA SYSTEM AND ITS IMPACT ON POOLING IN THOSE  
4 CALCULATIONS, PERFORMANCES, VALUES, AND SO IT HAS TO BE  
5 RECOGNIZED IN OUR PROPOSAL, AND SO WE WILL EXPLAIN THAT, AND  
6 EXPLAIN OUR VIEW, AND EXPLAIN HOW IT NEEDS TO BE RECOGNIZED,  
7 AND EXPLAIN THE FINANCIAL IMPACT, AND DISCUSS THE IMPACT OF  
8 THAT ON THE POOLS THAT RESULT, AND WHY OUR PROPOSAL INCLUDES  
9 INCLUSIVE POOLING AS A MEANS OF SPEAKING TO THE OTHER  
10 PROPOSALS, SO WE WILL SPEAK TO EACH ONE, SOME WILL NEED MORE  
11 SPEAKING THAN OTHERS, AND IN SOME CASES BOTH PARTIES HAVE  
12 REQUESTED THE SAME THING, SO HOPEFULLY THOSE WON'T NEED AS MUCH  
13 CONVERSATION AS OTHERS.

14 AND THEN, AS MR. BESHORE OUTLINED, WE'LL SEPARATE OUT  
15 THE PRODUCER-HANDLER PROVISIONS, THE TRANSPORTATION PROVISIONS,  
16 THE QUOTA PROVISIONS, THE PRICING PROVISIONS, THOSE WILL BE  
17 HANDLED IN SEPARATE TESTIMONIES, BUT WILL OUTLINE OUR VIEWS AND  
18 THE APPROPRIATE LANGUAGE TO DO IT.

19 SO I THINK THAT'S THE END.

20 MR. RICHMOND: BILL RICHMOND. I APPRECIATE THAT.

21 MR. HOLLON: OKAY. WE'LL SEE IF IT'S THE END.

22 MR. RICHMOND: THAT'S ALL WE HAVE FOR TODAY, YOUR HONOR.

23 JUDGE CLIFTON: AND DID HE ADEQUATELY RESPOND TO YOUR  
24 INQUIRY ABOUT THE DESIRED OUTCOME?

25 MR. RICHMOND: ABSOLUTELY.

1 JUDGE CLIFTON: MR. BESHORE, DO YOU HAVE ANY REDIRECT?

2 MR. BESHORE: I JUST -- MARVIN BESHORE -- A FEW QUESTIONS  
3 ON REDIRECT ALSO. I THINK THIS HAS BEEN ESTABLISHED, BUT YOU  
4 WILL REDO THE EXHIBITS 1(B) AND 1(C) AND MAKE THEM AVAILABLE  
5 PERHAPS THE NEXT TIME YOU TAKE THE STAND, OR DURING THE HEARING  
6 HERE TO DIRECT THOSE NUMBERS THAT WERE FOUND TO HAVE BEEN  
7 ERRONEOUS.

8 MR. HOLLON: I WILL TRY TO HAVE THEM AVAILABLE ON MONDAY.

9 MR. BESHORE: OKAY. LET'S -- LET ME ASK ABOUT, A QUESTION  
10 OR TWO ABOUT EXHIBIT 23.

11 REDIRECT EXAMINATION

12 BY MR. BESHORE:

13 Q. DO YOU HAVE THAT? THE NONPOOL HANDLER LIST, AUGUST  
14 2015, FEDERAL ORDER NUMBER I?

15 A. YES.

16 Q. NOW, AND I THINK YOU CORRECTED THIS ON YOUR OWN, ON  
17 YOUR OWN REQUEST, BUT YOU MISIDENTIFIED ONE OF THE DFA PLANTS  
18 THAT ARE ON THIS LIST, THE MECHANICSBURG PLANT.

19 A. YES.

20 Q. BUT YOU SAID YOU CONFUSED IT WITH ANOTHER PLANT, WHICH  
21 WAS -- WHICH WAS WHICH PLANT?

22 A. DFA PLANT, THE DFA PLANT IN MIDDLEBURY, PENNSYLVANIA.

23 Q. OKAY. IS THAT ON THIS LIST?

24 A. ACTUALLY, I'M NOT CERTAIN IF IT IS.

25 Q. OKAY. WELL, WHY --

1 A. NO, IT'S NOT.

2 Q. OKAY. SO IT'S NOT A NON-POOL PLANT THEN?

3 A. THAT'S CORRECT.

4 Q. OKAY. SO IS THAT -- THAT'S A BUTTER POWDER BALANCING  
5 PLANT IN MIDDLEBURY, PENNSYLVANIA?

6 A. THEY DON'T MAKE BUTTER, THEY MAKE MILK POWDERS AND  
7 CONDENSED MILK PRODUCTS AND SPECIAL BLEND PRODUCTS.

8 Q. OKAY. NOW, THE PLANTS, NON-POOL -- NON-POOL HANDLERS  
9 LISTED ON EXHIBIT 23, DO THEY DEAL SOLELY IN NON-POOL MILK?

10 A. IN NON-POOL MILK?

11 Q. YEAH, THEY ARE NON-POOL HANDLERS, DOES THAT MEAN THEY  
12 ARE DEALING IN NON-POOL MILK?

13 A. NO. I WOULD SAY MANY OF THESE PLANTS MAKE SPECIALTY  
14 PRODUCTS. THEY RECEIVE INGREDIENTS, BUT TO THE EXTENT THAT  
15 THEY RECEIVE SOME AMOUNT OF MILK OR A LOT OF MILK, ALMOST ALL  
16 THAT MILK WOULD BE POOLED WOULD BE A PRETTY RARE CIRCUMSTANCE  
17 THAT MILK DELIVERED TO ANY OF THESE PLANTS, NUMBER ONE,  
18 WOULDN'T BE FULLY POOLED, TWELVE MONTHS OUT OF TWELVE.

19 Q. OKAY. AND IF IT'S POOLED, THEN IT'S PRICED?

20 A. CORRECT.

21 Q. POOLED UNDER A FEDERAL ORDER, CORRECT?

22 A. POOLED UNDER A FEDERAL ORDER.

23 Q. PRICED UNDER A FEDERAL ORDER?

24 A. CORRECT.

25 Q. AND THEREFORE, THE POOLING HANDLER THAT WAS OBLIGATED



1 TO THE -- TO ACCOUNT TO THE POOL FOR THE MINIMUM REGULATED  
2 PRICE?

3 A. CORRECT.

4 Q. OKAY. NOW, SO IT'S YOUR TESTIMONY THAT DESPITE THE  
5 FACT THERE'S ALL THESE NON-POOL HANDLERS, THAT -- I THINK YOU  
6 SAID SOMETHING LIKE, NEARLY ALL OR ESSENTIALLY ALL THE MILK  
7 WOULD HAVE BEEN POOLED MILK THAT THEY HANDLED?

8 A. THAT'S CORRECT.

9 Q. OKAY. SO, I MEAN, IS THAT -- IS THAT THE CASE -- WHY  
10 IS IT -- HOW IS THAT IN ORDER 1?

11 A. ORDER 1 HAS THE, PERHAPS THE MOST RESTRICTIVE POOLING  
12 PROVISIONS OF ANY OF THE EXISTING ORDERS. AND IF YOU TAKE MILK  
13 OFF OF THE POOL, I'M GOING TO BROADLY CHARACTERIZE IT, IF YOU  
14 TAKE MILK OFF OF THE POOL, YOU CAN'T PUT IT BACK ON, CAN'T  
15 INCLUDE IT IN THE POOL UNTIL THE MARKETING YEAR IS OVER. SO  
16 THAT RUNS FROM JULY THROUGH JUNE. SO IF IN THE MONTH OF  
17 DECEMBER YOU DECIDED YOU DIDN'T WANT TO POOL SOME MILK FOR SOME  
18 REASON, THAT MILK WOULD, IN MOST CASES, HAVE TO REMAIN OFF OF  
19 THE POOL UNTIL THE FOLLOWING JULY. SO THAT CAN RESULT IN A  
20 PRETTY BIG FINANCIAL CALCULATION, AND NO ONE CHOOSES TO DO  
21 THAT.

22 Q. OKAY. THANK YOU. ARE THERE PREMIUMS -- YOU'RE  
23 INVOLVED OR FAMILIAR GENERALLY AT LEAST, WITH MARKETING ALL  
24 FEDERAL ORDERS AS YOU TESTIFIED. ARE THERE PREMIUMS IN ALL  
25 FEDERAL ORDERS?

1 A. YES.

2 Q. OF DIFFERENT LEVELS?

3 A. WIDELY DIFFERENT LEVELS, BUT YES, THERE ARE PREMIUMS IN  
4 ALL FEDERAL ORDERS FOR CLASS I, CLASS II, AND IN SOME CASES  
5 III, AND IN SOME CASES IV.

6 Q. DO THE MINIMUM, DO THE PRICES THAT PRODUCERS END UP  
7 RECEIVING WHICH ARE REFLECTED IN THE MAILBOX PRICES, THEREFORE,  
8 REFLECT A COMBINATION OF THE MINIMUM REGULATED PRICE PLUS THE  
9 PREMIUMS?

10 A. YES, BUT YOU HAVE TO CONSIDER THAT THE ANNOUNCED  
11 PREMIUMS AND THE RESULTING DOLLARS AVAILABLE TO BE PAID, YOU  
12 KNOW, DON'T NECESSARILY MATCH, AND THE ANNOUNCED PREMIUM PRICES  
13 ALWAYS, I'LL SAY ALWAYS, BUT MOST ALWAYS CONTAIN SOME ELEMENT  
14 OF MAYBE THE REGULATED PRICE, FOR EXAMPLE, IN ONE OF  
15 MR. ENGLISH'S QUESTIONS, THE ANNOUNCED PREMIUM CONTAINS THE 20  
16 CENTS PER HUNDREDWEIGHT PROMOTION PAYMENT THAT THE PROCESSOR IS  
17 OBLIGATED TO. WELL, THAT'S IN THE PRICE ANNOUNCEMENT, BUT THAT  
18 MONEY IS IN AND OUT, SO THAT'S NOT AVAILABLE FOR PRODUCER  
19 PREMIUM. SO -- SO THE ANSWER TO START OUT WITH WAS YES, BUT  
20 LIKE IN MOST THESE HEARINGS, IT IS NOT A SIMPLE YES.

21 Q. SO YOU WERE TALKING THERE ABOUT ANNOUNCED PREMIUMS  
22 WHICH GENERALLY RELATE TO CLASS I SALES?

23 A. GENERALLY, BUT THERE ARE ANNOUNCED PREMIUMS ON CLASS II  
24 IN MANY MARKETS.

25 Q. AND ARE THERE, GENERALLY THERE ARE NOT ANNOUNCED

1 PREMIUMS RELATED TO CLASS III AND CLASS IV SALES, CORRECT?

2 A. FOR THE MOST PART, YES.

3 Q. BUT THERE ARE NEVERTHELESS, NEGOTIATED AND ACTUAL  
4 PREMIUMS?

5 A. YES.

6 Q. ON MANY, IF NOT MOST, IF NOT ALL THOSE SALES IN FEDERAL  
7 ORDERS?

8 A. YES.

9 Q. SO THE MAILBOX PRICES, THEN, REFLECT THE COMBINATION OR  
10 RESULT OF THE REGULATED MINIMUMS, PLUS WHATEVER PREMIUMS ARE  
11 APPLICABLE IN THAT MARKETPLACE FOR THAT PRODUCER?

12 A. THAT WOULD BE CORRECT.

13 Q. SO IF YOU START LIKE YOU DO IN CALIFORNIA WITH A  
14 LOWER -- AND BY THE WAY, ARE THERE PREMIUMS IN CALIFORNIA?

15 A. YES, THERE ARE.

16 Q. SO IF YOU START WITH A SUBSTANTIALLY LOWER REGULATED  
17 MINIMUM PRICE, EVEN WITH PREMIUMS YOU ARE GOING TO END UP AS  
18 YOU ARE, AS YOUR, TEND TO END UP AS YOUR DATA DOCUMENTS WOULD  
19 LOWER TOTAL PRICE?

20 A. THAT WOULD BE CORRECT.

21 Q. SO IF YOU START WITH A HIGHER MORE UNIFORM MINIMUM  
22 REGULATED PRICE, AND YOU HAVE SOME PREMIUMS, YOU ARE GOING TO  
23 BE CLOSER TO THE MARKET?

24 A. CORRECT.

25 Q. AND THAT'S ONE OF THE GOALS OR MAYBE THE KEY GOAL OF

1 THE PROPOSAL?

2 A. THAT WOULD BE ALSO A KEY GOAL OF THE PROPOSAL.

3 Q. OKAY. AND JUST TO ANOTHER QUESTION OR TWO.

4 YOU WERE ASKED A QUESTION ABOUT YOUR PLANT, DFA PLANT  
5 PLANT IN TEXAS, AND I THINK YOU HAVE TESTIFIED THAT'S IN THE  
6 HOUSTON AREA, THE CHEESE PLANT?

7 A. THAT IS CORRECT.

8 Q. SO IF A PRODUCER IN EASTERN NEW MEXICO WANTED TO MARKET  
9 TO THAT PLANT, WHAT'S THE -- WHAT'S THE FREIGHT FROM NEW MEXICO  
10 TO HOUSTON, BALLPARK?

11 A. 600 MILES.

12 Q. AND WHAT DOES IT COST TO MOVE MILK?

13 A. \$3 A MILE WOULD BE TOTALLY OUT OF THE RANGE, SO 3 TIMES  
14 6 IS, WOULD BE \$1800, DIVIDED BY FIVE. 50,000 POUNDS WOULD BE  
15 SOME NUMBER PER HUNDREDWEIGHT. THAT WOULD BE PRETTY GOOD SIZE.

16 Q. MIGHT COST \$1800?

17 A. PER LOAD.

18 Q. PER LOAD FOR A 50,000 POUNDS, SO WE CAN DO THE DIVISION  
19 THERE, IT MIGHT COST \$3 BUCKS OR SO, MAYBE MORE, PER  
20 HUNDREDWEIGHT TO GET THE MILK TO THAT CHEESE PLANT?

21 A. I HAVE BEEN SITTING HERE FOR FIVE OR SIX HOURS, SO IF  
22 YOU SAY THAT'S \$3 BUCKS A HUNDREDWEIGHT --

23 Q. I THINK IT IS MORE THAN 30 CENTS, AT LEAST MORE THAN 30  
24 CENTS, AND PROBABLY LESS --

25 A. IT IS A SIGNIFICANT NUMBER.

1 Q. OKAY. AND THAT'S ONE OF THE ELEMENTS OF THE  
2 TRANSACTIONS FROM NEW MEXICO THAT YOU HAVE NOTED?

3 A. THAT'S CORRECT.

4 Q. ALL RIGHT. MR. VETNE ASKED YOU ABOUT COMPARING BLEND  
5 PRICE REGULATORY, YOU KNOW, A REGULATORY PAYMENTS IN NEVADA  
6 VERSUS NORTHERN CALIFORNIA. DO YOU REMEMBER THAT? REGULATED  
7 BLEND PRICES IN --

8 A. I REMEMBER THE QUESTION.

9 Q. OKAY. AND YOU SAID YOU COULD COMPARE THAT, YOU COULD  
10 MAKE SOME SORT OF COMPARISON THERE? I GUESS MY QUESTION IS,  
11 WHAT ARE 16 PRODUCERS IN NORTHERN NEVADA?

12 A. YES. 16 OR 17.

13 Q. OKAY. AND HOW MANY, YOU KNOW, IN NORTHERN CALIFORNIA?

14 A. SOME PORTION OF 1400.

15 Q. AND WHAT WERE YOU, I JUST WONDERED, WHAT WERE YOU  
16 THINKING ABOUT WHEN YOU WERE, WHEN YOU WERE SAYING THAT COULD  
17 HAVE SOME KIND OF MEANINGFUL COMPARISON OF THOSE?

18 A. I GUESS WHAT WENT THROUGH MY MIND, IS THERE A WAY TO  
19 ESTIMATE A PLANT BLEND IN A NEVADA HANDLER, WITH A PAY PRICE IN  
20 NORTHERN NEVADA. AND I DON'T NECESSARILY HAVE THE DATA TO DO  
21 ALL OF THAT. THAT'S WHAT I THOUGHT HE WAS ASKING. IF HE WAS  
22 ASKING FOR SOMETHING ELSE, THEN I MISSED IT.

23 Q. OKAY. WHEN YOU ANSWERED, THAT'S WHAT YOU THOUGHT HE  
24 WAS ASKING FOR.

25 A. YES.

1 Q. SOME WAY TO ESTIMATE SOME KIND OF PLANT BLEND IN  
2 NORTHERN NEVADA, AND COMPARE THAT TO THE NORTHERN CALIFORNIA  
3 MARKET ORDER AT PRESENT.

4 A. I THOUGHT HE WAS ASKING ABOUT THE NORTHERN NEVADA AREA.

5 Q. COMPARED TO NORTHERN NEVADA, BUT WASN'T IT BEING  
6 COMPARED TO SOMETHING?

7 A. AGAIN, I GOT -- I THOUGHT THE COMPARISON WAS A NEVADA  
8 PRICE TO PRODUCERS, AND A NEVADA PRICE GENERATED BY A DELIVERY  
9 TO A NEVADA PLANT.

10 Q. THAT'S HOW YOU ANSWERED THE QUESTION?

11 A. YES.

12 Q. OKAY. THANK YOU. I DON'T HAVE ANY OTHER QUESTIONS FOR  
13 MR. HOLLON AT THIS TIME.

14 JUDGE CLIFTON: SO I HAVE ONE, AND IT'S, OF COURSE, A  
15 SPELLING. MECHANICSBURG, PLEASE. I'M LOOKING AT IT, IT IS ON  
16 PAGE 2 OF EXHIBIT 23, SHALL I JUST READ IT INTO THE RECORD?

17 MR. HOLLON: YES.

18 JUDGE CLIFTON: M-E-C-H-A-N-I-C-S-B-U-R-G, PENNSYLVANIA.  
19 MR. HOLLON, THANK YOU SO MUCH, AND YOU MAY STEP DOWN.

20 MR. HOLLON: THANK YOU. IS ANYBODY ELSE STEPPING UP? I  
21 JUST LEAVE MY STUFF HERE FOR A LITTLE WHILE.

22 JUDGE CLIFTON: YOU MAY LEAVE IT FOR FIVE MINUTES, BECAUSE  
23 IT'S TIME FOR US TO MOVE EVERYTHING FROM THIS ROOM TO THE ROOM  
24 WE'RE GOING TO, AND DO WE HAVE SOME MARCHING INSTRUCTIONS AS TO  
25 HOW TO DO THAT?

1 MS. MAY: LAUREL MAY. WE WILL BE MOVING TO INDEPENDENCE  
2 AB, BUT FOR TONIGHT, PROBABLY EVERYBODY NEEDS TO JUST TAKE  
3 THEIR STUFF WITH THEM, AND WE WILL MOVE THE SOUND EQUIPMENT  
4 OVER, AND THE COPIER, BUT ALL YOUR PERSONAL STUFF, WE'RE NOT,  
5 WE WON'T BE SET UP YET TO ACCOMMODATE ALL THAT.

6 JUDGE CLIFTON: ALL RIGHT. IN OTHER WORDS, THE TABLES AND  
7 ALL THE WE ENJOY HERE, AREN'T IN PLACE YET.

8 MS. MAY: THEY WILL BE SET UP IN THE MORNING.

9 JUDGE CLIFTON: OKAY. AND SO I NEED SOME VOLUNTEERS TO  
10 HELP MOVE THE SOUND EQUIPMENT.

11 MS. MAY: WE HAVE GOT THAT COVERED.

12 JUDGE CLIFTON: THANK YOU, AMS DAIRY. AND I WOULD LIKE  
13 OGC TO HELP, TOO. ALL RIGHT.

14 LET'S CLOSE OUR RECORD, THEN, AT 4:42, AND YOU'RE  
15 WELCOME TO COME TOMORROW AS EARLY AS 8:00, WE WILL GO ON RECORD  
16 AT 9:00.

17 (WHEREUPON, THE PROCEEDINGS WERE CONCLUDED FOR THE DAY.)

18 ---000---

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COURT REPORTERS CERTIFICATE

STATE OF CALIFORNIA )  
  )     ss.  
COUNTY OF FRESNO     )

I, MYRA A. PISH, hereby certify:

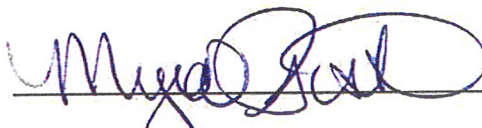
I am a duly qualified Certified Shorthand Reporter, in the State of California, holder of Certificate Number CSR 11613, issued by the Court Reporters Board of California and which is in full force and effect.

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



MYRA A. PISH, CSR  
Certificate No. 11613





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