UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

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

VOLUME XII

TRANSCRIPT OF PROCEEDINGS

October 7, 2015

Myra A. Pish, CRS No. 11613
397075

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6 _____)

7

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

9
          Wednesday, October 7, 2015

10
                9:03 a.m.

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12   Clovis Veterans Memorial District
             808 4th Street

13   Clovis, California 93613

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16   TRANSCRIPT OF PROCEEDINGS

17   VOLUME 12

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23 Reported by:

24 Myra A. Pish CSR
    Certificate No. 11613

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1   I N D E X - V O L U M E   12

2   WITNESSES IN CHRONOLOGICAL ORDER

3   JOHN MYKRANTZ:

8   PAUL CHRIST

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TRANSCRIPT OF PROCEEDINGS - VOLUME XII

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1   WEDNESDAY, OCTOBER 7, 2015 - - MORNING SESSION

2   JUDGE CLIFTON: We're back on record at 9:03 in the morning

3 on Wednesday, October 7, 2015. This is Day 12 of the milk

4 hearing. My name is Jill Clifton, I'm the United States

5 Administrative Law Judge who is assigned to take in the

6 evidence at the hearing and then certify the record. The

7 record will consist of the testimony as represented in the

8 transcripts, including corrections that I might make to them as

9 originally written, and the exhibits.

10   I would like to begin by taking the appearances of

11 others who are participating, beginning with my fellow USDA

12 employees, if they would come forward as a team. And then

13 following them, the teams of proponents and opponents.

14   MR. FRANCIS: Good morning, William Francis, F-R-A-N-C-I-S,

15 United States Department of Agriculture Agricultural Marketing

16 Service, I'm a Dairy Marketing Specialist.

17   MS. MAY: Good morning, Laurel May, L-A-U-R-E-L, M-A-Y,

18 USDA AMS Dairy Program, I'm a Rule Maker on the Order

19 Formulation Enforcement Branch.

20   MS. FRISIUS: Good morning, Meredith Frisius,

21 M-E-R-E-D-I-T-H, F-R-I-S-I-U-S,   I'm a Dairy Product Marketing

22 Specialist -- I looked at my business card.

23   MR. SCHAEFER: Henry Schaefer, H-E-N-R-Y, S-C-H-A-E-F-E-R,

24 Agricultural Economist for the Upper Midwest Milk Marketing

25 Area Federal Order 30, on detail with AMS Dairy Programs.

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1   MR. MYKRANTZ: John Mykrantz, J-O-H-N, M-Y-K-R-A-N-T-Z, I'm

2   an Agricultural Economist with the Pacific Northwest and

3   Arizona orders, on detail with Dairy Programs.

4   MR. HILL: I'm Brian Hill, B-R-I-A-N, H-I-L-L, I'm an

5   attorney with the Office of the General Counsel.

6   MS. BECKER: Good morning, Lauren Becker, L-A-U-R-E-N,

7   B-E-C-K-E-R, Office of the General Counsel.

8   MR. BESHORE: Good morning. Marvin Beshore, M-A-R-V-I-N,

9   B-E-S-H-O-R-E, counsel for the proponents of Proposal Number 1,

10   California Dairies, Dairy Farmers of America, and Land O'Lakes.

11   MR. VLAHOS: John Vlahos, Hanson Bridgett, also counsel for

12   the proponents of Proposal Number 1. J-O-H-N, V-L-A-H-O-S.

13   H-A-N-S-O-N, with an O, B-R-I-D-G-E-T-T.

14   MS. OLIVER THOMPSON: Good morning, Megan Oliver Thompson

15   also with the firm Hanson Bridgett, and co-counsel for the

16   proponents of Proposal Number 1.

17   JUDGE CLIFTON: Would you spell Megan for us?

18   MS. OLIVER THOMPSON: Megan is M-E-G-A-N.

19   MR. SCHAD: Good morning, Dennis Schad, S-C-H-A-D. I work

20   for the Land O'Lakes.

21   MR. ENGLISH: Your Honor, my name is Chip English. C-H-I-P

22   E-N-G-L-I-S-H, I'm with the law firm of Davis, Wright,

23   Tremaine, my office is located in Washington DC, and I'm here

24   on behalf of the Dairy Institute of California, and grateful

25   New York Yankees are out of the playoffs.

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1   MS. VULIN: Ashley Vulin, A-S-H-L-E-Y, V -- as in Victor --

 2   U-L-I-N, also an attorney for Davis, Wright, Tremaine,

 3   representing the Dairy Institute of California.

 4   DR. SCHIEK: Good morning, William Schiek, S-C-H-I-E-K,

 5   Economist with the Dairy Institute.

 6   MS. KALDOR: Good morning, Rachel Kaldor, R-A-C-H-E-L,

 7   K-A-L-D-O-R, Executive Director of Dairy Institute of

 8   California.

 9   MR. NEWELL: Good morning, Michael Newell, M-I-C-H-A-E-L.

10   N-E-W-E-L-L, Director of Sales, with HP Hood, LLC.

11   JUDGE CLIFTON: Come back, if you will. Tell me more about

12   the way I show HP Hood.

13   MR. NEWELL: HP Hood. Is it capital H, capital P and then

14   H-O-O-D.

15   JUDGE CLIFTON: So there's a space between the capital P

16   and the Hood?

17   MR. NEWELL: Yes.

18   JUDGE CLIFTON: But no dots for initials.

19   MR. NEWELL: No dots.

20   JUDGE CLIFTON: Thank you very much.

21   MR. DEJONG: Good morning, James Dejong, J-A-M-E-S,

22   D-E-J-O-N-G, Dairy Policy Economic Analyst with Hilmar Cheese

23   Company, dairy farmer-owned manufacturer of cheese, whey, milk

24   and powder.

25   MS. TAYLOR: Sue Taylor with Leprino Foods, L-E-P-R-I-N-O,

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 1   Foods, thanks.

 2        MR. BLAUFUSS:  Rob Blaufuss, B-L-A-U-F-U-S-S, with Dean

 3   Foods Company.

 4        MR. VETNE:  John Vetne, V-E-T-N-E representative for Hilmar

 5   Cheese Company.

 6        JUDGE CLIFTON:  Now, can we stand a little more volume on

 7   the podium mic without feeling like you are being assaulted?

 8   It's a fine balance, you know, we don't want to feel like you

 9   are being yelled at, but we'll play it by ear.

10        MS. HANCOCK:  Nicole Hancock with the California Producer

11   Handlers Association, H-A-N-C-O-C-K, I'm with the law firm of

12   Stoel Rives, S-T-O-E-L, R-I-V-E-S, and I also represent

13   Ponderosa Dairy.

14        JUDGE CLIFTON:  I would like now to invite participants

15   whether or not they are part of a team for proponents.

16        MS. REED:  Good morning, Kristine Reed, K-R-I-S-T-I-N-E,

17   R-E-E-D, I'm an attorney, and I represent Select Milk

18   Producers.

19        JUDGE CLIFTON:  Is there anyone here who has not yet come

20   forward to identify himself who would like to testify today?

21   No one responded at this point.

22        All right.  Let's go now to preliminary matters.  The

23   first thing I would like to do is read into the record the

24   docket number as known in the Hearing Clerk's office of the

25   United States Department of Agriculture.  In brackets, cap [AO]
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1 that just stands for agreements and orders. The docket number

2 is 15-0071.

3   I would like now to take other preliminary matters,

4 announcements, and the like.

5   MS. MAY: Laurel May. We'll go first. Welcome to our

6 hearing today. It is nice to have all of you here. We

7 appreciate your attendance and your willingness to help us

8 understand better the milk marketing situation in California

9 as we consider proposals for a Federal Milk Marketing Order

10 here.

11   If you would like to testify in the hearing, you may

12 approach one of us, especially Meredith, who will let the Judge

13 know that you would like to testify.

14   If you would like to ask questions of any witness, you

15 may. Anybody in the room may do so. Again, by approaching the

16 microphone here and notifying the Judge that you would like to

17 do so.

18   We are broadcasting this session of the hearing via

19 live audio feed that we are not recording, but you can access

20 this transmission at tinyurl.com/camilkhearing. The court

21 reporter is recording official transcripts of the hearing which

22 will be available approximately two weeks after the end of each

23 hearing week. Exhibits that are presented and accepted into

24 the proceeding are numbered in order of presentation. Copies

25 of those are also available on our website at AMS, and also

1 some of them have, we have some spare copies of some them in

2 the back of the room. We also have refreshments in the back of

3 the room to which you are welcome to participate. And at the

4 end of the day yesterday we finished with testimony from

5 Mr. Haramia. Today we plan to start, USDA would like to put

6 John Mykrantz on the stand who will present the Market

7 Administrator's chart of payment schedules that you had

8 requested, your Honor. And then the proponents for Proposal

9 Number 1 would like to have Mr. Paul Chris testify; and then,

10 as time permits, Mr. Elvin Hollon will return for Part 2 of his

11 testimony.

12   JUDGE CLIFTON: Who else has preliminary announcements or

13 preliminary issues? No one.

14   Then let us proceed with Mr. Mykrantz's testimony.

15 Mr. Mykranz, you may take the witness stand.

16   Mr. Mykrantz, you remain sworn. Will you again state

17 and spell your name?

18   MR. MYKRANTZ: J-O-H-N, M-Y-K-R-A-N-T-Z.

19   MR. HILL: Brian Hill. We do have an exhibit that we're

20 going to pass out before we begin.

21   JUDGE CLIFTON: This is a very detailed document, I'm so

22 glad to see this. We are going to mark this as Exhibit number

23 56; is that correct?

24   MS. FRISIUS: No, it is 57.

25   JUDGE CLIFTON: 57.

MR. ENGLISH: 56 was never moved into evidence, your Honor.

        JUDGE CLIFTON: Right. So if we put it in as an identified document, it will be on the website. It is up to AMS whether they want to put onto the website identified exhibits. As I have indicated, both accepted and rejected exhibits are part of the record and should be available on the website, unless there's some reason that I don't foresee now, keeping them off. I have kept rejected exhibits off the website when I felt that they were perhaps liablous or irrelevant, but, of course, we don't have any of that in this proceeding.

        Now, I'm marking this document as Exhibit 57.

        (Thereafter, Exhibit Number 57 was marked for identification.)

        JUDGE CLIFTON: Is there anyone who does not yet have a copy of Exhibit 57, who would like one? Everyone who would like one has a copy.

        Mr. Mykrantz you may proceed. Will you be leading the examination?

        MR. HILL: Yes, your Honor.

        JUDGE CLIFTON: All right. If you would again identify yourself.

                        DIRECT EXAMINATION

BY MR. HILL:

    Q. Brian Hill.

        So Mr. Mykrantz, could you, you already testified, but

1 could you tell us a little bit about your job description once

2 again?

3 A. I'm an Agricultural Economist with the Pacific

4 Northwest and the Arizona orders. I do analysis of dairy

5 regulations.

6 Q. Now, you're in possession of what's been marked Exhibit

7 number 57. Could you tell us what this is generally?

8 A. Each year when dairy programs announces the

9 announcements dates of the AMS surveys, we turn around and

10 publish a document illustrating all the due dates according to

11 the Federal Order language.

12 Q. And this document here is an example of that?

13 A. It is. It appears on the Market Administrator's

14 website.

15 Q. Thank you very much. So you have been here the last

16 two days and you have heard Dr. Erba's testimony; is that

17 correct?

18 A. I have.

19 Q. And you know that there has been some question about

20 dates, about payment dates. Have you heard the discussion on

21 payment dates?

22 A. Correct.

23 Q. So can you look at Exhibit number 57 in the last column

24 where it says December 15? If you look at four of those dates,

25 they are equivalent. Payment to the MA is January 19, payment

1 from the MA is also January 19, final payment to cooperatives

2 is January 19, and final payments to producers is also

3 January 19.

4   Now, you have heard the testimony of Dr. Erba. How is

5 it handled by the MA's office?

6   A. It is not an unusual occurrence for payment dates such

7 as you described to happen on the same day due to payment dates

8 falling on a weekend or a holiday. And how we deal with those

9 dates is described in 1000.90, and I guess typically they are

10 rare occasions. Handlers are able to submit their payments to

11 the office, and we are able to turn around and send all

12 payments to handlers on the same day.

13   Q. So you do work on order Federal Order 124, which is the

14 subject of this exhibit?

15   A. Correct.

16   Q. Do you have it in front of you, Federal Order 124?

17   A. Yes.

18   Q. Can you look at 1124? Can you look at 1124.72?

19   A. I see it.

20   Q. Okay. Can you read from where it says, "if" halfway

21 through that paragraph?

22   A. "If at such time the balance in the Producer Settlement

23 Fund is insufficient to make all payments pursuant to this

24 section, the Market Administrator shall reduce, uniformly, such

25 payments and shall complete the payments as soon as the funds

2414

1 are available."

2 Q. So what does that tell you? How would you describe

3 that in layman's terms?

4 A. In the event that the Market Administrator does not

5 have sufficient funds to pay all handlers according to their

6 obligation, they would pro rate what funds they have and pay

7 out what they can.

8 Q. Okay. Let me move forward to 1124.73(d).

9 A. Can I see it?

10 Q. Could you read the beginning of that as well?

11 A. "If a handler has not received full payment from the

12 Market Administrator pursuant to 1124.72 by the payment date

13 specified in paragraph (a), (b), or (c) of this section, the

14 handler may reduce pro rata its payments to producers or to the

15 cooperative association (with respect to the receipts described

16 in paragraph (b) of this section, prorating the underpayment to

17 the volume of milk received from the cooperative association in

18 proportion to the total milk received from producers by the

19 handler) but not by more than the amount of the underpayment.

20 The payment shall be completed on the next scheduled payment

21 date after receipt of the balance due from the Market

22 Administrator."

23 Q. So basically that allows a little wiggle room in making

24 the payments when the MA handler hasn't gotten -- well, let me

25 let you describe it, I'm not going to describe it. I'll let

2415

1 you describe it. Please tell us what that means to you in

2 layman's terms.

3   A. I guess in the event that the handler or if the Market

4 Administrator does not have sufficient funds to pay out the

5 pool, a pro rata distribution is made, and that pro rata

6 consideration is also passed on to the handlers.

7   Q. So that's how that's how Order 124 handles this?

8   A. Correct.

9   Q. Thank you, very much. I have no further questions at

10 this time, your Honor.

11   JUDGE CLIFTON: Mr. Mykrantz, is the next

12 regularly-scheduled payment a month away in what you just read?

13 Would you read that phrase, again?

14   MR. MYKRANTZ: I guess I'm not following.

15   JUDGE CLIFTON: All right. Please go to 1124.73(d).

16   MR. MYKRANTZ: Okay.

17   JUDGE CLIFTON: And find the phrase that tells when, what

18 could not be made because of a lack of funds is made, read that

19 phrase for me.

20   MR. MYKRANTZ: "The payment shall be completed on the next

21 scheduled payment date after receipt of the balance due from

22 the Market Administrator."

23   JUDGE CLIFTON: Would that ordinarily be about a month into

24 the future?

25   MR. MYKRANTZ: I believe that's the case.

1   JUDGE CLIFTON: Mr. Francis?

 2   DIRECT EXAMINATION

 3 BY MR. FRANCIS:

 4   Q. Will Francis, USDA.

 5   John, what about the partial payment?

 6   A. I guess I don't have any specific experience with that

 7 type of late payment, but I believe the next payment date would

 8 be the partial payment, which occurs towards the end of the

 9 month.

10   JUDGE CLIFTON: All right. So if it occurs toward the end

11 of the month, we wouldn't be waiting a whole month, we would be

12 waiting only a couple of weeks?

13   MR. MYKRANTZ: Correct.

14   JUDGE CLIFTON: All right. Thank you. All right.

15   Mr. Hill, anything further before I open the floor for

16 additional questions of Mr. Mykrantz?

17   DIRECT EXAMINATION

18 BY MR. HILL:

19   Q. To your knowledge, is this similar to the way other

20 orders function?

21   A. Yes, it is.

22   Q. No further questions, your Honor.

23   JUDGE CLIFTON: Who would like to ask the first

24 cross-examination questions of Mr. Mykrantz?

25   MR. ENGLISH: Chip English.

1   CROSS-EXAMINATION

2   BY MR. ENGLISH:

3   Q. So I really appreciate this very much, Mr. Mykrantz,

4   and I mostly want to go through a couple of things just to make

5   sure the record is clear.

6   And for that purpose, I do want you to have the Order

7   124 open for Section 73, and I would like to look at them the

8   the month of March 2015.

9   A. Okay.

10   Q. So for the month of March 2015, let's sort of work our

11 way back up. The final payment to producers as opposed to

12 cooperatives under March 2015, was April 20th, which was a

13 Monday, correct?

14   A. Correct.

15   Q. Now, looking at Section 1124.73(a)(2), the final

16 payment for producers is listed as no later than 19th day after

17 the end of the month, correct?

18   A. Correct.

19   Q. But since the 19th falls on a Sunday, pursuant to

20 1000.90, that ends up being Monday, correct?

21   A. Correct.

22   Q. Now, the final payment to cooperatives under 1124.73(c)

23 is on or before the second day prior to the date specified in

24 (a)(1) and (a)(2), so basically cooperatives are paid two days

25 earlier for both the partial payment and the final payment, as

                    2418

1 opposed to producers, correct?

2   A. Correct.

3   Q. So that would be the 17th, if you take the 19th, it's

4 the 17th, correct?

5   A. Correct.

6   Q. You don't read it as saying, because the 19th fell on a

7 holiday, and that due date was actually, therefore, the 20th,

8 you subtract two days, which would be the 18th, which would put

9 it on Saturday; is that correct?

10   A. The math is correct.

11   Q. Okay. But is that your interpretation of how the order

12 works? Is that how, I mean, I'm not here to disagree, I'm just

13 trying to get if that's how your interpretation of how that

14 works?

15   A. Could you rephrase that?

16   Q. Is that how -- is that how the Market Administrator has

17 interpreted how that series of provisions works, that the 19th

18 falling on a Sunday, you don't look at that falling on a

19 Sunday. You nonetheless subtract two days from the 19th, which

20 is the 17th, correct?

21   A. Yes.

22   Q. Okay. And you don't say, well, because the 19th falls

23 on a Sunday, and therefore, the final payment to producers is

24 actually the 20th. You subtract two days from the 20th to end

25 up on the 18th, which would be a Saturday, and then 1000.09

2419

1   provides -- you don't interpret it that way, correct?

2   A. The Market Administrator doesn't interpret it that way.

3   Q. I'm sorry, I do not intend for you, in this case "you"

4   means Order 124 as administered by the Market Administrator.

5   I'm happy to make that clarification.

6   A. Correct.

7   Q. So for the month of March 2015, the final payment to

8   producers was April 17th. Well, now let's go up to --

9   A. Could you repeat that?

10   Q. Well, I'm sorry, the cooperatives. Final payment for

11   producers for cooperatives was due April 17th, correct?

12   A. Correct.

13   Q. Thank you for correcting me.

14   Now let's go up the payment from the MA office. The

15   payment from the MA office would normally be on the 18th,

16   correct?

17   A. Correct.

18   Q. But because that's a Saturday, under 1000.90, that gets

19   moved to Monday the 20th, correct?

20   A. Correct.

21   Q. Does the Market Administrator have, for circumstances

22   like that which hopefully are rare, maybe not, in order to

23   avoid sort of having the 1124.73(d) kick in and have the

24   handler end up making basically two payments, does the Market

25   Administrator, as a practical matter, when that situation

2420

1 develops, try to turn around and get those payments out, so

2 that those payments can be made?

3 A. They do. And often times payments are made prior to

4 the dates listed in the order.

5 Q. And that's what I was really getting at. So for

6 instance, even though the payment to the MA office for March of

7 2015 was listed as being due by April 20th, your office is

8 conscious of what those implications are, and would have made

9 efforts to try to get those payments out on the 17th; is that a

10 fair statement?

11 A. Correct. I guess once the pool is done on or before

12 the 14th, obligations are e-mailed out, and I guess there is a

13 date on each of those as to when they are due.

14 Q. But regardless, if somehow on April 20th of 2015 -- I'm

15 sorry, April 17th, of the close of business of April 17th,

16 2015, the MA did not get the payment to the handlers, the

17 handlers would then be allowed, they don't have to do it, but

18 they would be allowed to deduct 734(d) for not getting that

19 payment, correct?

20 A. Correct. I guess many times also the Producer

21 Settlement Fund has such a balance in it that even if somebody

22 does not make payment, payments are still made out.

23 MR. HILL: Could you -- this is Brian Hill -- could you

24 repeat that last question? I'm not sure if you used the right

25 date and confused people.

2421

BY MR. ENGLISH:

Q.   I apologize. Let me see if I can say it over again.

If by the close of business on April 17th when the payment to cooperatives is due, for whatever reason, the MA office has not been able to make the payment out to handlers, and the payment is not actually due from the Market Administrator until the 20th, what I asked was, does paragraph (d) under Section 73 then kick in? And I think the answer was yes, subject to a caveat that because of balance in the funds from reserves, you would make every effort to make the payment out, correct?

A.   Yes.

Q.   Okay. Thank you, I have no further questions.

                    CROSS-EXAMINATION

BY MR. BESHORE:

Q.   Marvin Beshore.

Good morning, John, thank you for coming today and for providing this information. I have just a couple of questions in addition to those that you have had from Mr. Hill and Mr. English.

Can you -- can you tell us just little bit about the operating reserve that the Market Administrator has in the Producer Settlement Fund which allows these kinds of quick turn-around's, or even pre-payments, in essence, that in some cases?

2422

A.   I guess the Producer Settlement Fund in Order 124 and
135 represents about 9 to 10 cents per hundredweight of milk
pooled. Because of changes in producer milk, there's a
seasonal fluctuation in the dollars generally available. In
addition, I guess, audit adjustments can affect it, but
typically don't. Large audit adjustments are relatively rare.

Q.   But does the language in the Order provide that the
Market Administrator shall maintain, I think it's not more than
5 or less than 4 -- not less than 4 or more than 5 cents per
hundredweight in the account as an obligated reserve, just to
keep the account primed?

A.   Could you rephrase that?

Q.   Well, do you know what I'm talking about?

A.   I guess the PSF represents 9 to 10 cents per
hundredweight. Typically when the pool is run, half, up to
half is put into the pool and 4 to 5 cents is taken out, which
creates a self-balancing adjustment each month.

Q.   Okay. In other words, in the 4 to 5 cents is retained
from the funds in the -- is not calculated into the blend
price, the uniform price, the obligations for that month in
order to basically keep a balance in the account. Is that
fair?

A.   I believe that's fair.

Q.   Okay. So if I'm following the way Order 124 is
written, as reflected on Exhibit 57, Mr. English asked you

2423

1   about this and you explained how it is administered, the

2   payment from the MA to handlers who are entitled to the draw

3   from the fund, is scheduled almost every month on a calendar

4   date that is prior to, well, it's never -- it's never before, I

5   don't think, maybe it's before -- anyway, sometimes its even

6   after -- payment from the MA is after the date that the

7   handlers are obligated to pay, make a final payment to

8   cooperatives, that's kind of how 124 is actually literally

9   written.

10   A. I guess the payment to the fund is on the 16th subject

11 to 1000.90, and the payment out is the 18th.

12   Q. Okay. And the handlers obligation to make final

13 payments to cooperatives comes on the 17th, generally.

14 Correct?

15   A. Correct.

16   Q. Okay. So literally in the language of the Order, it's

17 a day before they would be entitled to receive payments out of

18 the Producer Settlement Fund from the Market Administrator?

19   A. Correct.

20   Q. But you have been able to work with that and make it

21 make it work in administration of the Order on a monthly basis

22 through the mechanisms that you discussed with Mr. English?

23   A. Yes, and I don't think there's -- I am not aware of any

24 complaints about the dates. The dates are typically chosen by

25 the local industry.

1   Q. Okay.

2   A. That seem to work.

3   Q. So I think in our, the question arose yesterday, if I

4 recall it correctly and understood correctly, in Proposal 1,

5 our language literally provides for that payment in and out on

6 the same day, that is -- or out, yeah -- provides for those

7 payments being on the same day. Instead of the 18th and the

8 17th, as you described we have got it on the same day. That's

9 not much, that's actually a little better in a sense to the

10 handlers, the way it's literally in your order?

11   A. As many orders.

12   Q. In many orders?

13   A. Have payment in and out on the successive days.

14   Q. Okay. Even --

15   A. Not a two-day spread, but a single-day spread.

16   Q. And even backwards in a sense the way yours is?

17   A. I guess we have two days, typically.

18   Q. From when payments are into the Producer Settlement

19 Fund to when payments are out?

20   A. Correct.

21   Q. But typically as Exhibit 57 shows, final payment to

22 cooperatives is due the day before the payments out of the

23 Settlement Fund are due? I'm sorry --

24   A. Yes.

25   Q. Yeah, the day before.

                        2425

1   A. Yes.

2   Q. Okay.

3   REDIRECT EXAMINATION

4   BY MR. FRANCIS:

5   Q. Will Francis, USDA.

6   Just a little bit of clarification to follow up on some

7   of the questioning that Mr. Beshore.

8   John, Mr. Mykrantz, can you refer to 1124.61, that

9   final paragraph (f)?

10   A. I would like to correct what I said previously.

11   Q. Okay.

12   A. It's not less than half of the Producer Settlement

13   Fund, as opposed to what I said.

14   Q. Okay. So you are talking about (d)?

15   A. Correct.

16   Q. Okay. Can you, for the record, can you just read that

17   paragraph (d)?

18   A. "At an amount equal to, not less than, one half of the

19   unobligated balance in the Producer Settlement Fund."

20   Q. Okay. And you are reading from Section 1124.61.

21   A. Correct.

22   Q. Okay. Can you skip down to paragraph (f) and read that

23   section?

24   A. "Subtract not less than 4 cents, nor more than 5 cents

25   from the price computed pursuant to paragraph (e) of this

                    2426

1 section. The result shall be known as the producer price

2 differential for the month."

3   Q. Okay. And maybe that wording is a little unclear. But

4 paragraph (f), when you subtract the 4 cents or not more than 5

5 cents, Mr. Beshore referred to something called the reserve.

6 Would that paragraph accurately characterize what the reserve

7 is?

8   Maybe I can say that again. When Mr. Beshore referred

9 to the Market Administrator's reserve, is there language here

10 that would describe that?

11   A. Not explicitly.

12   Q. Okay. The result, that last sentence, the result, is

13 that referring to the entire section calculations?

14   A. Could you repeat that?

15   Q. Okay. In paragraph (f), the last sentence, where it

16 says, "the result shall be known as a producer price

17 differential for the month," that's the end result of all the

18 previous calculations that you go through in Section .61; is

19 that accurate?

20   A. Correct.

21   Q. Okay. And it doesn't necessarily just refer only to

22 paragraph (f)?

23   A. Correct.

24   Q. Okay. So that first sentence in paragraph (f) where

25 you are going through the calculation of subtracting not less

1 than 4 cents, no more than 5 cents, would it be fair to

2 characterize that limited value as "the reserve?"

3 　A.　Yes.

4 　Q.　Okay.　And then, in addition, if you go back up to

5 paragraph (d), add an amount equal to not less than one-half of

6 the unobligated balance in the Producer Settlement Fund, that

7 kind of rolls into that reserve.　Would that be accurate?

8 　A.　Yes.

9 　Q.　Okay.　I think hopefully that helps clarify.　Thank you

10 very much.

11 　　JUDGE CLIFTON:　Who would like next like to question

12 Mr. Mykrantz?

13 　　　No one.　Mr. Mykrantz, is there anything you would like

14 to add?

15 　　MR. MYKRANTZ:　No, there's not.

16 　　JUDGE CLIFTON:　Thank you.　You may step down.　Thank you

17 so much for the work of the team to bring this to us.

18 　　　Mr. Beshore?　Oh, Mr. Hill?

19 　　MR. HILL:　Yes, I do want to move that into evidence, your

20 Honor.

21 　　JUDGE CLIFTON:　Is there any objection to the admission

22 into evidence of Exhibit 57?　There is none.　Exhibit 57 is

23 admitted into evidence.

24 　　　(Thereafter, Exhibit Number 57 was

25 　　　received into evidence.)

1   MR. BESHORE: Marvin Beshore. Your Honor, at this time,

          2   proponents of Proposal 1 call Mr. Paul Christ.

          3   JUDGE CLIFTON: I'll swear you in in a seated position.

          4   Do you solemnly swear or affirm under penalty of

          5   perjury that the evidence you will present will be the truth?

          6   MR. CHRIST: I do.

          7   JUDGE CLIFTON: Thank you. Please state and spell your

          8   name.

          9   MR. CHRIST: My name is Paul Christ. First name, P-A-U-L,

         10   second name, C-H-R-I-S-T.

         11   MR. BESHORE: Thank you. Now, your Honor, I would like to

         12   ask at this time that three exhibits be marked for reference

         13   and use during Mr. Christ's examination. And the first is a

         14   document 14-pages in length, titled, Testimony of Paul G.

         15   Christ, and I would ask that that be marked as Exhibit 58.

         16   JUDGE CLIFTON: All right. I'm marking mine as Exhibit 58.

         17   (Thereafter, Exhibit Number 58 was marked

         18   for identification.)

         19   MR. BESHORE: The second document I would ask be marked is

         20   a five-page document, Resume of Paul G. Christ. Ask that that

         21   be marked as Exhibit 59.

         22   JUDGE CLIFTON: It will be so marked. And I'm marking my

         23   copy as Exhibit 59,

         24   (Thereafter, Exhibit Number 59 was marked

         25   for identification.)

                                    2429

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1   MR. BESHORE: Finally, I would ask that a 17-page

 2 document, which on the first page has a title at the top, Table

 3 2, Difference by Competitive County, May and December of 2008

 4 to 2011, ask that that be marked as Exhibit 60.

 5   JUDGE CLIFTON: It shall be so marked, and I'm marking mine

 6 Exhibit 60.

 7   (Thereafter, Exhibit Number 60 was marked

 8   for identification.)

 9   MR. BESHORE: Thank you very much, your Honor.

10   JUDGE CLIFTON: If you would like Exhibit 58, Exhibit 59

11 and Exhibit 60, and do not yet have it, would you raise your

12 hand please? Still being distributed, Mr. Beshore, so let's

13 hold off.

14   If you do not yet have Exhibit 58, 59 and 60, now

15 please raise your hand if you do not yet have those exhibits.

16 They have been distributed. Mr. Beshore, you may proceed.

17   MR. BESHORE: Thank you, your Honor. And the witness has

18 been sworn, right?

19   JUDGE CLIFTON: He has.

20   DIRECT EXAMINATION

21 BY MR. BESHORE:

22   Q. Good morning, Mr. Christ.

23   A. Good morning, sir.

24   Q. Would you please present, at this time, read the first

25 paragraph in your prepared testimony, which has been marked as

                          2430

Exhibit 58. At the end of the first paragraph, I would ask you

to stop so we can, I can ask you a few questions at that point.

A.   Okay. My name is Paul Christ. I have been involved in

the Federal Milk Marketing Order program (FMMO) since February

1961. I have worked for the government in the administration

of Federal Milk Orders, and in the private sector, for Land

O'Lakes, Inc., where I was responsible for complying with

Federal Milk Order regulations. The range of my experience is

outlined in my resume, which is offered as an exhibit.

Q.   Okay. Now, is Exhibit 59, do you have that,

Mr. Christ?

A.   Yes, I do.

Q.   Is that your resume to which you have referred in your

in your statement?

A.   Yes, it presents the highlights of my career. It

doesn't cover everything I have done, good or evil.

Q.   Okay. Could you -- could you just give us at this

point the highlights of the highlights in your career?

A.   My career began working for the Federal Milk Marketing

Administrator in Detroit. I basically spent two years there,

and then marked to the Washington DC office. I spent about two

years there, involved in the administration of the program. I

transferred to the Kansas City Market Administrator's office on

a temporary basis, at which time I also did graduate studies at

Kansas State University. So in those periods, I learned the

features of the program from the center of the activity, in

those days it was called the Dairy Division of AMS.

I came back to Washington DC in the year 2000, spent

four years, again, in the Dairy Division.

Q. Mr. Christ, what year did you return to Washington DC?

A. The year 1970.

Q. Okay.

A. 1970. Did I say 2000?

Q. You did. We have got it right now.

A. If we do this quickly, I'll remember most of it.

I went back to Washington DC in 1970, and as a Senior

Agricultural Economist, supervising most of the analytical

activity in the Dairy Division. I was in the Program Analysis

Branch. I interacted with dairy researchers around the

country, supervised dairy research done, done on behalf of the

Dairy Division. I did some internal research, and some of it

in cooperation with the Economic Research Service.

Responsible, in part, for compiling dairy statistics. So a

fairly wide range of activity.

During that time I also had a couple of temporary

assignments, one of which I was a staff member for the National

Commission on Productivity, and another as a temporary staff

member for the National -- well, let's see.

Q. Cost of Living Council?

A. Cost of Living Council, yes, and that was the Price

1 Control Agency of the Whitehouse.

2   Q. Did you then move to the, to a career in the private

3 sector?

4   A. Yes. I was hired by Land O'Lakes in April of 1974, and

5 my assignment was to try to consolidate Federal Milk Marketing

6 Orders in the Midwest. And that involved negotiations with

7 other market participants in the states of Minnesota and Iowa

8 and developing a proposal that was widely acceptable to the

9 market participants. These proposals were offered to USDA,

10 hearings were held, and the consolidations occurred.

11   I did other staff activities at Land O'Lakes, including

12 evaluation of capital projects, and policy observations, and

13 monitoring. I then became Vice President, which was pretty

14 exalted for me at the time. But I supervised dairy

15 manufacturing plants for about four years, the procurement of

16 milk in the Upper Midwest, and I supervised the marketing of

17 Grade A milk for 26 years, I think.

18   I was involved in number of dairy and agricultural

19 organizations. I spent a lot of time communicating with

20 members and other interested parties in the dairy industry.

21 Participated in many policy initiatives at the state and

22 national level. Helped organize the Upper Midwest Milk

23 Marketing Agency, and got involved later on in my career in

24 dairy risk management.

25   Q. Now, I would like to just go back at this point,

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1 Mr. Christ, and ask you about your academic background. What

2 degrees do you hold from what universities?

3   A. Okay. I have a Bachelor of Science from, and a Master

4 of Science, from Southern Illinois University -- the home of

5 the Salukis.

6   JUDGE CLIFTON: What is it the home of?

7   MR. CHRIST: The Salukis, that's an Egyptian Greyhound dog,

8 rarely seen.

9   MR. BESHORE: Do you know how that's spelled?

10   MR. CHRIST: S-A-L-U-K-I.

11 BY MR. BESHORE:

12   Q. Thank you. And your degrees from Southern Illinois are

13 what?

14   A. I have a Bachelor's degree in Agricultural Education,

15 which means I was trained to be a Vocational Agriculture

16 Teacher. I have a Master's degree in Agricultural Economics,

17 and my research was on the egg marketing system of the State of

18 Illinois -- that's E-G-G, egg.

19   Q. Do you have any post Master's course work that you have

20 done?

21   A. Yes, I took Ph.D. level courses at Kansas State

22 University, oh, it was the normal preparatory course work for a

23 Ph.D. I did not complete my dissertation, so I'm not a Ph.D.

24 but I have done much of the work associated with such a degree.

25   Q. Have you taught at the, in universities at the graduate

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1 level?

2   A. Yes, I have. Upon retirement in the year 2000, I

3 started teaching graduate students at St. Thomas University in

4 St. Paul, and the program I taught in was the International

5 Management Program, so I was teaching Economics to students,

6 roughly equivalent to MBA students interested in international

7 degrees.

8   Q. What courses did you teach to graduate students?

9   A. Okay. I taught International Economics. I also taught

10 for awhile to the -- in the executive MBA program, and that was

11 microeconomics. And part of that program at St. Thomas was

12 teaching at foreign universities that had a contractual

13 arrangement with The University of St. Thomas. And in 2003, I

14 transferred over to St. Mary's University, which started a new

15 MBA program. I taught macroeconomics, microeconomics,

16 economics and strategy, and managerial economics to students in

17 that program.

18   Q. Prior to teaching in graduate levels at St. Thomas and

19 St. Mary's, had you taught undergraduate courses at Metro State

20 University in St. Paul?

21   A. Yes, I did. And the curious thing is, I was trained to

22 teach high school, and when I graduated there were no jobs

23 available in the State of Illinois. So I ended up working for

24 the Federal Milk Marketing Order program. Well, I still had

25 this interest in teaching. So I was invited to teach at the

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Metro State University, to teach undergraduate students, and I

accepted it. And I did it as a hobby, even while I was still

working.

   Q. Now, post-retirement from Land O'Lakes, have you

continued to be professionally engaged in consulting

activities?

   A. Yes. There are two kinds of consulting activities, one

is international development. Land O'Lakes has an

International Development Division which is largely funded by

USAID and some by the Foreign Agriculture Service. I consulted

on probably a dozen of those projects, largely dealing with the

dairy or organizational, organizational development, or

cooperatives, that's one kind.

        The second kind of consulting activity is just like

this, where I have been asked to participate in developing a

policy or participate in Federal Milk Order proceedings. So I

have done both kinds of things.

   Q. And over the course of your career as you described it,

have you testified as an expert witness in various Federal

Order and other proceedings?

   A. I think I have been certified once or twice as an

expert, but I have testified in a lot of hearings, and I can't

remember how many, but probably in the order of 20 or so.

   Q. So Mr. Christ, what how would you identify your fields

of expertise?

1   A. Well, I would argue that I probably have three. One

2 is, of course, Agricultural Economics, that's where my training

3 is. And I have also continued to be very active in the

4 American Agricultural Economics Association, now known as the

5 Agriculture and Applied Economics Association, so I have

6 continued to keep abreast there.

7   Another course is in Agricultural Policy. My

8 responsibilities both in the government and Land O'Lakes

9 included understand Federal programs the State programs related

10 to agriculture in general and dairy in particular.

11   And third, most of the focus was on dairy policy and

12 dairy marketing. So I would list those as the three things

13 that I'm most qualified and experienced in.

14   Q. Your Honor, I would offer Mr. Christ as an expert in

15 Agricultural Economics, Agricultural Policy, and Dairy

16 Marketing and Regulation.

17   JUDGE CLIFTON: He said Dairy Marketing and Dairy Policy.

18 Do you want to --

19   MR. BESHORE: I'll accept his description. Dairy Marketing

20 -- well, let me ask you this. Would Dairy Regulation be

21 considered that one of your fields of expertise, Mr. Christ?

22   MR. CHRIST: Dairy regulations would be encompassed in

23 Dairy Policy. Dairy Marketing is the physical activity of

24 transacting business in the dairy industry.

25   MR. BESHORE: So I would -- I would add Regulation as

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1 described by Mr. Christ to those areas of expertise.

2   JUDGE CLIFTON: Is there anyone who would like to ask

3 Mr. Christ questions before determining whether you you object

4 to his being accepted as an expert in those areas in this

5 proceeding? There is no one.

6   Is there any objection to my accepting Mr. Christ as an

7 expert in Agricultural Economics, Agricultural Policy, Dairy

8 Policy, including Dairy Regulations, and Dairy Marketing?

9 There are no objections. Mr. Christ, I accept you as an expert

10 in Agricultural Economics, Agricultural Policy, Dairy Policy,

11 including Dairy Regulation, and Dairy Marketing.

12   MR. CHRIST: Thank you, your Honor.

13 BY MR. BESHORE:

14   Q. Thank you, your Honor.

15   Mr. Christ, at this point would you then proceed with

16 your prepared statement, Exhibit 58, picking up at the second

17 full paragraph where I interrupted?

18   A. Yes, Mr. Beshore.

19   I appear here in support of Proposal Number 1 offered

20 by three cooperatives to adopt a new Federal Milk Marketing

21 Order for California. This proposal includes some new and

22 unique features that may raise questions among interested

23 parties. My goal is to bring an historical perspective to

24 these questions, to relieve doubts about these features, and to

25 demonstrate that they are appropriate based on law

1 and/precedent.

 2 Primary Goals of Federal Milk Marketing Orders

 3   I have read the Agricultural Marketing Agreement Act of

 4 1937 (the Act) several times during my career, including twice

 5 during the last few months. Here I paraphrase Section 602 of

 6 the Act, which states its purposes:

 7   Number 1 --

 8   JUDGE CLIFTON: Let me interrupt, I believe I'm about to

 9 hear a couple of objections.

10   MR. VETNE: No, you will only hear one objection repeated

11 several times. The witness starts with "here I paraphrase,"

12 and we have had this discussion before about interpretation of

13 statutes by a witness. And paraphrasing, by its nature,

14 distorts what Congress said, whatever the paraphrasing is, and

15 I'm reading forward. And following the paraphrase, there are

16 express attributions of intent to, by Congress, attributed to

17 Congress by this witness. Apparently the testimony goes on and

18 captures that intention of the witness to attribute to Congress

19 a certain intent. It is not -- a witness is not capable under

20 Laws of Evidence and Precedent, of so doing. The Act says what

21 it says.

22   Now, there is, however, precedent that agencies may

23 interpret statutes, and agency interpretations are frequently

24 accepted by courts.

25   The fact of agency interpretation is one thing, and I

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think it's a good thing to look at. And since 1937, I'm

looking in advance here, Congress, the agency has interpreted

the Act of '37 differently from the attribution that this

witness attributes to Congress.

So I object, legal opinion, paraphrasing, attribution

of intent to Congress is improper. I don't know if it is

necessary to raise it multiple times, but this is a good time

to raise it. Thank you.

JUDGE CLIFTON: Thank you, Mr. Vetne. I would like a

little more volume on the podium mic, please.

MR. ENGLISH: Chip English. I join the objection, and I

don't think it's appropriate to have paraphrasing of Section

602. He then does quote Section 608(c)(18). I don't object to

his reading a statute into -- so the part on the bottom of page

2, top of page 3, I do not object to the text.

Just to save time, I think I know where your Honor is

going to go with this, so we're not going to interrupt again,

but the objection here would go to the paragraph that follows

the text, with an interpretation of what Congress said.

And just to join Mr. Vetne, we haven't used the phrase

yet, I could have used it yesterday, but agency interpretation,

when properly included in Federal Register and subject to

review, is known as Chevron deference -- C-H-E-V-R-O-N --

deference. And that's important, as Mr. Vetne noted, because

there is plenty of agency interpretation of the statute to

which is entitled to Chevron deference, and to change that

interpretation would be subject to certain legal issues.

Nonetheless, I join Mr. Vetne's objection.

MR. BESHORE: Marvin Beshore. Your Honor, of course we

believe the testimony is completely appropriate, proper, and

should be allowed to proceed with Mr. Christ's stated

understanding and interpretation of the law, as he has

participated and experienced its application for so many years.

And I think without going any further, that your Honor's ruling

yesterday should be, should apply here. And hopefully we can

have an understanding that the objection is a standing one so

that the witness does not need to be interrupted repeatedly.

We certainly understand that the objection is, you know, is not

waived by not being raised again and again and again.

JUDGE CLIFTON: Thank you. I love the Dairy Bar. You are

so thoughtful, you are so experienced, and you are so

articulate, and it is a pleasure to be at a hearing such as

this.

My ruling is identical to yesterday. I'm not going to

repeat it. I encourage all witnesses who are grappling with

the facts and the law to express their opinions about both.

And we know that those representatives of the United States

Department of Agriculture who have to sift through all that so

carefully to determine what recommendation to make to the

Secretary, will be very careful. But I appreciate so much the

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1 cautions that the objections expressed. They are helpful.

2   And that said, Mr. Christ may give us his

3 interpretation, his opinion, and his historical perspective, as

4 he intends to. So, Mr. Christ, do you remember where you were?

5   MR. CHRIST: Yes, ma'am, I do.

6   JUDGE CLIFTON: You may proceed.

7   MR. CHRIST: 1. Establish and maintain parity prices to

8 farmers. Parity prices refer to the purchasing power of farm

9 prices during the 1910 to 1914 period.

10   2. Protect consumers by gradually approaching parity

11 prices.

12   3. Establish and maintain orderly marketing conditions

13 to promote an orderly flow of product to the market.

14   Section 608(c)(18) of the Act is more explicit about

15 milk pricing: The Secretary of Agriculture -- and this is a

16 quote --

17   "The Secretary of Agriculture, prior to

18   prescribing any term in any Marketing Agreement or

19   order, or amendment thereto, relating to milk or

20   its products, if such term is to fix minimum

21   prices to be paid to producers or associations of

22   producers, or prior to modifying the price fixed

23   in any such term, shall ascertain the parity

24   prices of such commodities. The prices which it

25   is declared to be the policy of Congress to

1   establish in Section 602 of this title, shall, for

2   the purposes of such agreement, order, or

3   amendment, be adjusted to reflect the price of

4   feeds, the available supply of feeds, and other

5   economic conditions which affect market supply and

6   demand for milk and its products in the marketing

7   area --"

8   JUDGE CLIFTON: Because it is a direct quote, I want you to

9 read that second line and again, please.

10   MR. CHRIST: Okay.

11   "And demand for milk and its products--"

12   JUDGE CLIFTON: No.

13   MR. BESHORE: Look at that carefully, milk --

14   MR. CHRIST: -- or its products," my apologies.

15   -- and demand for milk or its products in the

16   marketing area in which the contemplated Marketing

17   Agreement Order --

18   MR. BESHORE: Excuse me, Mr. Christ.

19   MR. CHRIST: Yeah?

20 BY MR. BESHORE:

21   Q. "Marketing area to which."

22   A. Okay.

23   The marketing area -- this is the second line --

24   in the marketing area to which the contemplated

25   Marketing agreement, order, or amendment relates.

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1   Whenever the Secretary finds, upon the basis of

2   the evidence adduced at the hearing required by

3   Section 608(b) of this title, or this section as

4   the case may be, that the parity prices of such

5   commodities are not reasonable in view of the

6   price of feeds and other economic conditions which

7   affect market supply and demand for milk, and its

8   products, in the marketing area to which the

9   contemplated agreement, order, or amendment

10   relates, he shall fix such prices as he finds will

11   reflect such factors ensure a sufficient quantity

12   of pure and wholesome milk, and be in the public

13   interest.

14   These themes are --

15 Q.   Is that the end of the quoted?

16 A.   That is the end of the quote.

17 Q.   Thank you.

18 A.   These themes are recited in the preamble to every

19 Federal Milk Order decision I have read. My interpretation of

20 the plain language of these sections is that the primary

21 purpose of the Act is to enhance producer prices with parity

22 price as the goal. Congress also recognized the need to modify

23 prices as market realities dictate, but did not modify its

24 explicit intent to enhance prices to producers.

25   Proposal Number 1 for the California Order does that

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without harming consumers and without disrupting the orderly

flow of milk and dairy products to the market.

Federal Milk Orders Federal Orders Can Apply to Any and/or All

Dairy Products

The Act mentions "milk" 72 times. It never specifies

"Grade A milk," so the implication is that an order can be

issued for manufacturing milk, Grade A milk, or all milk.

Among the references to milk, 9 refer to "milk and its

products," and 6 refer to "milk or its products."

MR. ENGLISH: Your Honor? I am trying to read ahead, so I

can only do this -- I don't disagree with Mr. Beshore, I don't

want to interrupt. I do think the next sentence is, again,

objectionable on the grounds we have stated before, and I

understand what your ruling is going to be. I just want to

note my objection, and I will try to run ahead, Mr. Beshore, so

I can try to do all at once and not interrupt.

MR. BESHORE: Well, I'm not quite sure what that means

since we were just interrupted.

MR. ENGLISH: Well, I had to because --

MR. CHRIST: Your Honor, may I comment?

JUDGE CLIFTON: Not quite yet, but, yes.

MR. CHRIST: Okay.

JUDGE CLIFTON: Mr. Beshore, I know you would prefer that

your witness not be interrupted.

MR. BESHORE: I would.

1   JUDGE CLIFTON: I prefer that Mr. English spots a part of

2   the presentation that indeed is objectionable based on his

3   argument, I prefer that he help us pinpoint it, that he do

4   interrupt. If you want him to just mark those on his copy and

5   then at a time when your witness is stopped to go back and

6   point them out to us, we can do it that way. But for him to be

7   able to highlight the particular areas where he calls it an

8   objection, I call it a caution, I appreciate his highlighting

9   those.

10   MR. BESHORE: I'm open to any accommodation that does not

11   truncate his right to make objections, but which also allows

12   the witness' testimony to proceed subject to the objections.

13   JUDGE CLIFTON: Mr. English, would it work that you mark

14   them as we go through and then I hear them when the witness

15   gets through the statement?

16   MR. ENGLISH: I don't know, your Honor, I'll try. I

17   understand. I will try.

18   JUDGE CLIFTON: All right. Thank you. All right. Now,

19   you wanted to make a comment, Mr. Christ?

20   MR. CHRIST: Well, as a practical matter, those people who

21   are subjected to the law and to the rules have to have a means

22   of interpreting what the law or the rules are. And most of us

23   can't consult with the Circuit Court to find out what those

24   are, and so we try to use the plain meaning of the language,

25   our interpretation of English words and phrases and how they

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apply to our activity. And that's, in my view, that's a common

practice in any economic endeavor.

JUDGE CLIFTON: Well, that's certainly a starting place in

trying to understand the law, it's not necessarily where we

need to end. Mr. English?

MR. ENGLISH: And I appreciate Mr. Christ's comment, it

doesn't change what court's view of those statements can be.

So I'm trying not to belabor the point. The objection is made,

it's been obviously overruled, rule viewed as a caution. We

are maintaining our position on this and we will maintain our

position on this.

JUDGE CLIFTON: Thank you, Mr. English.

Mr. Beshore, would you lead the witness to where he

should resume his reading of his statement?

BY MR. BESHORE:

Q. I would ask you to resume, Mr. Christ, with the

sentence, fifth line from the bottom of page 3 of Exhibit 58,

which begins "again."

A. I will continue.

Again, the plain reading of the language in the Act

leads me to conclude that a FMMO can be adopted to regulate the

purchase and handling of any subset of the milk supply, or of

any derivatives or products of milk.

There is evidence of this flexibility. Shortly after

the implementation of the Agricultural Adjustment Act of

1 1933 -- that should be Agriculture, not agricultural.

2   Q. Actually, it should be agricultural as you read it --

3   A. Okay.

4   Q. -- properly. That is its name.

5   A. Okay. The correction is corrected.

6   Agricultural Adjustment Act of 1933, "a predecessor Act

7 to the Agricultural Marketing Agreement Act of 1937, which

8 included much of the same FMMO language as the 1937 Act), the

9 Secretary of Agriculture issued a "Marketing Agreement"

10 applying to the evaporated milk industry -- and in parentheses

11 is reference -- (Baker, Burton A, and Rudolph K. Froker, "The

12 evaporated Milk Industry under Federal Marketing Agreements",

13 Research Bulletin 158, University of Wisconsin, September

14 1945). This regulations operated under three legal constructs,

15 including Marketing Agreement Number 7, Marketing Agreement

16 Number 60, and License Number 100. It regulated manufacturers

17 of evaporated milk across the United States (including those in

18 California), required the payment of minimum prices to

19 "presumably manufacturing grade" milk producers.

20   Q. Did you mean in parentheses?

21   A. No, not quote, parentheses, I'm sorry.

22   Q. Thank you.

23   A. Established minimum and maximum wholesale prices for

24 evaporated milk and regulated trade practices. The evaporated

25 milk License 100 was mandatory and applied to all processors of

2448

evaporated milk in the United States. It was in effect at the

same time the above-referenced Bulletin was issued, and

continued in effect through 1947.

The Evaporated Milk agreements and license illustrated

that both manufacturing grade milk and --

JUDGE CLIFTON: I'm sorry, it does make a little difference

how you read it. Would you read again the last sentence of

that paragraph?

MR. CHRIST: The preceding paragraph? Yes.

JUDGE CLIFTON: Yes.

MR. CHRIST: The evaporated milk license --

JUDGE CLIFTON: No, prior sentence, "it was in effect" --

MR. CHRIST: It was in effect at the same time --

JUDGE CLIFTON: Well, you have said "same" a couple of

times, and I don't know if that's what you mean.

MR. CHRIST: No, your Honor, no. I will try again.

JUDGE CLIFTON: All right.

MR. CHRIST: It was in effect at the time the

above-referenced Bulletin was issued, and continued in effect

through 1947.

The evaporated milk agreements and license illustrated

that both manufacturing grade milk and a "product of milk"

could be regulated under the Act.

Another example of this flexibility is the 1939 version

of the Dubuque, Iowa, Federal Milk Marketing Order. The

2449

1 definition of a producer -- it should be "producer" as a

2 "person...who produces milk which is received at a plant of a

3 handler from which milk is disposed of in marketing area..."

4 does not distinguish Grade A milk from manufacturing milk.

5 Neither does the handler definition, which specifies that a

6 "'handler' means any person who engages in such handling of

7 milk, which is disposed of as milk or cream in the marketing

8 area." Again, there's no reference to Grade A milk or health

9 inspection.

10   From this background, it is reasonable to conclude that

11 regulation of all plants purchasing milk in California and all

12 milk purchased by them from California producers, would fall

13 within the scope of the law. The cooperatives' proposal would

14 regulate only the purchase of Grade A milk.

15   The focus of existing FMMO's is regulating the purchase

16 and handling of Grade A milk, which is presumably available for

17 Class 1 use. This has been the history of the program. In the

18 beginning, many orders operated individual handler pools,

19 meaning that the primary users of producer milk were for fluid

20 milk and cream products. Producers received a "base" price

21 and/or a uniform price, derived from primarily from those uses.

22 Orders with market-wide pools exhibited these same

23 characteristics. A producer participated in the pool only if

24 he shipped to a fluid milk processor.

25   Over time, conflicts arose between Grade A producers

1 who shipped to a fluid processor and Grade A (or potential

2 Grade A) producers who want access to the higher pool price.

3 The dairy program administration gradually adopted by

4 accommodating supply plants, relaxing pool qualification

5 standards, and eliminating individual handler pools. This

6 process, in effect, accomplished the regulation of nearly all

7 Grade A milk used for manufacturing within the FMMO system.

8   The Cooperatives' proposal goes one step further. It

9 essentially provides for the pooling of all Grade A milk

10 produced and marketed within the State of California. This

11 means that Grade A milk, no matter what product it is used to

12 produce, is included. This is well within the range of

13 possibilities under the law.

14   MR. ENGLISH: Objection.

15   JUDGE CLIFTON: Objection is noted.

16   MR. CHRIST: Okay. Next, Section 3.

17 The Need to Regulate all Grade A Milk

18   The Cooperatives propose that all Grade A milk produced

19 and marketed within the state, be price-regulated. This is

20 necessary to assure that so-called "depooling" is minimized.

21 There are current times when the "uniform" price falls below

22 Class II, Class III, or Class IV prices.

23 BY MR. BESHORE:

24   Q. Those are Roman numerals.

25   A. Roman Numeral Class II, Roman Numeral Class III, and

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1 Roman Numeral Class IV prices.

2   Q. Thank you.

3   A. The frequency of this phenomenon increased with the

4 introduction of advanced pricing under FMMO's. At times, this

5 may create incentives to disassociate milk used in those

6 classes from the pool. FMMO's have adopted rules to reduce the

7 incidents of depooling. The California state order currently

8 prices essentially all Grade A milk so a handler gains no

9 advantage from depooling milk. It is still possible for

10 individual producers to withdraw from the pool on an annual

11 basis by foregoing Grade A status.

12   Depooling can do greater damage in California than

13 elsewhere because of the priority claim of quota milk to pool

14 revenues. As is the case now under California regulations,

15 quota milk is paid first and the residual pool revenues accrue

16 to all regulated milk. If depooling were to occur, it would

17 reduce revenues from the higher valued manufacturing uses, and

18 reduce the uniform price for milk remaining in the pool. The

19 Cooperatives' proposal would maintain the California practice

20 of pooling all Grade A milk produced and purchased in the state

21 to minimize the potential fluctuation in pay prices among Grade

22 A producers. Thus, greater uniformity and stability of actual

23 pay prices to producers would result.

24   Depooling would also promote instability in the uniform

25 price. In any one month, one or more of the Class II, Class

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III, or Class IV prices could be above the likely uniform price

providing an incentive for depooling. Thus, the amount of milk

for which there is incentive to depool, could vary greatly from

month to month. This could result in greater volatility and

pay prices to producers.

Uniformity of Prices Among Producers

The Act requires that prices to producers in

market-wide pools be uniform as to all producers "irrespective

of the uses made of such milk by the individual handler to whom

it is delivered; subject...only to adjustment for (a) volume,

market, and production differentials, customarily applied by

the handlers subject to such order, (b) the grade or quality of

the milk delivered, (c) the locations at which delivery of such

milk is made to such handlers, and (d) a further adjustment

among producers and associations of producers on the basis of

their marketings of milk during a representative period of

time."

   Q. Can I stop you there? Did you -- were there several

points in reading that quoted language from the Statute where

the printed text has dots representing the fact that some of

the words have not been included in the quoted material?

   A. Yes, some of the words were eliminated because they

didn't contribute to a clear understanding of what was

intended, I think.

   Q. Okay. And, your Honor, I would ask that it is possible

1 for the text to reflect the highlighted notation in the written

 2 exhibit.

 3   JUDGE CLIFTON: All right. So I'm going to instruct the

 4 court reporter when preparing the transcript to refer to

 5 Exhibit 58. And where Exhibit 58 shows with "dot, dot, dot,"

 6 portions of the language that have not been include, that the

 7 transcript likewise show that. These exhibits I think will be

 8 very helpful when the court reporter creates the transcript,

 9 not only for spellings and that kind of punctuation,

10 Mr. Beshore, also determining whether it's an Arabic 1 or a

11 Roman Numeral I and the like. So I invite the court reporter

12 to read these exhibits when creating the verbatim transcript.

13   MR. BESHORE: Thank you, your Honor.

14   MR. ENGLISH: Your Honor, Chip English. And I'm not

15 interrupting because the witness has already been interrupted

16 by his own counsel. And I wouldn't have stood up, but for, and

17 I don't object to the references to the ellipticals and what

18 they mean in the sense of words being missing, I rise to object

19 to the commentary from the witness with respect to his

20 interpretation that they took away from the meaning of the

21 Statute, when, of course, the plain meaning of the Statute is

22 the plain meaning of the Statute. I object to that particular

23 commentary.

24   JUDGE CLIFTON: The objection is noted.

25 BY MR. BESHORE:

2454

1   Q.   Would you proceed, then, with your statement,

  2 Mr. Christ, beginning with the sentence after you finished the

  3 quotation from the Act?

  4   A.   Okay.

  5   The Cooperatives' proposal fulfills these requirements.

  6   The question of "uniformity" has been interpreted in

  7 many ways in the history of the FMMO program. In the days of

  8 individual handler pools, producers were paid uniformly by each

  9 handler. However, there was little or no uniformity of prices

 10 between handlers because of different utilization. Some FMO's,

 11 such as the Washington, DC --

 12   JUDGE CLIFTON: Let me have you do it again. It is so hard

 13 to say that phrase.

 14   MR. CHRIST: Some FMO'S --

 15   JUDGE CLIFTON: One more time.

 16   MR. CHRIST: FMMO's -- did I get the right number of M's?

 17 Okay. Good.

 18   Such as the Washington DC order, did not set prices for

 19 "surplus" milk, but pooled whatever revenue the handler in

 20 question received for his "surplus" milk, with the caveat that

 21 it not be less than the offering price of the Maryland and

 22 Virginia Milk Producers Cooperative Association. Thus, the

 23 manufacturing portion of the "uniform" price could differ for

 24 each handler. In addition, many early FMMO's included what

 25 were referred to as "base" plans that assigned a higher value

                              2455

1 distribution to each producer who owned "base."

2 Q. Could you just read --

3 A. Earned.

4 Q. Thank you.

5 A. Who earned "base."

6 Q. Okay. Thank you.

7 A. Some members, or some producers, had more "base" than

8 others so they were paid more. Another variation came from

9 seasonal incentive plans such as the so-called Louisville plan,

10 where some of the -- some pool money was withheld in the spring

11 months and paid out in the fall months, in an effort to reduce

12 seasonality of milk production. Also, new producers in many

13 orders were paid at lower price until they became established

14 in the market. So historically, there have been many instances

15 of variations in prices paid to producers.

16   These variations in pay prices were gradually reduced

17 as individual handler pools were eliminated "base" plans grew

18 out of favor and minimum class prices were harmonized across

19 orders.

20   The Cooperatives' proposal does include some of its own

21 variations in producer prices. The first is the distribution

22 of pool revenues to "quota" and "over-quota" milk. Owners of

23 California quota have a priority claim to pool revenues just as

24 "base" producers did in the past. This priority distribution

25 is required by California law.

1   The 1996 and the 2014 Farm Bills support this practice

2   by authorizing any California FMMO to "recognize quota value."

3   The residual pool revenues accrue uniformly to all other

4   producers whose production is not fully covered by quota. This

5   uniformity is greater than exists in other Federal orders,

6   because there would be no producer location adjustments.

7   Will Manufacturing Milk Prices in California be Too High?

8   Under the Cooperatives' proposal, some of the prices

9   for manufacturing milk in California will be higher than they

10   have been in the past. Will they be too high? The prices

11   proposed are the same prices that are paid by other handlers in

12   other FMMO's. Some of the handlers affected by these prices

13   today are located in the western region of the U.S., and are

14   subject to similar economic forces as California handlers.

15   Western cheese makers located outside of California and Idaho

16   (both states outside the FMMO system) have grown at a faster

17   rate than California cheese makers (see the table below).

18   The table below is titled Cheese Production, California

19   and Other Western States (Less Idaho) 2000 and 2014. The

20   column headings are Year -- ranging from, I have 2000 and 2014;

21   and the next column is headed California with Million Pounds

22   underneath; and the third column is Western States (Less

23   California and Idaho).

24   What this table shows that in 2000 the California

25   cheese production was 1,494,000 pounds. In 2014, it was

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1   2,444,000 pounds; and which expresses a 64 percent increase.

2   In the third column representing the other western

3   states, the first column shows that, or the third column shows

4   that in the year 2000, these states produced 852,000,000 pounds

5   of cheese; and in 2014 they produced 1,634,000 pounds of

6   cheese, representing a 92 percent increase in production.

7   So the plants in the western states outside of

8   California and Idaho grew faster than the cheese plants in

9   California.

10   Q. Before you leave that page of Exhibit 58, could you

11   read the source of the information?

12   A. Okay. The source came from Dairy Products, which is a

13   USDA publication, annual summary for the years 2000 and 2014.

14   Q. Thank you.

15   JUDGE CLIFTON: Let me interrupt. That was the bottom of

16   page 8?

17   MR. CHRIST: Yes.

18   JUDGE CLIFTON: I would like to take a 15-minute break if

19   we could. I hate to interrupt the witness, but I think that

20   would be helpful to me.

21   So we'll go off record at 10:38 and come back on at

22   10:55. Please be back and ready to go at 10:55.

23   (Whereupon, a break was taken.)

24   JUDGE CLIFTON: We are back on record now at 10:55.

25   Mr. Beshore?

2458

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BY MR. BESHORE:

Q. Thank you, your Honor.

Marvin Beshore.

Mr. Christ, would you resume presenting your prepared testimony in the Exhibit 58 beginning at the very top of page 9?

A. Yes. These data imply that FMMO Class III prices have not been detrimental to the growth of the cheese industry in other western states.

Evidence exists that the minimum prices paid by handlers outside of California, are not too high, as exhibited by their ability and willingness to pay producers substantially more than minimum blend prices. Several years ago, I asked the FMMO 30 Market Administrator to compare actual gross pay prices to producers, to minimum blend prices in each county sorted by degree of competition in that county. He did this first for FMMO 30, and later for all markets. The results for all "competitive" counties are shown on "Table 2," a document prepared by the Market Administrator's Office for the months of May and December 2008 through 2011. I offer this document as an Exhibit.

Q. Okay. Now, Mr. Christ, is the document to which you have just referred in your testimony, what has been marked as Exhibit 60?

A. That is correct.

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1   Q. Okay. Could you go ahead then, and continue with your,

2 with your testimony?

3   A. Okay. Each "competitive" county listed in "Table 2"

4 has sufficient computation by regulated handlers to render an

5 HHI (Herfindahl - Hirschman Index) of .33 or less. I chose the

6 HHI index represented in the table.

7   The price differences reported in the last column is

8 the gross pay price to each producer compared to the minimum

9 FMMO price, at test, for the same producer. Hauling charges

10 were not deducted from either price.

11   Q. Could I interrupt you there? Mr. Christ, if you would

12 look at the first page of Exhibit 60, and there's a footnote at

13 the bottom, and I would like you to read that footnote, if you

14 would, please.

15   A. Footnote number 1, the difference, per cwt -- which

16 means centi weight or hundredweight -- is the result of

17 subtracting the individual minimum order price at test and

18 location from the gross pay price. The difference is then

19 weighted using the producers' pool pounds of milk to arrive at

20 the county average.

21   So this is a weighted average of all regulated,

22 producers producing regulated milk within that county.

23   Q. Now, could you just tell us what -- first of all, the

24 data was prepared, on Exhibit 60, this is all the work of the

25 Market Administrator. Correct?

2460

1   A. Yes. The data were compiled by him based on a request

2   that I made, and but he's responsible for the data and the

3   computations.

4   Q. So when the footnote says that the difference is the

5   result of subtracting the individual minimum order price at

6   test and location from the gross pay price, could you just

7   explain clearly what you -- what that means by having a minimum

8   order price at test and location?

9   A. All right. Every -- first, every producers' milk has a

10 different composition. And the minimum pay price will vary by

11 how much protein, solids not fat, and butterfat are in his

12 individual milk. However, and that composition is reflected in

13 the minimum blend or uniform price that the handler is required

14 to pay, and -- but it also, so to make things comparable, I

15 asked that the gross pay price, which includes all the value of

16 all those components and other things such as quality premiums,

17 volume premiums, be included in the gross pay price compared to

18 the minimum required by the Federal Milk Marketing Order for

19 that same identical milk.

20   Q. So is that another way of -- maybe I can say it more

21 directly, correct me if I'm wrong -- that the difference

22 represented in the right hand column on Exhibit 60, is a pure

23 over-minimum regulated price payment made to these producers

24 and it is not, can't be accounted for in any way by the

25 location to which they deliver or the components in their milk?

2461

1   A. Yes. The location adjustments would apply to the

2 minimum uniform price to that producer, and presumably, there

3 would be some reflection in the actual pay price. However,

4 when there's a difference, it can be arise from a number of

5 sources such as eagerness to buy the milk, premiums offered by

6 the handler, or a choice not to make the same location

7 adjustment as is provided in the Federal Milk Order.

8   Q. In any event, they represent dollars that are over and

9 above the minimum regulated --

10   A. Yes, they are dollars over and above the regulated

11 minimum uniform price for that individual producer's milk.

12   Q. So in Exhibit 60, then, which is 70 pages -- 17 pages,

13 I'm sorry, 17 pages. Does it, can you just describe the

14 columns on each page? I don't want to go through each line of

15 each page, but just tell us what the columns are and how the

16 data is organized?

17   A. Okay. The first column identifies the state. And what

18 I asked is for the Market Administrator to identify each county

19 in each state where the Herfindahl Index was .33 or less. The

20 Herfindahl index is a widely accepted indicator of market

21 power. It's calculated by taking the market share of each

22 market participant, and squaring it, and then adding up the

23 squared numbers. So if there's a concentrated group of buyers

24 or individual buyer, it has a high HHI index. If there are a

25 lot of competitors and they are small relative to each other,

2462

1 then the HHI index is lower.

2   Part 3.33 is an arbitrary number chosen by me, but it

3 represents, at the minimum, three equally-sized competitors in

4 the county. Since that's not quite possible, it's at least

5 four, and it could be any larger number.

6   Now, there could also be a large number of purchasers

7 in a county with a higher HHI index if there are dominant firms

8 in that particular county. If someone has a large market share

9 and others have very small. So it's a number chosen by me.

10 And it's just a threshold. Say, if the numbers is larger than

11 that, if the county is less competitive. If the number is

12 smaller than that, the county is more competitive. But it

13 seemed like a reasonable threshold to consider. So identifying

14 first the states that had counties that met this threshold.

15   Second, it identifies, in the second column, the

16 counties for which the competition met this .33 HHI index

17 threshold.

18   And then the third column shows the years; and in the

19 fourth column, the months.

20   Now, the Market Administrator's comply sources of milk

21 by county, in May and December of each year. So they had the

22 data at the county level for those years, and those are

23 represented in columns 3 and 4.

24   The final column is the actual observed difference

25 calculated by the Market Administrator between what was paid to

2463

1 the producers in that county on a weighted average basis,

2 compared to what the minimum uniform price was for that same

3 milk, from the same producers, in that same county.

4   Q. Okay. Thank you. Thank you, Mr. Christ. Would you

5 then return to Exhibit 58 at page 9 where I interrupted you.

6   A. Okay.

7   Q. And continue with your testimony.

8   A. Okay.

9   I don't remember where you interrupted me.

10   Q. Begin with "here" the sentence, "here are", right

11 before the data set.

12   A. Okay. Okay. Okay. Here are the extreme differences

13 for each state;

14   And the only purpose of reproducing some of this

15 information in the statement was to show that the numbers range

16 fairly widely within the state and sometimes between states.

17   For example, of these eight observations, for all the

18 counties in Iowa that met the competitive threshold, the

19 smallest overpayment was $0.25, and the largest overpayment was

20 $3.90. Now, this is not the extreme individual producer, this

21 is the extreme for the entire county for an entire month. And

22 it just shows that there is great variation, but it's

23 predominated by plus numbers.

24   Indiana shows a minus number. And there are a few

25 minus numbers in Exhibit 60, Table 2.

2464

1   Q. Okay. So I'm going to ask, your Honor, if the

2 transcript could reflect table on pages 9 and 10 of Exhibit 58

3 in the transcript, without Mr. Christ reading the numbers line

4 by line, if that would be acceptable.

5   A. Your Honor, the same information is in Table 2,

6 Exhibit 60.

7   JUDGE CLIFTON: Mr. Beshore, I appreciate that suggestion,

8 and it's an excellent one. I ask that the transcript prepared

9 by the court reporter include the table as shown at the bottom

10 of page 9, top of page 10 of Exhibit 58, just after the

11 statement that the witness has made, "here are the extreme

12 differences for each state:"

13   And this table will be included in the transcript as if

14 read into the record, without Mr. Christ having to read it,

15 because it's not very helpful just to hear it read, it's better

16 to see it as laid out on pages 9 and 10.

17   (Refer to the Table that starts on Page 9 and

18   ends on Page 10 in the printed testimony of

19   Mr. Christ.)

20   MR. BESHORE: Thank you, your Honor.

21 BY MR. BESHORE:

22   Q. And with that, Mr. Christ, would you resume your

23 testimony where the text begins after the table on page 10?

24   A. Okay. In some competitive areas, such as the Upper

25 Midwest, farm-to-plant hauling costs are subsidized by the

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1 handler. Such a subsidy would increase the apparent

2 overpayment relative to the FMMO minimum prices.

3   Factors other than competition also affect a handler's

4 ability to pay. One is economies of scale. The milk in

5 California is processed into butter, powdered milk, cheese and

6 whey in larger plants than is the case for the rest of the

7 country. Here is a comparison for cheese and butter:

8 The table is headed: (Refer to table on Page 10.)

9 Production Per Plant of Cheese and Butter in California and the

10 Rest of the U.S. 2014.

11   Under cheese I have two columns, California; and the

12 second column is the U.S. -- that meaning the United States

13 minus California.

14   For cheese production, California averaged, for the

15 state, produced 2,313,000 pounds of cheese.

16   Q. Is that an average or a total?

17   A. That's a total. The cheese production in California is

18 a total of 2,313,000 pounds.

19   Q. For what period of time?

20   A. This would be for the year 2014. Similarly, the United

21 States without California produced 8,789,000 pounds of cheese.

22   The next line shows the number of plants producing

23 cheese in California and the U.S. outside of California. In

24 2014, there were 64 plants producing cheese in California. In

25 the rest of the United States, there were 466 plants.

1   When I divided the total production in line one, by the

2   number of plants in line two, I derived production per plant.

3   For California, the production of cheese per plant was 36.1

4   million pounds. The United States outside of California had a

5   production of per plant of 18.9 million pounds, meaning that

6   California production is approximately double per plant, that

7   of the cheese plants in the rest of the United States.

8   A similar result is seen for butter. In California,

9   the production in 19 or 2014, was 634 million pounds. The

10   production of butter in the U.S. outside of California was

11   1,229,000 pounds.

12   The number of plants in California producing butter was

13   14. The number of plants producing butter outside of

14   California in the United States was 72.

15   Dividing the line 1 number by the line 2 number, I get

16   production per plant for California was 45.3 million pounds in

17   2014; and for the United States outside of California, was

18   17.1.

19   What this says is the plants in California are much

20   larger in production of per plant than are plants, are

21   producing butter and cheese in California.

22   Q.   And the source for that data was what?

23   A.   USDA publication called Dairy Products, Annual Summary,

24   2014. That would have come out early in 2015.

25   A third factor is the provision of producer services,

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1 such as field services, producer record keeping,

2 communications, milk testing, and producer milk transportation.

3 Here is some data:

4   Average milk production per producer in the U.S. and

5 California, 2011. In the United States -- I think that should

6 be 2014. Yes.

7   Q. Okay.

8   A. Should not be 2011. 2014.

9   In the United States, average production per producer

10 was 4.5 million pounds. In California, the average production

11 per producer was 28.5 million pounds. So there are many fewer

12 producers in California for a given amount of milk than is the

13 case in the United States as a whole.

14   And that implies that the cost of servicing each

15 individual producer is distributed over a much larger volume of

16 milk.

17   The source of this data is again, the USDA publication,

18 Milk Production reported in February of 2015.

19   Q. So just to be clear, the report in February of 2015

20 would have included the report of the annual numbers for the

21 year 2014?

22   A. 2014.

23   Q. Thank you.

24   A. Larger producers mean lower cost of these services per

25 hundredweight of milk.

2468

1   A fourth factor is the cost of balancing services for

2   the fluid market. Since a seasonality of fluid demand does not

3   harmonize with the seasonality of milk production, the handlers

4   that service the fluid market suffered a loss of plant capacity

5   utilization. The California market has a lower utilization

6   than any FMMO market.

7   Q. Mr. Christ, could you just begin that sentence again?

8   I think you missed a word or two.

9   A. The California market has a lower Class 1 utilization

10 than any FMMO market, other than maybe the Upper Midwest. So

11 there is less "give-up" cost incurred by California milk

12 manufacturing plants.

13   A fifth factor in California is California's proximity

14 to the Asian export markets. When export prices for dairy

15 products rise above domestic prices, California (and other West

16 Coast) processors, can use their geographic proximity to serve

17 those markets. They may capture higher prices, which may only

18 be partly reflected in the national average dairy product

19 prices that are used in FMMO class price formulas. Their

20 revenue opportunities rise more than their manufacturing class

21 prices.

22   A sixth factor is that manufacturing class prices are

23 based on basic commodity prices.

24   Q. Excuse me --

25   A. I gave basic commodity products.

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1   Q.   Thank you.

2   A.   Bulk butter, bulk cheddar cheese, bulk dry whey, and

3   bulk nonfat dry milk. These are typically lowered valued

4   products, and their prices are viewed as indicators of national

5   supply and demand conditions. However, dairy manufacturers

6   have a choice of making these products or of producing higher

7   value products such as retail butter, specialty cheese, whey

8   protein concentrate, and customized milk powders. These

9   represent opportunities for manufacturers to enhance their

10   revenue stream without increasing milk cost through regulated

11   milk prices. Thus, it is not likely that the proposed prices

12   for manufacturing milk will be too high.

13   Next section.

14   Class 1 Differentials

15   The level of Class I differentials proposed will be

16   discussed by another witness. I will comment only on the

17   purpose and function of Class I differentials. In the early

18   days of FMMO's, especially with individual handler pools, Class

19   I differentials provided revenue for creating an incentive for

20   the production of Grade A milk, and for delivering it to a

21   fluid processing plant. First, a plant with a relatively high

22   Class I utilization could justify paying more than other

23   plants. Second, the extra revenue created by the differential

24   would offset the added cost of maintaining Grade A production

25   status for the dairy facility. And third, location adjustments

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encouraged the delivery of milk to urban areas where most fluid

milk plants are located.

However, with the adoption of market-wide pools, there

was a lesser incentive to ship to the highest utilization

plant, but producers only needed to ship milk to a regulated

plant, whether it be a manufacturing plant or a fluid plant.

It was up to the manufacturing plant operator to satisfy

pooling standards, and to remain an attractive market for Grade

A milk. The Class 1 differential was no longer sufficient to

attract milk to fluid plants. However, it's contribution to

the uniform price usually remained sufficient to attract more

and more Grade A milk to the market.

So, the level of Class I differential -- should be

differentials -- is not the primary determinant for assuming

that milk gets to the fluid plants that need it.

Q. So could you --

A. I'll read that sentence.

Q. Read that sentence again, please, Mr. Christ?

A. So the level of the Class I differential is not the

primary determinant for assuring that milk gets to the fluid

plants that need it.

Q. Thank you.

JUDGE CLIFTON: Now, Mr. Christ, first time you read it you

said "differential" should be plural, "differentials." But the

second time you read it, you read it as if the singular was

1   acceptable. Which way do you prefer?

2   MR. CHRIST: I will try a hybrid. And that is, so the

3   level of the Class I differentials -- S plural -- is not the

4   primary determinant for assuring that milk gets to the fluid

5   plants that need it.

6   A producer gets the uniform price no matter what

7   product his milk is used to produce.

8   Proposal Number 1 imitates the California program with

9   regard to shipping requirements. There are none. However, the

10   California program has a latent call provision which could

11   require reluctant suppliers to sell milk to fluid processing

12   plants. In my experience, this provision has never been

13   invoked.

14   Other factors contribute to an orderly supply of

15   Class I milk, of milk for Class I use. Most important are the

16   contractual relationships between suppliers and Class I buyers,

17   both of whom may operate on a regional or a national basis.

18   They agree to sell and/or buy milk for Class I use, on terms

19   that satisfy their business needs. These contracts exist

20   outside the FMMO system, but provide assurance that milk be

21   available, will be available, for Class I use.

22   In the California system and in the Cooperatives'

23   proposal, the Class I differential is the most lucrative source

24   of funds to pay dairy farmers. Higher Class I differentials

25   means that quota and transportation credits will be paid and a

higher residual uniform price will be available to producers.

And lower Class I differentials mean a lower residual uniform

price.

        As argued above, Class I differentials do not provide

an adequate incentive for attracting milk to a fluid processing

plant. In the Cooperatives' proposal, transportation credits

are an important mechanism for facilitating the movement of

milk to fluid processing plants located in urban areas. Milk

shipped from the farm to a qualified fluid processor is

eligible to receive a partial reimbursement from the pool for

the cost of the haul.

        If, for whatever reason, fluid processors have

difficulty attracting enough Grade A milk, they can pay more

than minimum FMMO prices for it, while -- which is customary, a

customary practice throughout the FMMO system.

Next section:

Orderly Marketing Conditions

        One of the primary goals specified in the Act is to

"establish and maintain orderly marketing conditions."

"Orderly marketing" is not specifically defined in the act;

furthermore, the term "disorderly marketing" does not appear in

the law. However, the Act does explicitly give the Secretary

of Agriculture tools to create "orderly marketing conditions"

in FMMO's. I will try to offer some perspective on these

terms.

1   One aspect of orderly marketing conditions is

2   stability. To me, that means that the economic environment

3   under which producers and handlers transact business does not

4   vary as an artifact of regulation. For example, evidence will

5   be introduced that the cost of milk for manufacturing varies

6   widely between the California state program and the Federal

7   program. That means that sometimes it may be more profitable

8   to process milk under one regulatory program than the other.

9   Firms regulated under both programs compete in the same

10 national input market (with the exception of raw milk) and

11 output markets. The economic environment may be distorted

12 merely by differences in the regulations.

13   Orderly marketing can be approved for California

14 producers. They compete in the national market for farm inputs

15 but experience significantly different prices for milk, due to

16 regulation.

17   Another aspect of orderly marketing is efficiency. By

18 this, I mean, "Does the regulatory program simulate a

19 competitive economic environment?" If it does, transportation

20 and transaction costs will be lower; and most favorably located

21 producers will associate with the most favorably located

22 plants.

23   Furthermore, the appropriate amount of milk will go to

24 the most valuable uses. Whether or not a competitive economic

25 environment is fostered, is a difficult question to answer, but

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 1   we can strive to achieve efficiency in developing regulations.

 2   I believe the Cooperatives' proposal for a FMMO in California

 3   will embody both stability and efficiency.

 4           Your Honor, that ends my statement.

 5     Q.  Thank you, Mr. Christ, and your Honor, I would move for

 6   the admission of Exhibit 58, 59 and 60, and at this time

 7   Mr. Christ would be available for questions from other

 8   participants.

 9     JUDGE CLIFTON:  I would like to make three corrections on

10   the record copies of Exhibit 58.  On Exhibit 58, on page 3,

11   second line up from the bottom, I would ask that the record

12   copies change the word "agriculture" to "agricultural."

13           Mr. Beshore, is that acceptable?

14     MR. BESHORE:  That is acceptable.  Thank you for that

15   correction, your Honor.

16     JUDGE CLIFTON:  And on page 11, the third line down from

17   the top, at the end of the sentence, "2011" the "2011" would be

18   stricken and in its place "2014" would be written.  Is that

19   acceptable, Mr. Beshore?

20     MR. BESHORE:  Yes, it is, thank you, your Honor.

21     JUDGE CLIFTON:  And then on page 12, third line up from the

22   bottom, the singular word "differential" would just have an "S"

23   added to make it plural, so that it reads "differentials."

24           Is acceptable, Mr. Beshore?

25     MR. BESHORE:  Yes, it is, thank you.
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1   JUDGE CLIFTON: Is there anyone who would like to ask

        2   questions of Mr. Christ before determining whether you object

        3   to Exhibit 58 being admitted into evidence? There is no one.

        4   Is there any objection to the admission into evidence

        5   of Exhibit 58? There is none -- there are none. Exhibit 58 is

        6   admitted into evidence.

        7   (Thereafter, Exhibit Number 58 was

        8   received into evidence.)

        9   JUDGE CLIFTON: With regard to 59, is there anyone who

       10   would like to ask questions of Mr. Christ before determining

       11   whether to object to Exhibit 59 being admitted into evidence?

       12   There is no one. Are there any objections to the admission

       13   into evidence of Exhibit 59? There are none. Exhibit 59 is

       14   admitted into evidence.

       15   (Thereafter, Exhibit Number 59 was

       16   received into evidence.)

       17   JUDGE CLIFTON: With regard to Exhibit 60, does anyone wish

       18   to question Mr. Christ before determining whether you have any

       19   objections to it being admitted? There is no one. Are there

       20   any objections to the admission into evidence of Exhibit 60?

       21   There are none.

       22   Exhibit 60 is admitted into evidence.

       23   (Thereafter, Exhibit Number 60 was

       24   received into evidence.)

       25   JUDGE CLIFTON: Who would like to go first in asking

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1 cross-examination questions of Mr. Christ?

2   CROSS-EXAMINATION

3 BY MR. VETNE:

4   Q. John Vetne, representative for Hilmar Cheese Company.

5   Good morning, Mr. Christ.

6   A. Good morning, Mr. Vetne.

7   Q. I made a couple of notes on Exhibit 59, which is your

8 resume. From 1961 to '64 on the first page, you worked for the

9 Market Administrator's Office in Detroit, and one of your

10 functions was evaluating hearing records. I just wanted to ask

11 a question about the quality and nature of that experience.

12 Was that evaluating the records for purposes of assisting and

13 writing decisions and rules?

14   A. Mr. Vetne, no. My assignment was to index the record

15 so that people could identify every area where particular topic

16 was discussed.

17   Q. Okay. So it was in the process of, in the process of

18 rule making, you were assigned a ministerial function?

19   A. Yes.

20   Q. Okay. And then, in the following segment, 1964 to '66

21 you compiled something called a Midwest Condensory price?

22   A. Yes. Each month I would call, I think at the time it

23 was three Condensory operators in the Midwest, and they would

24 tell me what they had paid for milk for the preceding month,

25 and I would average them and announce that as the Midwest

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1 Condensory price.

2   Q. Okay. And the function of that price for regulatory

3 use -- at that time there was a product price formula in some

4 markets used for surplus milk?

5   A. I don't recall that they were product prices, but there

6 was a great variation in the mechanisms used for pricing milk

7 and manufacturing. Some markets used local manufacturing plant

8 averages, some used the Midwest Condensory average. At that

9 time, a few markets had started using the Minnesota Wisconsin

10 price, and New York was always an outline, I can't remember

11 just what they did. Class 1 prices were based on an economic

12 formula.

13   Q. All right. Are you familiar with something called by

14 shortened reference the Nourse report or the report of the Milk

15 Pricing Study Committee to the Secretary of Agriculture

16 published in 1962?

17   A. Yes, the name is quite familiar. It's probably been 40

18 years before I perused it, but I recall that it was considered

19 a significant contribution to thinking about Federal Milk

20 Orders.

21   Q. Okay. You mean you waited 40 years to look at it or

22 you waited 40 years to look at it again?

23   A. No, I have not done it since 40 years ago.

24   Q. You did it 40 years ago and you have done it more

25 recently; is that correct?

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1   A. No, I have not done it more recently.

2   Q. Oh, you have not done it, the last time you did it was

3 40 years ago?

4   A. Yes.

5   Q. And there was another report by academic types within

6 USDA that prepared a similar paper in 1972, just ten years

7 after that. Do you recall that, headed by Dr. Knudsen?

8   A. I would have been involved in that. I'm trying to --

9 there was a study that I was involved in that he supervised,

10 which tried to model supply and demand conditions in the dairy

11 industry, and we established a multiple equation model that

12 tried to show how demand would respond to changes in supply and

13 that sort of thing. Yes, I recall that study, but it may not

14 be the same one that you are referring to.

15   Q. Okay. The one I'm thinking of -- let me see if this

16 refreshes your memory -- was created because the observation

17 was that the supply of Grade B manufacturing grade milk was

18 dwindling and eventually we'd have to find something other than

19 MW. Do you remember that?

20   A. That was the one where they invited a number of

21 academic dairy specialists to participate in the study, yes.

22 And I, and I observed the development of the study and

23 expressed my opinions about some of the findings.

24   Q. Okay. Do you recall enough of the Nourse report to

25 remember that the Nourse Committee opined, expressed an

1 opinion, that if premium prices are excessively above Federal

2 minimum prices, that maybe the system isn't working to capture

3 the regulated prices, and either flux should be given to either

4 raising regulated prices or terminating orders?

5   A. I don't remember that conclusion from the Nourse

6 report, but I have come to a similar conclusions after

7 observing data like in Exhibit 60.

8   Q. Okay. Do you recall from your memory of the 1972

9 report and your experience with the USDA thereafter, that

10 USDA's thinking gradually evolved so that regulated prices were

11 thought of as a floor from which buyers and sellers could

12 negotiate premiums and premiums served as a vehicle for rapid

13 response to market changes?

14   A. Okay. I'm aware of administrative attitudes on the

15 question of minimum prices and premiums. At one time there was

16 a lawsuit I think in the Philadelphia market where the

17 administrators of the dairy programs actually either sued or at

18 least threatened to sue people paying prices above the Federal

19 Order minimum. I don't know -- I don't know the outcome of

20 that. But later in my experience at USDA, there was acceptance

21 of the idea that premiums could be negotiated above minimum

22 prices, that open market forces could achieve prices higher

23 than Federal minimums. But there was a time when they were,

24 there was doubt about their appropriateness.

25   Q. Okay. And do you accept the other part of my question

1 that the regulatory thinking evolved in a way so that premiums

2 charged were considered a way for the marketplace to respond

3 rapidly to market changes without regulatory intervention?

4   A.   Well, I think premium pricing in the dairy markets may

5 be attributable to a number of things, for example, of cost of

6 servicing the market and those sort of things. But these are

7 private treaty transactions occurring between suppliers and

8 buyers. I participated in those kind of transactions as a

9 representative of Land O'Lakes, but I'm not sure if my motives

10 were the same as everybody else's.

11   Q.   My question related to your knowledge of the thinking

12 of regulators that administered the Federal Order program, and

13 the function of premiums overlying a regulatory price?

14   A.   Okay. I never attended an official meeting where we

15 were, where official policy was explained, but I do remember

16 hallway discussions about, and different arguments and

17 attitudes about overpayments.

18   Q.   Are you familiar with the publication most recently

19 updated in 1989, published by AMS called the Federal Milk

20 Marketing Order program?

21   A.   Okay. I haven't seen the recent editions, but I'm

22 familiar with the earlier editions.

23   Q.   You haven't seen the 1989 version of it? That's not

24 recent.

25   A.   Boy, I doubt if I have. And the reason is that there's

1   not much change from one version to the next.

2   Q.   Okay. And I wanted to ask a question about Exhibit 60

3   so that I understand what you did, what you have done here.

4   You have made a request to the Market Administrator, you asked

5   for records of over-order premiums in certain counties, and you

6   chose the counties based on your assessment of a reasonable HHI

7   index?

8   A.   Yes.

9   Q.   Meaning they are worth three or more competitors buying

10   milk in those counties.

11   A.   At a minimum.

12   Q.   At a minimum of three?

13   A.   There could be more than three and still have an HHI

14   index much higher because of the dominance by one or two firms.

15   But it's an arbitrary number, but it does represent more

16   competition than an HHI index above .33, and less competition

17   than a number below .33.

18   Q.   Okay. So would it be fair to say that, that you're

19   applying a principal where there are multiple buyers competing

20   for milk supplies?

21   A.   Yes.

22   Q.   You were more likely to see premiums and the

23   marketplace response to supply and demand?

24   A.   I believe that's, that can be interpreted from the data

25   in Table 2, that if the, in the predominant situation, number

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of cases, there were large premiums paid in counties with an

HHI index of .33 or less. Now, I expected that but that was a

hypothesis until I saw the data.

Q. All right. What you would expect to see in a county

where there are multiple, many buyers seeking milk supplies,

would it not be true that premiums would be paid at a level to

either maintain a milk supply against what is offered by

competitors or to attract milk supplies away from competing

buyers?

A. I think so. If there are competing buyers, they are

likely to pay more, if and only if, purchase of milk is a

profitable activity, and, or at least expected to be a

profitable long-run profitable activity. Then if it's not a

profitable activity, my guess is that competing buyers would be

not as eager to pay premiums.

Q. So a buyer that has, well, if it -- let's distinguish

long-term and short-term here. Sometimes buyers, in your

experience, pay more for milk than they can recover from the

marketplace in the sale of products they produce in order to

secure milk supply for the future where they think the margins

will be better for them.

A. Absolutely, that's a standard economic question of

whether you cover your variable costs or not. If you don't

cover your variable costs, you discontinue business today. If

you cover, if you cover your variable costs but not your fixed

1 costs, you continue in business until you have to replace your

2 fixed costs.

3   Q. So the existence of premiums where there are many

4 buyers seeking a milk supply, would be a good measure of

5 determining whether, and to what degree, buyers are recovering

6 their costs in the competitive marketplace?

7   A. It's a measure of whether to recovering their variable

8 cost, not necessarily their fixed cost. The fixed cost is a

9 learned, long-term proposition and will influence whether they

10 choose to reinvest. But as long as they are covering their

11 variable cost, they will try to buy milk.

12   Q. Let me try to put it in English. If the purchase of

13 milk and making a milk or dairy product is profitable to the

14 buyer, you would expect to see that financial incentive

15 reflected in premiums; is that correct?

16   A. Sounds reasonable to me.

17   Q. Okay. And the greater --

18   A. I -- it -- may I back up and elaborate just a bit?

19   Q. Yes.

20   A. If required to do so because competitors are also

21 willing and able to do so, if I'm a monopsonist, then I may not

22 choose to pay premiums, no matter how profitable.

23   Q. Okay. Could you describe, actually, could you spell

24 and then define "monopsonist"?

25   A. Okay. A monopsonist is -- MO -- monopsony is

1 M-O-N-O-P-S-O-N-Y. And that is a monopoly on the buying side

2 of a market. And I was educated last night to learn those are

3 two Greek words. But it's a monopoly on the buying side. A

4 monopoly refers to the selling side, monopsony to the buying

5 side.

6   Q. And the HHI index that you described here, does that

7 neutralize the .33 you used, does that neutralize potential

8 impact of the existence or nonexistence of a monopsony?

9   A. It would not qualify as a monopsony. Another technical

10 term it might qualify even at .33, as an oligopsony, which I

11 will spell, O-L-I-G-O-P-S-O-N-Y. And that is a small number of

12 interrelated competitors in the market, rather than perfect

13 competition.

14   Q. Elaborate on that. How that might --

15   A. Well, that --

16   Q. In the dairy market, how would -- how would the

17 existence of that serve to constrain premiums by multiple

18 buyers seeking, competing for a finite milk supply?

19   A. If they learn to interpret each other's behavior, and

20 this is standard game theory analysis, if people can learn to

21 interpret each other's, in a, among a small number of

22 competitors, interpret each other's behavior, they might get

23 some of the results that a monopoly might get, but it depends

24 on how efficiently you do that. If they form a cartel, they

25 can do it very efficiently. If they don't form a cartel and

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1 don't trust each other, then they can't do it very well.

2   Q. Would you expect to see an element of that, even though

3 there were multiple entities buying milk, if those entities

4 purchased milk, say, functioning as a federation of

5 cooperatives under different names?

6   A. I think it would not happen.

7   Q. Because?

8   A. A federation of cooperatives, unless they were one

9 entity. Cooperatives can form common marketing agencies of the

10 sale of agricultural products, but to my understanding is they

11 cannot do that with respect to buying from agricultural

12 products.

13   Q. Buying agricultural? I'm talking about buying milk.

14   A. Buying milk is an agricultural product.

15   Q. Okay. I'm going to go backwards here. I'm starting,

16 I'm starting on page 13.

17   A. Of the statement?

18   Q. Of your statement, yes. Your statement, Exhibit 58.

19 Actually, the question I have addresses the transition from the

20 bottom of page 11 to the top of page 12. Let me read the

21 sentence:

22   "However, dairy manufacturers have a choice of making

23 these products, or of producing higher value products such as

24 retail butter, specialty cheeses, whey protein concentrate, and

25 customized milk powders. These represent opportunities for

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1 manufacturers to enhance their revenue stream without

2 increasing milk costs through regulated prices."

3   Would you agree with me that rational businessmen,

4 rational dairy product manufacturers, rational buyers of raw

5 milk to convert to various consumer products, will seize upon

6 opportunities to make money in the marketplace where they

7 exist?

8   A. The answer is yes, that's why they are in business is

9 to be profitable, and they will choose the activity that they

10 view as being the most profitable.

11   Q. So if an opportunity to make more money by doing

12 something new or different exists, you would expect over a

13 period of time to observe that behavior in the transactions,

14 marketing transactions and marketing decisions of the buyer of

15 milk?

16   A. Please repeat the question.

17   Q. Okay. If an opportunity exists to make more money by

18 using milk one way rather than another, you would expect to see

19 that in observed transactions, observed behavior, observed uses

20 of buyers in the aggregate?

21   A. Well, we would expect -- expect people to pursue the

22 business opportunities that represent the greatest

23 profitability.

24   Q. That's just basic economics, that people --

25   A. No, not everybody has perfect knowledge, but that's a

1 reasonable objective.

2   Q. Okay. I'm going down here to the middle near the, just

3 below the middle of page 12. You are talking about the Class 1

4 differential in the third sentence:

5   "The Class 1 differential was no longer sufficient to

6 attract milk to fluid plants."

7   As I understand your statement there, it's that having

8 a Class 1 price, whatever it is, if you are going to blend it

9 among everybody, the Class 1 price isn't going to attract milk.

10   A. If it is a blended across all producers, I have no

11 particular incentive to deliver to a fluid plant compared to a

12 nearby manufacturing plant, because it gets the same price at,

13 net price, at my location.

14   Q. Okay. You did not include in your statement -- or if

15 you did I missed it -- the the practice in the Federal Order

16 system of adjusting producer prices at the same rate as class

17 prices are adjusted. It's true that the Federal Orders have a

18 producer price incentive or disincentive built into the

19 penny-for-penny adjustment of their prices with penny-for-penny

20 increases or decreases in Class 1 prices?

21   A. They are, most, I think the existing Federal Orders

22 have the same location adjustments or producers and handlers.

23 However, I remember the old Ozarks order had different location

24 adjustments, and they are not -- the law permits adjustment for

25 location, but it doesn't require it and it doesn't require that

1   they be exactly the same or that they exist. Again,

2   interpreting the law.

3   Q. Thank you. I have been searching my memory for the one

4   instance in which producer prices did not mirror --

5   A. Yes.

6   Q. -- Class 1 prices changes. And Ozarks, I knew it was

7   Missouri someplace.

8   A. Just added comment related to it, I don't think it was

9   ever challenged by anyone.

10   Q. No. Would you agree with me that post-Federal Order

11   Reform, well, let's go first to pre-Federal Order Reform,

12   pre-Federal Order Reform producer milk prices for delivery to

13   manufacturing plants at a distance from the market within which

14   they were pooled, were generally subject to negative

15   adjustments so that producers got a low price if they delivered

16   to a manufacturer in quite a distance from the primary

17   population market?

18   A. That was a common practice in Federal Orders, yes.

19   Q. Okay. And would you agree with me that served as a

20   disincentive?

21   A. A disincentive to do what?

22   Q. A disincentive to the producer to, a comparative

23   disincentive to deliver to a distant manufacturing plant versus

24   a distributing plan near a large city?

25   A. The location adjustment, in latter years at least,

1 applied to the point at which the milk is first received.

2   Q. Yes.

3   A. And if the milk is first received at a nearby plant

4 with a negative location adjustment, the revenue would be less

5 than if the milk were received at an urban plant, for example,

6 with a lesser location adjustment. However, offsetting that is

7 the cost of delivering the milk to the higher valued location.

8   Q. Okay. And what, at one time Class 1 differential and

9 producer prices were adjusted somewhat in relation to the cost

10 of transporting milk from Wisconsin -- Eau Claire, Wisconsin?

11   A. Yeah, the rate usually applied was 1.5 cents per ten

12 miles.

13   Q. Per hundredweight per ten miles?

14   A. Per hundredweight per ten miles. That was a common

15 number in Federal Milk Orders.

16   Q. Are you familiar with the 1952 USDA Academic Expert

17 Report that first observed that price surface behavior?

18   A. Okay. Yes, I am, and I can't remember the names of the

19 authors, but I have read that report, but not in the last 40

20 years. And I understand the mechanism of how those numbers

21 were derived.

22   Q. Do you recall from your reading that report 40 years

23 ago -- do you have a current memory from reading that report 40

24 years ago, that that report also observed that prices in the

25 West Coast couldn't be explained by distance from Wisconsin,

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1 that there's a difference base operating it?

2   A. Yes, I recall that part. The mechanism of that report,

3 which has been misinterpreted, is that they actually observed

4 prices across the country and drew, through regression, a line

5 back to Eau Claire, Wisconsin. That was the closest

6 approximate origin of milk price plus transportation.

7   Q. Thank you. Okay. Let me go back to my notes. At the

8 beginning, I'm looking at page 3, the middle paragraph standing

9 by itself, Proposal Number 1.

10   A. Okay.

11   Q. Let's see what it does. You say, "Proposal Number 1

12 does that." Does what? What are you, what are you referencing

13 in your prior statement that Proposal Number 1 does?

14   A. Let's see, it enhances prices to producers, that's what

15 it does.

16   Q. Okay. That's what I thought. And it does so, you have

17 opined, without harming consumers and without disruption of the

18 orderly flow of milk and dairy products to the market. So that

19 means it's not going to make things worse. Is that your

20 opinion?

21   A. That's my opinion that it will not.

22   Q. Okay. So your opinion is that there is -- my inference

23 is -- it's orderly now and this isn't going to make it more

24 disorderly?

25   A. I think there is some -- okay. I didn't sit down and

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1 make a parallel. It will, in terms of milk production in

2 California, maybe not -- okay. I can't really state whether

3 the amount of disorder is greater, is likely to be greater in

4 the future with the adoption of Proposal Number 1 than it is

5 today. We know that, or we have evidence being introduced that

6 there's significant disorder today with the variations in

7 prices between California and the rest of the country. But we

8 will reduce that, so I would -- I would conclude that there

9 will be less disorder with the adoption of Proposal Number 1.

10   Q. Perhaps I misunderstood your testimony as read or as

11 explained at various times. But now you are using the word

12 "disorder" to equate to an observed difference in regulatory

13 prices. Am I correct?

14   A. I should argue that it, I expect that there will be

15 more order if prices are, there's greater harmony in prices

16 paid by processors in California and processors under the

17 Federal Milk Order system.

18   Q. Okay. Let me then ask you about your use of the term

19 "disorder."

20   A. Did I use it?

21   Q. No, you did in answer to my question.

22   A. Okay.

23   Q. And based on your experience in the system, an inquiry

24 into whether there is disorder is an examination of market

25 behavior of transactions, of things taking place in the

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1 marketplace that are observable and quantifiable and

2 identifiable. Do you have any of those in mind when you say

3 the change will be more orderly? Can you identify a

4 transaction or a behavior that you believe is now disorderly

5 that would be, and behavior would be changed in the future?

6   MR. BESHORE: May I object, your Honor? Marvin Beshore.

7 Mr. Vetne's question seriously misstates Mr. Christ's

8 testimony, and you know, as he recently said, he didn't use

9 disorder. Mr. Vetne asked him about disorder and he responded,

10 and now he's continuing to put the words, attempt to put the

11 words in his mouth. The question is misleading and

12 objectionable.

13   JUDGE CLIFTON: Mr. Vetne, you made a statement, and

14 without asking whether Mr. Christ agreed with that definition,

15 you then went on. Do you remember your statement?

16   MR. VETNE: I remember the question and I remember what was

17 in my mind and his answer. Mr. Christ identified differences

18 in price, in regulated price, as indicative of disorder.

19   JUDGE CLIFTON: Well, now wait just a minute.

20   MR. VETNE: That's my memory.

21   JUDGE CLIFTON: So take into account that Mr. Christ said

22 there's been evidence in this hearing --

23   MR. VETNE: Yes.

24   JUDGE CLIFTON: -- that the differences in price constitute

25 disorder. Now, go back to his statement and remember what he

1   identified, including if regulations alone make the difference

2   in a market, that was one of his methods of analyzing, and then

3   he used the word "efficiency." If you can promote efficient

4   markets, they tend to be orderly. If you want to ask him

5   questions about what he presented, rather than his reference to

6   the evidence that's come out in this hearing about disorderly

7   marketing, I think that might be more fruitful.

8   MR. VETNE: May be more fruitful. That has been my effort,

9   but maybe I -- my thinking is focused here.

10   JUDGE CLIFTON: Why don't you go to the parts of his

11 statement where he said what would promote orderly marketing.

12   MR. CHRIST: Let me review that. And I discuss,

13 philosophically at least, two attributes of orderly marketing;

14 one is stability and the other would be efficiency where we're

15 trying to simulate the outcomes of a competitive economic

16 environment.

17 BY MR. VETNE:

18   Q. Okay. And that's good. In both cases you tried to

19 simulate what would happen in a competitive market, correct?

20   A. In a competitive market, but even in a competitive

21 market, things change from time to time and people change with

22 whom and what volumes and that sort of thing, that they

23 transact business. But if it's driven by regulation rather

24 than economic forces, then I think it's less than orderly.

25   Q. Okay. I think you are saying, and I would agree, that

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1 on occasion regulation by itself can create behavior which

2 rational people would not make in an unregulated market.

3   A. I think that's the idea I'm trying to approach.

4   Q. Okay. And an illustration of that, for example, might

5 be the pooling of California milk in Ohio to take advantage of

6 the system. I don't know if are -- are you familiar with that

7 from a few years ago?

8   A. I am reasonably familiar with that.

9   Q. Well, and that's an illustration of that kind of

10 behavior.

11   A. That is an artifact of regulation and would not likely

12 have occurred in the absence of regulatory latitude.

13   Q. Okay.

14   JUDGE CLIFTON: What do you mean by regulatory latitude?

15   MR. VETNE: Good question.

16   MR. CHRIST: Your Honor, this is, it goes back to whether

17 milk can be pooled under one, more than one set of regulations.

18 And at one time, the language of the milk orders would permit

19 the pooling of milk under both state regulation and Federal

20 regulation, and that's been remedied since. But at one time

21 that occurred, and that was an artifact of differing or

22 regulation.

23 BY MR. VETNE:

24   Q. On page 6 you talk about the pooling, and the second

25 full paragraph beginning there you say, "Depooling would also

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1 promote instability in the uniform price."

2   Do you see, are you we on the same page?

3   A. Yes, I see that.

4   Q. Now, in the Federal Order system, correct me if I'm

5 wrong, please, depooling occurs because of behavioral market

6 participants in response to financial incentives in the

7 unregulated market, correct?

8   A. That's correct to the degree that the markets for the

9 products are unregulated. For example, cheese and butter,

10 nonfat dry milk, those are unregulated. And if the markets for

11 the alternative products of manufacturing milk do not move in

12 harmony, at one time the minimum price calculated under Federal

13 milk orders for Class 4 might be higher than the blend price.

14   Q. Yes.

15   A. And as a result, there would, you would be wise to

16 depool the milk that is used to produce Class 4 products,

17 because we don't have mandatory pooling for milk used to

18 produce manufactured products.

19   Q. So your use of the word "instability" in this sentence

20 that I read to you --

21   A. Uh-huh.

22   Q. -- did not, was not intended to be somewhat synonymous

23 with variability?

24   A. No, I agree that variability can have a different

25 connotation than instability. Instability means that something

2496

1 that you would not expect in a competitive environment to

2 occur.

3   Q. Well, you don't have market-wide blend prices in a

4 competitive environment either?

5   A. No, you do not.

6   Q. Or actually, who knows, we might.

7   A. Well, just a back up on that. Some of the original

8 philosophy between pooling is that milk is not marketed in a

9 competitive environment, there were few buyers and many

10 sellers, and therefore, you are not getting nearly competitive

11 results, that the blend price may be closer to competitive

12 results than the existing situation.

13   Q. Okay. Just while I'm thinking of, go back. A large

14 component of marketing disorder which existed during the early

15 decades of the program '30s, '40s, '50s, was seasonal variation

16 in production whereby spring production could have been double

17 during the short season, correct?

18   A. Yes, that's right. Seasonality was a serious problem

19 and that's one of the major achievements of the dairy industry

20 I think, that we use to reduce it.

21   Q. And, you know, 50 percent difference several decades

22 ago has been reduced substantially to like 10 percent now,

23 correct?

24   A. That's my understanding.

25   Q. So now, okay. So you would agree with me that when

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1   when dairy product prices are moving up faster than the

2   regulations can follow, there may be an incentive to depool

3   because you receive revenue from the marketplace, you don't

4   have to share with the pool?

5   A. That's correct. And that still is the case to some

6   degree, although there have been efforts to modify Federal

7   Orders to reduce the incidents of depooling.

8   Q. Okay. So depooled milk actually moderates the

9   acceleration of the price increase in the uniform price because

10   of higher value.

11   A. Yes, the higher valued manufacturing uses may withdraw

12   from the pool.

13   Q. Okay. Are you aware that depooling has been used at

14   times since Federal Order Reform by manufacturers as a way to

15   recover from the marketplace what could not be recovered by

16   inadequate manufacturing allowances?

17   A. I really can't comment on that, because I -- I don't

18   see where that makes much difference. The price of cheese is

19   the price of cheese, and if it was not profitable to convert

20   milk into cheese with or without a Federal Order or pooling,

21   you wouldn't want to do it.

22   Q. If you make cheese or butter and powder, you know, and

23   lose a dollar for every hundredweight you make because of an

24   inadequate make allowance, when prices are inverted, you can

25   recover money not available to you through the pool and that

1 sort of offsets that regulated loss.

2   A. Well, I -- I'll concede that that might be a strategy,

3 but I guess I am not thinking in that line. Normally, the

4 incentive to depool is that I reduce the amount of money that I

5 have to pay into the pool, not that I have to -- well, I want

6 to reduce the amount of money I pay in and not necessarily --

7 well, I guess I don't understand the rest of it.

8   Q. Okay. So for a manufacturing, cooperative

9 manufacturer, for example, if either the make allowance or the

10 reference price results in the cooperative not being able to

11 recover their costs, they have to share in what's in effect a

12 higher class price with all producers while their own members

13 suffer those costs that are unrecovered in the regulated

14 system.

15   A. Well, let me try to put a little different twist on it.

16 No matter what the price of cheese is, for example, the make

17 allowance doesn't change. Whether the cheese prices are high

18 or cheese prices are low, the margin at Federal Order minimum

19 prices stays about the same.

20   Q. Uh-huh?

21   A. And so from that standpoint, it doesn't affect the

22 direct profitability of making cheese at regulated milk prices.

23 However, you can reduce your regulated milk price by depooling

24 the milk.

25   Q. Okay. And if the wrong cheese is used? Like, there's

1 a difference between barrel and block, so if the reference

2 price used is barrels and you make block or vice versa, there

3 could be a built-in regulated cost by the reference price,

4 correct?

5   A. Okay. And what we're talking about is an artifact of

6 the survey methods. And they are not perfect probably, but

7 they're as good as we have been able, as an industry, to

8 construct.

9   Q. Okay. Not just the survey methods, Mr. Christ, my

10 question goes beyond that. I agree with you. But also the

11 product chosen to survey, that would also be included in

12 that --

13   A. Yes.

14   Q. Thank you.

15   A. And that goes to the some of my points here, that there

16 are more valuable products that can be made and priced on the

17 basis of lower value products, like bulk 40-pound block cheddar

18 cheese or 500 barrel cheddar cheese, I can make some fancy

19 cheese, that's worth a lot more money.

20   Q. Yes. And no doubt that's true. I don't -- as long as

21 you make that point. I think one of the things you refer to

22 is, let's see, oh, retail butter, specialty cheeses. Both of

23 those things have higher value, but then you also have to go to

24 the place where they have value. If you are going to go to the

25 grocery store shelf and survey the price, you have to, you have

1 to factor in to get back to producer price, you know, the store

2 cost, the transportation cost, the wrapping cost, the aging

3 cost, you have a much more complicated system to convert the

4 observed price to a milk price.

5   A. I agree. To pursue those kind of markets, you will

6 have added costs, but you would do that if, and only if, there

7 was added value available to cover not only those costs, but

8 more. It's more profitable than making commodity-type

9 products.

10   Q. Okay. You made a reference, where is that, to, oh

11 yeah, page 8 and 9, western region?

12   A. Yes.

13   Q. California, Idaho. Currently, the Dairy Product Annual

14 Summary divides the country into three regions, Atlantic Coast,

15 Central, and west, correct?

16   A. I know there's a West because I looked at it, but I'm

17 not sure of how many other regions are there are.

18   Q. Okay. Well, and the West includes Colorado, New

19 Mexico?

20   A. Basically everything West of the Great Plains.

21   Q. Okay. Now, if you looked at the year 2000, did you

22 observe that New Mexico was not listed in the states that had

23 individually identified cheese production?

24   A. I did not notice that.

25   Q. Okay.

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1   A. But whether it's included in the aggregate, I don't

2 know.

3   Q. Are you familiar enough with this publication to know

4 that if there aren't more than three, they won't tell you

5 what's in the state?

6   A. I'm familiar with that as a common practice among

7 Federal agencies not to disclose the information for less than

8 three participants.

9   Q. So if you look at, I'll represent to you that the 2000

10 Dairy Products Annual Summary does not contain information for

11 New Mexico, and there's a footnote.

12   A. I have no reason to doubt that.

13   Q. There's a footnote, not more than three plants --

14   A. But the implication there is that, or the importance of

15 that is, is it or is it not also included in the regional

16 numbers.

17   Q. It is?

18   A. Of course.

19   Q. It is in the regional. But the 2014, which was

20 published this year --

21   A. Uh-huh.

22   Q. -- includes New Mexico with nine plants. Would that

23 suggest to you that there's something happening in New Mexico

24 that makes it profitable to build plants and produce cheese in

25 New Mexico that's not happening in some other places?

1   A. Oh, I agree that, I don't think a rational business

2 would expand cheese production unless they expected it to be

3 profitable.

4   Q. Okay. Are you familiar enough with the New Mexico

5 market to know that plants there can frequently purchase milk

6 to make cheese at less than Federal Class III price?

7   A. I'm not sure of the mechanisms, I have never

8 participated in any of those transactions.

9   Q. Okay. And with respect to the rest of the West, do you

10 know whether plants there can, and do, purchase milk to make

11 cheese at less than the Class III price?

12   A. Well, proprietary plants in Idaho, for example, are not

13 subject to Federal regulation. Coops have a reblending

14 privilege that they can market their products to their members

15 in a variety of markets and reblend, and they can redistribute

16 the income, either in terms of current pay price plus earnings

17 at the end of the year, more earnings, less pay price; less

18 earnings, more pay price. So they have that flexibility.

19   Q. Or take losses and share that among their membership?

20   A. I presume so, yes.

21   Q. Okay. And even within Washington, states of Washington

22 Oregon, which are within the north, Pacific Northwest Marketing

23 Order, there are plants that may be nonpool plants that may

24 purchase milk for under Class III, that those transactions are

25 not regulated, are they?

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1   A. It depends. If the handler who payrolls those

2 producers is accountable to the pool, he's accountable at

3 minimum class prices. If he resells, he doesn't have to resell

4 at those same class prices.

5   Q. A handler is accountable to the pool only if the

6 handler reports volume to the pool, correct?

7   A. That's right. If he depools the milk, then he doesn't

8 have to sell it.

9   Q. So that's all I have for the moment. Thank you.

10   JUDGE CLIFTON: Thank you, Mr. Vetne. Let me ask, it's

11 12:20, do we want to finish this witness before we break for

12 lunch? Mr. Christ, wise man says we're not going to finish.

13 So would this be a good time to break for lunch?

14   MR. HILL: That's fine, your Honor.

15   JUDGE CLIFTON: Good. It's 12:20 now, please be back and

16 ready to go at 1:40. 1:40. That gives you an hour and 20

17 minutes.

18   (Whereupon, the lunch recess was taken.)

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 1        WEDNESDAY, OCTOBER 7, 2015 - - AFTERNOON SESSION

 2        JUDGE CLIFTON:  We're back on record at 1:47.  Who would

 3   next like to question?  Good.  Thank you.  So we resume

 4   cross-examination of Mr. Christ.

 5                       CROSS-EXAMINATION

 6   BY MR. DEJONG:

 7     Q.  James Dejong, Hilmar Cheese.

 8         Good afternoon.

 9     A.  Good afternoon, Mr. Dejong.

10     Q.  I just have some questions regarding Exhibit 58, page

11   11.  Looking kind of in the middle of the page there, you have

12   a paragraph that reads:

13         "A fifth factor in California's proximity to Asian

14   export markets" -- I'm sorry, I misread that.

15         "A fifth factor is California's proximity to Asian

16   export markets.  When export prices for dairy products rise

17   above domestic prices California (and other West Coast)

18   processors can use their geographical proximity to serve those

19   markets.  They may capture higher prices, which may be

20   partially reflected in national average dairy product prices

21   that are used in FMMO class price formulas.  The revenue

22   opportunities rise more than their manufacturing class prices."

23         For example, if we just looked at something like cheese

24   prices, is it always the case that cheese prices that are, a

25   competitive cheese price in Asia is higher than U.S. prices?
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A. No, that there are times when export prices might be

higher than domestic prices, but you would engage in the export

market if you expected those market opportunities to be better

over time than domestic markets.

Q. Okay. So just to summarize, sometimes those

opportunities are there, and sometimes it really doesn't make

sense.

A. I would agree. But as to affirm what, try to make a

judgment about whether the long-term opportunities make any

sense to cultivate the export market.

Q. Okay. Would you agree that over the past year or so

some of these, you know, prices that are competitive in Asia,

whether they be Oceania cheddar cheese prices, European cheddar

cheese prices, that they have been substantially lower than

U.S. prices?

A. Okay. I have not followed those numbers so I really

don't know, and I have never engaged in that business myself in

the past.

Q. Okay.

JUDGE CLIFTON: Mr. Dejong, would you spell Oceania?

MR. DEJONG: I believe it is O-C-E-A-N-I-A, and it

primarily refers to New Zealand and Australia commodities.

BY MR. DEJONG:

Q. Okay. So I'm going to move onto the next paragraph

below that. Would it be helpful if I re-read that or if I just

1 went to a specific portion?

2   A. Just try to make your point, I think I know what's in

3 it.

4   Q. Okay. Fair enough. When looking at product prices for

5 bulk butter, bulk cheddar cheese, dry whey, nonfat dry milk,

6 would you agree that there are, across the U.S., geographical

7 differences in those prices?

8   A. I think the best source of that information would be

9 the Dairy Market Newletter where they do report regional prices

10 for products. I'm not sure if NASS does in terms of reporting

11 the elements that go into their compilation of the price, but I

12 don't look at those as a person outside the business right now.

13   Q. Okay. So you don't really look at --

14   A. No, I haven't.

15   Q. -- you don't pay attention to it, you are not familiar

16 with it?

17   A. I haven't for along time, but there are places to get

18 that information.

19   Q. Okay. So it's just not something you follow --

20   A. No.

21   Q. -- or are aware of?

22   JUDGE CLIFTON: That's you, Mr. Christ. That's you and you

23 did it with Mr. Beshore, too. You are very quick, and just

24 pause until you are sure they finished talking.

25   MR. CHRIST: I apologize, your Honor, I have been warned by

2507

1 this in the past.

2 BY MR. DEJONG:

3   Q. Turning specifically to where you talk about specialty

4 products. In your estimation, what would happen if Hilmar

5 Cheese Company in California, which, as far as we know, is the

6 largest single manufacturing site of cheese in the world,

7 decided to switch a substantial portion of its processing

8 capacity into specialty cheeses to try to capture some of that

9 value? What do you think would happen to those specialty

10 cheese prices?

11   A. Well, if you added to the supply, all else being equal,

12 it would probably lower the price. But a rational firm would

13 factor that in, that even after this adjustment takes place, is

14 it more profitable than what I am already doing.

15   Q. So we could only make, potentially a limited amount of

16 that type of products, so it is not some, we can't capture the

17 full value of those specialty products?

18   A. That would depend on the market opportunities. I'll

19 just use the example, back in the 1983, Mozzarella cheese was

20 not a big deal, now it's a really big deal, and the market did

21 grow. So I -- there will be market impacts if there's any

22 significant change in supply or significant change in demand.

23 And a rational firm would take those into account.

24   Q. Okay. Also, let's say that we did want to, you know,

25 try to capture some of those higher prices that are available

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1 in specialty cheese markets. We would probably have to do some

2 significant retooling of our manufacturing capabilities, how

3 we -- how we run the plant, might have to do some upgrades

4 there. Would you agree with that? That there could be some

5 substantial costs?

6   A. I would guess that you would have to make investments,

7 but if you are trying to capture added value, you probably will

8 incur some added costs, and you would hope that the value

9 exceeds the cost.

10   Q. Okay. And also, we would also, this is kind of going

11 along with this marketing, too, of these products, if Hilmar

12 Cheese, for example, is set up to do bulk commodities, lots of

13 cheddar cheese, that we would have to change how we market

14 products. We would have to try to get those products into

15 markets. There would be some substantial investments to make

16 that, to realize that goal?

17   A. I agree, that in most business adjustments, there are

18 added costs you hope are justified with added value.

19   Q. Okay. Just one more quick question. You mentioned

20 customized milk powders. What powders were you thinking of

21 there?

22   A. I don't have any business experience with that, but --

23 I don't know what opportunities exist. I have heard criticisms

24 of the market for American dry milk is because we make nonfat

25 dry milk, we don't make skim milk powder, we don't make protein

1 enhanced and a variety of other things. I don't know what the

2 market opportunities are, but it may be a matter of interest

3 for a flexible processing firm.

4   Q. Okay. I realize you don't know a lot about that, but

5 you, would you acknowledge like switching to some kind of

6 specialty cheese product, making those type of milk powders

7 would potentially, would almost certainly, in my estimation,

8 take substantial investments to create those product

9 specifications?

10   A. Yes, I would agree with that, but any rational firm,

11 again, would not do that, unless the expected added value

12 exceeds the expected added cost.

13   Q. Okay. And also, like U.S. cheese markets versus

14 international cheese markets, powder markets can also have a

15 similar flavor where they kind of can march to their own tune

16 at times. So based on your knowledge, would you agree that

17 sometimes those international powder markets can be out of line

18 with U.S. powder markets, for example, nonfat dry milk?

19   A. I understand that world prices do not move in harmony

20 with domestic prices, and that's part of the risk associated

21 with participating in one market or the other. And again, a

22 rational firm would take those into account before deciding to

23 engage in that kind of business.

24   Q. So sometimes there could be an opportunity there and

25 sometimes not, the firm just has to take all things into

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1 consideration and then --

2   A. I agree.

3   Q. I have no further questions.

4   CROSS-EXAMINATION

5 BY MR. ENGLISH:

6   Q. Chip English.

7   Good afternoon, Mr. Christ.

8   A. Good afternoon, Mr. English.

9   Q. So let me start on Exhibit 59. And in your

10 post-retirement consulting activities, you have consulted for,

11 among others, the Dean Foods Company, correct?

12   A. That's correct.

13   Q. And when you reference, "participated as a witness in

14 the producer-handler hearing," we worked together on that, you

15 and I, correct?

16   A. That's correct.

17   Q. Okay. You are also -- now, when you say

18 producer-handler hearing, what hearing, because there's been a

19 couple, which ones are you referring to, or one?

20   A. I participated in the hearing at two locations. One of

21 them was in Arizona, and I believe it was in Phoenix; and the

22 second one was in the Pacific Northwest in Seattle, or nearby

23 Seattle.

24   Q. Do you recollect also participating in a proceeding in

25 the Southeast where the producer-handler issue was raised?

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1   A. I do not recall participating in that hearing. I don't

2   think I did. I don't remember everything, but --

3   Q. Okay. And I don't recall everything either, so I'm not

4   trying to -- this is not in any way, shape, or form designed to

5   be a trick question or anything.

6   A. You want to find out if I'm demented or not.

7   Q. I'm certainly not suggesting anything like that. You

8   say you participated as a witness in two depooling hearings.

9   Which hearings, if you recall, were those?

10   A. There was a depooling hearing in the Upper Midwest

11   Marketing Order in the Twin Cities, I participated in that, and

12   I can't remember who my client was, but I did participate. And

13   I think the outcome came to agree with my clients' interest.

14   And the second one was a depooling hearing in Order 33, and I

15   don't remember, I think that was in Cleveland, but I'm not

16   positive.

17   Q. To be clear, and I think it isn't going to be clear, in

18   those proceedings you were not participating for Land O'Lakes,

19   correct?

20   A. I don't think so.

21   Q. Well, just to be clear, I think the record needs to be

22   clear because to the extent you made statements in those, they

23   can't be attributed to Land O'Lakes. I don't believe you

24   appeared for Land O'Lakes.

25   A. I'm representing the group of cooperatives, I'm not

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1 representing Land O'Lakes as an individual firm.

2   Q. But you also, to the extent you didn't speak for Land

3 O'Lakes in the past for those proceedings, you spoke for a

4 different entity, correct?

5   A. Yes.

6   Q. Okay.

7   A. But again, I was careful not to take, support a

8 position that was contrary to the interests of Land O'Lakes.

9   Q. And nor did you take a position or make statements that

10 were, that you didn't agree with, correct?

11   A. I hope not.

12   Q. And then another time you developed a proposal for

13 using competitive pay prices for milk in the establishment of

14 Federal Order milk prices, and you say you advocated for its

15 adoption. Was that on behalf of a group of Northeastern and

16 maybe even Maine dairy farmers?

17   A. Yes, it was the Maine Dairy Industry Association was

18 the client, and that is an organization of the dairy farmers in

19 Maine, which is partially funded by the state government.

20   Q. And you say you advocated for its adoption. It would

21 be fair to say you appeared at another one of these

22 proceedings, I believe, in 2007, to advocate?

23   A. You are correct. I did present the proposal in sort of

24 rough form at a hearing, and further in advocating, I did visit

25 with a number of dairy interest groups to explain the ideas

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1　behind it. I did work with the attorney for the Maine Dairy

2　Industry Association to develop a proposal, and we did discuss

3　that proposal with the staff of the Dairy Programs in AMS. We

4　did not go to the point of officially requesting a hearing.

5　　Q. But do you remember there was a hearing about Class

6　III, IV formulas, and you nonetheless appeared just to provide

7　that information for the record?

8　　A. Yes.

9　　Q. Okay. And again, to the extent you advocated that

10　position, it was not on behalf of Land O'Lakes, correct?

11　　A. That is correct.

12　　Q. But nonetheless, it was your professional opinion that

13　what you were presenting was a good idea?

14　　A. Yes, that is correct.

15　　Q. Now, turning to that portion of the testimony to which

16　I objected and the Judge disagreed with me. And that is on

17　page 2 and page 3. And you have referenced parity prices.

18　　　Back on Exhibit 59 you reference that when you first

19　worked for Land O'Lakes you negotiated plans for consolidating

20　the four Federal Milk Orders for Minnesota, correct?

21　　A. That is correct.

22　　Q. And you participated in the administrative hearings to

23　achieve the above, it says above consolidations, referring to

24　two, but that's certainly including the Upper Midwest, correct?

25　　A. Yes, that's correct. There was one consolidation in

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1 Minnesota, a second consolidation in Iowa.

2   Q. Now, do you recall the result of that Upper Midwest

3 consolidation? That actually occurred?

4   A. It did occur. There were four Federal Milk Marketing

5 Orders operating in the State of Minnesota when I arrived, and

6 two years later, there was one.

7   Q. And so that was in 1976, correct? If it was two years

8 later, that's what it was?

9   A. Okay. I guess, it might have been a little longer than

10 that. I don't recall the exact dates.

11   Q. Now, you testified both in response to questions from

12 Mr. Beshore in terms of your experience and what your expertise

13 is, and in also questions from Mr. Vetne about your, you know,

14 participation in and review of regulations, correct?

15   A. Yes.

16   Q. Okay. So isn't it true that in that consolidation in

17 1976, USDA made the following finding:

18   "The parity prices of milk as determined pursuant to

19 Section 2 of the Act, are not reasonable in view of the price

20 of feeds, available supplies of feeds, and other economic

21 conditions which affect market supply and demand for milk in

22 the marketing areas, and the minimum prices specified in the

23 tentative marketing agreements and orders as hereby proposed to

24 be amended, are such prices as will reflect the aforesaid

25 factors; ensure a sufficient quantity of pure and wholesome

1 milk can be in the public interest."

2   A. I have no doubt that that's in there. I don't remember

3 specifically the words in that decision, but I have read a lot

4 of Federal Milk Order decisions, and that verbiage is included

5 in virtually -- the preamble -- of virtually every decision.

6   Q. Do you remember, in your working with the Department,

7 and I maybe be stretching the memory, but do you remember the

8 last time that verbiage did not appear?

9   A. No, I did do not.

10   Q. Do you know what the parity price for milk is in 2015?

11   A. No, I don't. I know how it is calculated and I know

12 where to look it up, but it's an ag, it is reported in ag

13 prices every month, but I have not looked at it for years.

14   Q. Would you accept my representation that it's above $50

15 a hundredweight?

16   A. Yes, I do.

17   Q. Would you accept the following proposition:

18   That to the extent parity prices are a factor, that

19 there is an upper limit, and the upper limit is the statement

20 when the Department finds that that price is not reasonable in

21 view of the price of feeds and other economic conditions, as

22 stated in the statute?

23   A. It is still clearly the objective that's a number that

24 was chosen in the '30s to be the objective, the objective is

25 still in place, but the language of the law and its application

2516

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1   is made in a way that the realities of current market

2   conditions are taken into account, such as the price of feeds,

3   the available supply of feeds, to modify the price to be

4   workable in the current economic environment.

5   Q.   Thank you, sir.   Now, you state in that same section,

6   nonetheless, that "the primary purpose of the Act is to enhance

7   producer prices."

8   A.   That is my studied opinion.   That there's little point

9   in just having rigid prices for everyone or to create strict

10   structures for the transaction of business that don't provide

11   any economic benefit.   The economic benefit that I foresee is

12   enhancement of prices to producers.   This is a long-held

13   opinion of mine, that, in fact, I'll just mention, you may have

14   been there even, I gave a talk at Midwest Milk Marketing

15   Conference in Michigan one time about who benefits or who

16   should benefit from Federal Milk Orders.   And my conclusion was

17   number one, producers; and number two, consumers.

18   Q.   And I appreciate that.   So let me ask the question

19   different way.   Do you know of any time that the Secretary of

20   Agriculture, speaking through a decision with respect to milk

21   marketing orders, has said that the primary purpose of the Act

22   is to enhance producer prices?

23   A.   I have never seen those terms, but I think that intent

24   is implied in the fact that he even addresses the question of

25   parity prices, and he does address that in the preamble.

2517

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1 Q. Subject to current marketing conditions providing --

2 A. Yes.

3 Q. Yes -- - some parameters.

4 A. Uh-huh.

5 Q. Now, I'm not going to disagree with you it's been a

6 long-held opinion of yours. I have read a number of your

7 things, we worked together over the years, so I'm not here to

8 disagree with that.

9 A. Uh-huh.

10 Q. Have you also not stated -- have you also stated, let's

11 put it in the positive, have you also stated that another one

12 of the basic purposes of a Federal Milk Order is to ensure an

13 adequate supply of milk for fluid uses?

14 A. I partially agree with that but it's not defined as

15 such in the legislation. If I recall my review of the

16 legislation, it says an adequate supply of milk for consumers.

17 And that doesn't necessarily mean fluid milk, or fluid cream,

18 or cheese, or ice cream, or yogurt. It's an adequate supply of

19 milk for consumers.

20 Q. Now, nonetheless, my question was, have you not

21 testified to the following:

22   "The foundation for this view is my belief that the

23 basic purposes of a Federal Milk Order are to: A. assure an

24 adequate supply of milk for fluid uses, and; B. Enhance the

25 returns to milk producers, C. Serve the public interest?

2518

1   MR. BESHORE: Your Honor?

 2   MR. ENGLISH: I've asked him a question, has he not

 3 testified to that.

 4   MR. BESHORE: I would ask that the witness be accorded the

 5 courtesy of seeing whatever is being read from. If something

 6 is being, his testimony is being read from, I think he should

 7 be able to see it in order to understand the question fully.

 8   MR. ENGLISH: I don't believe that's required. I may do

 9 it, your Honor, after -- I asked him the question does he

10 recall having testified, and he may say no, and then I'm

11 entitled to show it to him to see if he recalls. But to say in

12 advance -- I'm happy to do it, but I don't think that's an

13 appropriate objection, your Honor.

14   JUDGE CLIFTON: Well, it depends on whether you are in a

15 court proceeding or whether you are in a setting such as ours.

16 Your correct, Mr. English, if we were in court you would not

17 have to show him his deposition ahead of time, but he's got

18 decades of experience, I don't even know what date you are

19 attributing this statement to him. And the way you read it, it

20 almost sounded like it was a writing rather than taking place

21 in a hearing.

22   MR. ENGLISH: Can I ask the question another way, your

23 Honor?

24   JUDGE CLIFTON: Yes.

25 BY MR. ENGLISH:

2519

1   Q. Okay. Do you recall having testified at anytime in a

2   Federal Milk Order hearing to the following:

3   "The foundation for this view is my belief that the

4   basic purposes of a Federal Milk Order are to:

5   A. Assure an adequate supply of milk for fluid uses,

6   and; B. Enhance the returns to milk producers, C. Serve the

7   public interest."

8   JUDGE CLIFTON: That's semicolon is in an odd place, isn't

9   it?

10   MR. ENGLISH: It is in an odd place. Your Honor, I am

11 sorry, I realize that this is not a court, but I believe that

12 to instruct a cross-examiner how to cross, how to attempt

13 cross-examination is just simply not appropriate. I can show

14 it to him, if he says he doesn't recall it, he can agree to it.

15 But to require me in advance to do it, I believe is

16 objectionable.

17   MR. BESHORE: May I speak, your Honor.

18   JUDGE CLIFTON: Yes, please go to the microphone.

19   MR. BESHORE: The only information --

20   JUDGE CLIFTON: Marvin Beshore.

21   MR. BESHORE: Marvin Beshore. The only information

22 requested in that question is whether Mr. Christ has a

23 recollection of a verbatim long quote made at some undated

24 time. My specific objection to that question in this forum, in

25 this context, is it's absolutely not you, know, helpful

2520

material to the -- what we're getting after here. What he

remembers about a verbatim statement of some period of time is

just not helpful to the record.

JUDGE CLIFTON: Your objection is noted. I'll allow the

witness to answer the question as asked.

MR. CHRIST: Okay. I don't recall making that specific

statement, but it sounds like a statement that I could have

made with respect to a milk order that is designed to serve the

Class I market. Not every milk order needs to be that way, but

through most of our history, that was the character of Milk

Marketing Orders.

MR. ENGLISH: I'll be delighted to share with the witness.

I will show you and see if you recollect this. I was trying to

save trees today, but it is marked as Exhibit 64 to a hearing

held in the Southeast on February 25th, 2004, in Atlanta,

Georgia. It is actually an exhibit that is available on the

Internet if you go to the website for that proceeding, and I'll

be happy to show the witness the testimony.

And I want to be clear that I made a long quote in

order to include his other long-held opinion, enhanced the

returns to milk producers. I could have made it a much shorter

quote had I been less than fully forthcoming, and merely asked

about the other. So that's why there was a long quote.

JUDGE CLIFTON: Before you go away from the mic -- so the

proceeding was with regard to the Southeast?

1   MR. ENGLISH: It was a proposal made by Dairy Farmers of

2 America -- maybe this will help the witness a little bit.

3 There was a proposal made by Dairy Farmers of America to merge

4 the Southeast order and the Appalachian order. And Mr. Christ,

5 appearing for Dean Foods, with me as his attorney for that

6 purpose, Mr. Christ appeared and testified as to two issues.

7 One, the appropriateness of merging Orders 5 and 7 versus

8 perhaps an alternative that was not, actually, I think was

9 before the Department, which was instead to split up the Orders

10 in a different way, and he also testified on a producer-handler

11 issue, which was Proposal 7. The first was Proposal 5 and then

12 Proposal 7.

13   Does that refresh your recollection, Mr. Christ, of an

14 appearance that you made?

15   MR. CHRIST: I really apologize. I don't remember

16 specifically, but it's nagging at me. Maybe something like

17 that did happen, but I, at this point, don't actually remember

18 it, and I think you have proved my dementia, maybe.

19 BY MR. ENGLISH:

20   Q. Well, I'm not trying to and it was not my intent. So

21 let me show him if I may now, Exhibit 64, which was his

22 testimony as to Proposal Number 7.

23   JUDGE CLIFTON: And it was 64 in that proceeding?

24   MR. ENGLISH: In that proceeding, yes. Not in this

25 proceeding. And I'm actually, I was hoping today to be not

2522

1 adding paper to the record here, but I may have to.

2   MR. BESHORE: Is there more than one copy?

3   JUDGE CLIFTON: For now you may show the witness. We may

4 need for you to make some copies. We'll see how far this goes.

5   MR. CHRIST: Your Honor, this statement, which is a copy of

6 presumed testimony that I gave at the hearing that Mr. English

7 has mentioned, looks authentic. It looks like the kind of work

8 I would do, but for some reason it hasn't stuck in my memory.

9 I don't deny that I did this, but in terms of discussing detail

10 about it, I don't remember being at the hearing, although

11 obviously I was.

12   JUDGE CLIFTON: As you look at the statement, is there any

13 part of it that Mr. English did not include that you think

14 should be included to express the view that you were expressing

15 at the time?

16   MR. CHRIST: No, it is complete. And to all, it appears

17 completely authentic.

18   MR. ENGLISH: Your Honor, I will do whatever everybody

19 wants me to do. If we are going to make copies, maybe we

20 should take a break. I was hoping that I could be very

21 efficient with this and we could move through it. I was not

22 attempting to make exhibits of every single document. I am

23 really trying to save on paper. We, you know, a little bit,

24 but I was merely trying to ask one question which had there

25 been a recollection, we would be long past this right now. But

2523

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1   I'm happy to go take a break and make copies of this and a

2   subsequent document.  It is available on the Internet.  You

3   have the access, too.

4        MR. BESHORE:  My question is, will it be marked and

5   offered?  That would have something to do with my interest in

6   it, I think.

7        MR. ENGLISH:  Well, actually, now that I have had him

8   recognize it and agree that it was a statement.

9             Did you see the part that I read, Mr. Christ?

10       MR. CHRIST:  I did not re-read the yellow highlighted

11  parts.

12       MR. ENGLISH:  I'm going to hand it back to you.  I'm not --

13  I wasn't looking to make it an exhibit, but if you want me to.

14       JUDGE CLIFTON:  If it will not be made an exhibit, all I

15  would ask is that it be repeated again slowly so we can take

16  notes and I think that would suffice.  And you would be the

17  best one to read it for us, Mr. Christ.

18       MR. CHRIST:  Okay.

19       JUDGE CLIFTON:  Slowly, please.

20       MR. CHRIST:  I should read the entire document?

21       JUDGE CLIFTON:  No, no, the part that expresses the view

22  that you were expressing, apparently in 2004.

23       MR. CHRIST:  Okay.  Mr. English has highlighted in yellow,

24  several paragraphs.  And I could read those paragraphs, if you

25  like.
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1   JUDGE CLIFTON: Well, take a look at them and see if you

2   think they adequately cover what you were attempting to convey.

3   MR. CHRIST: Okay. Well, a quick perusal, I guess I have

4   no particular problem with what I said at that time. And I

5   don't know if any of it is relevant to the information that I

6   have provided for this hearing, but I guess I don't see

7   anything that is contrary to or hostile to the position that I

8   have expressed here.

9   JUDGE CLIFTON: All right. Would you read it slowly to us

10 so we can take notes?

11   MR. CHRIST: I will read the yellow highlighted portions,

12 and first is:

13   "It is my view that exemptions from the pricing and

14 pooling provisions of Federal Milk Orders should be a rare and

15 highly restricted privilege. The foundation for this view is

16 my belief that the basic purpose of a Federal Milk Order -- the

17 basic purposes of a Federal Milk Order are to: A. Assure an

18 adequate supply of milk for fluid uses, and; B. Enhance the

19 returns to milk producers, and C. Serve the public interest.

20   Number 2. Federal Milk Orders achieve their objectives

21 by doing five things:

22   Classifying milk according to how it's used, settling

23 different prices for each class of milk in "price

24 discrimination"; C. Pooling the proceeds from all uses of milk

25 to all producers; and D. Verifying the accuracy of reports of

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milk receipts and utilization; F. Serve the public interest by

doing the above four things efficiently."

The second highlighted paragraphs start with a number

3. It says:

"Historically there have been only a few types of firms

that have been exempted from the pooling and pricing provisions

of Milk Orders. These include: A. Institution of milk

processing plants, such as those operated by government

institutions and universities; B. Small plants for which the

administrative costs of regulation exceeds the regulatory

benefit; C. Plants located in Clark County, Nevada; and

D. Producer-handlers."

Another paragraph, paragraph 5:

"Other pool participants effectively subsidize the

operations of a producer-handler. To the extent that he

experiences a raw milk cost for his fluid milk products that is

less than the local Class I price, the producer-handler can use

its financial advantage to offer lower prices or better service

than his rival regulated handlers."

And the next highlighted paragraph is paragraph 10:

"Balancing is an important cost for the fluid milk

market. Significant reserves of milk are needed to ensure that

sufficient milk is available for Class I use at all times.

Each plant needs an operating reserve that covers unavoidable

Class II, Class III, and Class IV uses, such as shrinkage and

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1 disposition of cream arising out of standardizing Class I milk.

2 In addition, a reserve is needed to cover seasonal variations

3 in Class I sales in milk production. In the average market,

4 the minimum average of these two kinds of reserves is about 15

5 percent. The actual size of the reserve in a particular market

6 depends on how much milk is pooled and how many Class I sales

7 are regulated. In 2003, the Class I utilization of producer

8 milk in the Southwest market was 65.4 cents -- that should be

9 the Southeast market -- was 65.47 percent, meaning that

10 34.53 percent of pooled milk was reserve. Reserve milk must be

11 disposed of in lower valued uses. This is one of the reasons

12 for classified pricing and pooling in Federal Milk Orders. The

13 processing pooling ensures that all producers share in the

14 lower value of reserve milk."

15   And the final paragraph that's highlighted is:

16   "A pooled producer can control his own milk production,

17 but it can not control the volume or monthly variation of other

18 producers in the market-wide pool. Therefore, a

19 producer-handler is likely to experience an even smaller

20 reserve than the minimum average of 15 percent mentioned

21 above."

22   That concludes the highlighted portions of my testimony

23 at the hearing in Atlanta.

24   MR. ENGLISH: With respect to that particular proposal,

25 right?

1   MR. CHRIST: With respect to that proposal, yes.

2   And I -- okay. What do we do with it? I must have

3 really been busy that month.

4 BY MR. ENGLISH:

5   Q. Do you agree that one of the basic purposes of a

6 Federal Milk Order is to ensure an adequate supply of milk for

7 fluid use?

8   A. It is, I think it's a requirement or an important

9 objective of a Federal Milk Order that is designed to focus on

10 the Class I market, and I would argue that there are other

11 kinds of Federal Milk Orders that can cover any portion of the

12 milk supply or any products made from milk.

13   Q. So going back to my form of the question with respect

14 to enhanced producer prices. Has the Secretary ever adopted,

15 to your knowledge, in a written decision, published in the

16 Federal Register, a broader definition of assuring an adequate

17 supply of milk that is broader than for fluid use?

18   A. I don't recall any, except I don't know of any

19 Marketing Order in my work experience that was not designed to

20 serve the fluid market. That does not mean that an Order could

21 not, could be -- could not be designed to serve other purposes.

22   Q. But your bottom line answer is, no, you don't know of a

23 statement by the Secretary?

24   A. No, I don't know of a statement by the Secretary, no.

25   JUDGE CLIFTON: Don't cut off Mr. English, Mr. Christ.

2528

1   MR. CHRIST: Thank you.

2   BY MR. ENGLISH:

3   Q. I think in a way you may have responded to this

4   question with Mr. Vetne, but let's go to page 6. And I'm

5   looking at the middle sentence in the top paragraph.

6   A. Okay.

7   Q. And maybe just the way it is constructed, would you

8   say, "The California State Order currently prices essentially

9   all Grade A milk so a handler gains no advantage from

10 depooling."

11   Do you see that?

12   A. Yes, I do.

13   Q. Now, to the extent that there's limits on depooling

14 that's one thing, but assuming that a handler could depool, I

15 think in response to Mr. Vetne's questions, you would agree

16 that a handler could gain an advantage if it doesn't have to

17 pay into the pool, those proceeds, correct?

18   A. That would be correct if you had the same liberal

19 pooling provisions that exist in, for example, the Upper

20 Midwest. But you don't have them here in California.

21   Q. Presently?

22   A. Presently.

23   Q. Okay. So you are not saying that a handler in the

24 Upper Midwest would gain no advantage from depooling?

25   A. No, I would not say that.

1   Q. You, also on page 7, discuss some history, and I think

2   you use in support of this concept, and I just want to have

3   some clarity in the record about that history, you discuss base

4   plans and the so-called livable plan, correct? On page 7?

5   A. Yes, I see that now.

6   Q. Okay. Now, given your time involved in the industry,

7   would you agree with me that at a period of, for a period of

8   time starting no later than 1970, there was express legal

9   authority in the statute for a base plan?

10   A. I recall that the Class I base plans were authorized

11   under one of the Farm Bills about that time, and they were

12   actually implemented in the Pacific Northwest area and in

13   Oregon.

14   Q. But the authorization was basically Farm Bill to Farm

15   Bill and would expire if a new Farm Bill did not expand it,

16   correct?

17   A. I don't remember the Sunset Provisions, but it is my

18   understanding that the authority no longer exists.

19   Q. So effectively it did sunset or got voted out; is that

20   correct?

21   A. That's my best understanding.

22   Q. Actually, going back briefly to parity prices. Given

23   your years of experience in the industry, and while it's

24   administered by a different agency within USDA, you know about

25   the previous existence of, or operation of a Support Price

2530

1 Program, correct?

2   A. Yes, that is correct.

3   Q. Okay. And, in fact, when the Support Price Program

4 originally went in in the 1949 Act, the Support Price Program

5 was based on parity prices, correct?

6   A. That is correct, and the minimum price was 75 percent

7 of parity.

8   Q. And since, again, at least 1970, in the Farm Bills,

9 Congress has suspended the operation of permanent law which is

10 the 1949 Act, correct? If you know.

11   A. Boy, I can't recall it being suspended until recently,

12 but because I'm certain that in the 19 -- late 1970's, early

13 1980's, all through the 1980's and early '90's, the support

14 program was effective and parity was part of the calculation.

15   Q. Okay. So let me be a little clearer if I can, and if

16 you don't recall, you don't recall. Do you recall that at some

17 point in the Farm Bills, whether this was the 1970's or the

18 1980's, that the Farm Bill suspended the permanent law, and for

19 the period of a Farm Bill, inserted particular support program

20 language that would be in effect during the term of that Farm

21 Bill?

22   A. Okay. This would have been probably in the late

23 1980's, and I don't recall the actual legal mechanism by which

24 it was accomplished, but it did put a cap on the support price

25 for milk, it prevented it from rising higher than than was

2531

1 desired by Congress. But I don't recall the mechanism.

2   Q. Okay. Do you recall whether it was broader than milk,

3 it was milk and other commodities as well? If you don't

4 recall, I mean.

5   A. I don't.

6   Q. Nonetheless, would you agree with me that since at

7 least the 1980's, there has been a cap, and the direct

8 reference to parity prices has been suspended since that time?

9   A. I recall the cap, but I don't recall the, you know, the

10 mechanism by which parity prices were no longer used.

11   Q. Okay. I'm not sure from the questions from Mr. Vetne

12 and Mr. Dejong, and I'm not trying to duplicate, but do you

13 agree that milk has location value?

14   A. The answer is yes, and it has to do with transportation

15 costs and locations of supply and locations of demand. There

16 are been a number of attempts to model this. And it does show

17 that some location value exists depending on the product. In

18 some cases it's more efficient to transfer full fluid milk, in

19 other cases it's more efficient to transfer finished

20 concentrated dairy products.

21   Q. Would you agree that there's location value for cheese?

22   A. It's based on the same factors, where is the location

23 of the production and where is the location of the demand. And

24 there are some transportation costs in equalizing the location

25 of the supply with the location of the demand.

2532

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1   But another aspect of that is that some, just because

2   some product moves, let's say, 10 percent of the product moves

3   from point A to point B, doesn't mean that the other 90 percent

4   of the product should reflect the same differences in cost.

5   Q.   Well, are you familiar that since 2000 Federal Order

6   forms of limitation, that the reporting to USDA, the mandatory

7   reporting to USDA for nonfat dry milk, generally reflects a

8   higher reported price to -- whether it was NASS or now AMS --

9   than that that is reported to the California Department of Food

10 and Agriculture?

11   A.   I'm not aware of that by direct observation, I'm not

12 surprised with the assertion. But there are other aspects,

13 too, that I don't know. And that is, are the surveys exactly

14 the same?

15   Q.   You participated in what's called Federal Order Reform,

16 correct?

17   A.   That is correct.

18   Q.   On behalf of Land O'Lakes, correct?

19   A.   That is correct.

20   Q.   And so for Land O'Lakes, you would have made one or

21 more submissions to USDA that are available on the Federal

22 Order Reform Publication Website, correct?

23   A.   I presume so, I have never looked them up.

24   Q.   Do you recall on behalf of Land O'Lakes, recommending

25 that the nonfat dry milk price be different and higher,

2533

adjusted by the transportation function, and be higher East of

the Rockies than West of the Rockies?

A. I don't recall doing that, however, I'm not surprised

if you have got it documented.

Q. Would your justification for that have been a location

value difference for nonfat dry milk West of the Rockies versus

East of the Rockies?

A. As I mentioned earlier, there are differences in

location value based on where the supply is located, where the

demand is located, and both the cost of transportation and of

proportion of the supply that's transported.

Q. Is that a yes?

A. Yes, with qualification.

JUDGE CLIFTON: Yeah, his answer was so much better than

yes, Mr. English.

MR. ENGLISH: But I'm entitled to a yes. As you have

indicated earlier in this proceeding, I should get a yes and

then the explanation. He gets to explain, but I think I'm

entitled to a yes or a no.

JUDGE CLIFTON: All right. Would you ask your question

again and let me consider that. Mr. English, ask it again.

BY MR. ENGLISH:

Q. Assuming you made that submission to USDA, were you

making adjustment for the transportation function to determine

a Midwest price, recognizing a location value for nonfat dry

2534

milk?

JUDGE CLIFTON: He doesn't have to answer that with a yes

or a no, because he added additional factors that make his

answer more meaningful, including supply and demand.

MR. CHRIST: Thank you, your Honor, I think I'll rest with

that.

BY MR. ENGLISH:

Q. Now, in your testimony with respect to Class I, pages

12 and 13, you acknowledge that there are no shipping

requirements either under the California program or under

Proposal 1 for the Cooperatives, correct?

A. Largely, but California does have a latent call

provision which is not used, that I know of.

Q. The word latent is effectively meaning not used, right?

A. Yes.

Q. But whether used or not, the coops are not proposing

putting it into their proposal, are they?

A. No, we are not, because we are confident that existing,

the incentives we provide through transportation credits plus

private treaty transactions, will take care of supply in the

Class I markets. But again, that is not the primary focus of

this proposal. Class I buyers can get all the milk they want

if they make the necessary trade deals, including prices that

are satisfactory to suppliers.

Q. In order -- in other words, paying over what premiums

1 sufficient to get the milk?

2   A. If they need to, yes.

3   Q. So since you say that private transactions can take

4 care of it, why do we need a Federal Milk Order with respect to

5 Class I?

6   A. There are a lot of other attributes to Federal Milk

7 Orders. And one, of course, is the uniformity of pricing;

8 another is the distribution of proceeds; uniformity to

9 producers with adjustments. There is a great deal of stability

10 coming from one price applying to all people who buy milk for

11 each purpose. So I think there are other significant benefits.

12 And I also agree that, or I also think that the intent of

13 enhancing producer prices can be fulfilled through Federal

14 Orders. However, I think that that's largely been neglected.

15   Q. Nonetheless, if a Class I processor is paying a Class I

16 differential, makes it in most months the highest price,

17 correct?

18   A. Yes, in most markets in most months, the Class I price

19 is the highest price that goes into the pool.

20   Q. You're, nonetheless, looking for other private trade

21 transactions in addition to transportation. But you are

22 basically looking for private trade transactions to move the

23 milk to Class I plants?

24   A. Those terms exist today in most markets in the East. I

25 don't know about the situation in California, but I personally

2536

1 participated in the Upper Midwest Milk Marketing Agency, which

2 established over our prices to help compensate for the cost of

3 servicing the Class I market. And I participated in the

4 Central Milk Producers Cooperative, which did the same in the

5 old Chicago market.

6   Q.   What's the Class I utilization in the Upper Midwest?

7   A.   Pretty low. It's probably 10 to 15 percent, maybe

8 close to 15.

9   Q.   Why should a Class I processor pay the highest price,

10 and then in return, be told, "Never mind, in order to get your

11 milk, we're going to have a CMPC or an UMA establish a higher

12 price to provide the services to get you the milk?"

13   A.   First, a Class I price, they pay it in but that does

14 not accrue to any producer on the basis of performance. Every

15 producer gets his share of the Class I differential through the

16 pool, so there is no incentive to the producer to supply the

17 milk.

18   The more effective method is having minimum shipment

19 requirements which provide only partial compensation for the

20 cost of servicing the fluid market. They provide

21 transportation credits. In the case of the Upper Midwest, an

22 assembly credit. But the costs of servicing the Class I market

23 are significant. And over order premiums help compensate for

24 those, and I would argue in most cases, they are not adequate.

25   Q.   Well, nonetheless, you indicated that a shipping

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requirement or performance standard, you know, does work to get

milk to Class I operations, correct?

   A. Yes, because by and large, producers are made better

off because they participate in the pool, they get the blend

price, which is in most cases higher than the manufacturing

price, whether it be Class III or Class IV. In most cases,

it's higher.

        In order to capture that blend price differential for

producers you need to pool the milk. So the firm marketing the

milk may incur losses to serve the fluid market in order to

gain the pool benefit for the producers whose milk they market.

   Q. Isn't that, in essence, the bargain, whether Class I

handlers want it or not, that is struck with Federal Orders,

that you pay the higher price, and in return there's at least

some shipping requirement that should get some milk to you,

correct?

   A. Well, it is sort of a convoluted mechanism to get to

that result. That -- and I would argue that supplying milk to

the fluid market, especially in a low utilization market, is

more expensive than the benefit of the overall premium.

   Q. Isn't that the whole point of being allowed to

participate in the pool, that you have got to incur some cost?

   A. That's right. What is earned is participation in the

pool for the producers. But the firm who incurs those costs,

gets no direct benefit, other than partial compensation for

1   their expenses through the over order price.

2   Q. Well, no, they have got the benefit of being in the

3   pool and getting the blend price, correct?

4   A. The firm does not get the blend price, the producer

5   gets the blend price.

6   JUDGE CLIFTON: When you talk about "the firm" are you

7   talking about the processor?

8   MR. CHRIST: Yes. I'm talking about what's defined in the

9   orders as a handler. And this is the person who is accountable

10   to the Federal Milk Market Administrator for paying the

11   producers.

12   BY MR. ENGLISH:

13   Q. Nonetheless, the firm does that in order to receive

14   funds from the pool to be able to pay its dairy farmers to

15   offset the competitive price in the marketplace, correct?

16   A. Yes.

17   Q. Thank you. Even as in some months when the prices are

18   inverted in the Upper Midwest, logical firms choose to depool

19   so they don't have to share those monies with those other dairy

20   farmers, correct?

21   A. That occurs within limits. Not everyone can depool

22   under every price inversion.

23   Q. During Federal Milk Order Reform, do you recall

24   advocating effectively open pooling, that a plant could choose

25   what order to be pooled on?

1   A. In what circumstance did I advocate --

2   Q. During Federal Order, that a supply plant could choose

3 to be regulated and pooled on the market of its choice. Do you

4 recall advocating that?

5   A. This is in Federal Order Reform?

6   Q. Federal Milk Order Reform, yes.

7   A. That sounds like a reasonable position for me to have

8 advocated on behalf of Land O'Lakes.

9   Q. As part of that different treatment of pooling, did you

10 also suggest that there be a requirement to commit to the

11 market such that a supply plant operator, while it could choose

12 once a year where to be pooled, it would be required to perform

13 under any and all calls issued under that order for the

14 succeeding twelve months or be subjected to severe penalties?

15   A. I need to know better the origin of that information.

16 Was that a petition I filed, or was it testimony I gave, or

17 what's the source of that?

18   Q. I represent to you that you may, you remember that

19 during Federal Order Reform, we didn't have this formal

20 process, correct? Do you remember that? That instead, it was

21 effectively notice and comment rule making?

22   A. Yes.

23   Q. So as opposed to a petition, any and all, and many of

24 the people in this room, in fact, certainly any of us who were

25 in the business at the time, made one or more, maybe multiple

1 submissions to USDA regarding our positions.

2 　　　　Do you recall that?

3 　A.　I don't recall the mechanisms, I have no reason to

4 doubt what you have said.　But if that is the case, was this

5 the final submission or intermediate submission or in --

6 　Q.　This would have been early.　I'm happy to show it to

7 you.

8 　A.　Okay.　It might have been an initial submission, part

9 of the negotiating process.

10 　Q.　Yes.　I will tell you that it was June 26, 1996.

11 　A.　Okay.　Yeah, that is early.　That would be in the

12 vicinity of the '96 Farm Bill, and I recall a lot of turmoil

13 among dairy interests at that time.

14 　Q.　Do you recall that as a sort of a flip side of this

15 idea that a supply plant could pool anywhere it wanted to, that

16 your position for Land O'Lakes advocated that it would have to,

17 such entities would have to respond to calls during succeeding

18 twelve months?

19 　A.　I don't recall those words, but it appears to fit with

20 the flexibility of pooling.

21 　Q.　Thank you.

22 　JUDGE CLIFTON:　Would you give us the cite to the Federal

23 Register?

24 　MR. ENGLISH:　Well, your Honor, it is not, this would not

25 be the Federal Register.　It was, we have referred earlier in

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this proceeding to filings made that are available on the

Internet for Federal Order Reform, and it would be FOR-9. It

was dated June 26, 1996, signed by Paul Christ, it seems to

have been stamped received July 1, 1996, by the Department, but

it is available, it would be, the Department has kindly put up

on the website all of these submissions, and it's FOR-9.

JUDGE CLIFTON: Did you read him, Mr. English, the entirety

of his submission?

MR. ENGLISH: No, I did not. It is -- I think it looks

like it is seven or eight pages, your Honor, and no, I did not.

I, you know, I read a portion. I don't, you know, we can take,

I would be entitled to take this later in as a submission of a

statement of a party under Rule 1. If people want to -- I have

read him that section, I have not read the entire document.

JUDGE CLIFTON: Have you read verbatim the section you

asked him about?

MR. ENGLISH: Yes, I did.

JUDGE CLIFTON: That's adequate at this point.

BY MR. ENGLISH:

Q. Now, my last set of questions, Mr. Christ. You

advocated on behalf of the Maine Dairy Industry Association,

the idea of a competitive pay price mechanism.

A. That is correct.

Q. Was it your view then, that that was a superior method

of pricing milk for manufactured products?

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1   A. It was my view that that mechanism could be considered

2 as an alternative to end-product pricing that was now in place

3 in Federal Milk Marketing Orders. It represented prices paid

4 for milk, rather than prices paid for cheese, and butter, and

5 other products. It also represented the consequences of

6 competition, which as can be seen in Table 2, Exhibit number

7 60, rendered higher prices for milk than were being rendered by

8 the dairy product formula prices.

9   Q. Now, the competitive pay price concept you were

10 advocating was for unregulated market, correct?

11   A. I was advocating for the development of the basic price

12 by deregulating areas where there was a significant amount of

13 competition defined as an HHI index of .331 by me -- not 331,

14 .33.

15   Q. The counties you have listed in Table 2, which is

16 Exhibit 60, a number of them though are, of course, in

17 regulated areas, correct?

18   A. Everyone of those counties includes producers who are

19 pooled on one or more, one or another Federal Milk Marketing

20 Orders. The counties may not be in a regulated marketing area,

21 but they certainly are in areas where the producers who are

22 subject to a Federal Milk Marketing Order regulations are

23 located.

24   Q. Thank you for that correction. I didn't mean that, and

25 we all know producers aren't regulated, it's handlers that are

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1 regulated.

2   A. Yes.

3   Q. So just to be clear, your competitive pay price concept

4 would be milk that isn't subject to regulation, correct?

5   A. Yes. And in my belief, there would be adequate

6 safeguard provided by competition that the farmers would not be

7 cheated. And then this price average across the competitive

8 unregulated area would be used to price milk in areas that were

9 less competitive -- in regulated areas that were less

10 competitive.

11   Q. Thank you. That's all I have.

12   JUDGE CLIFTON: Thank you, Mr. English. Who next has

13 questions for Mr. Christ?

14   CROSS-EXAMINATION

15 BY DR. SCHIEK:

16   Q. Bill Schiek for Dairy Institute.

17   Good afternoon, Mr. Christ.

18   A. Good afternoon, Dr. Schiek.

19   Q. I have, I think just a few questions, mostly

20 clarification, but a couple of questions on your statement. So

21 I guess I'm primarily going to be referring to Exhibit 58,

22 which is your written testimony.

23   And I wanted to look at page 3 of the document to start

24 with. And there's a quote, well, there's not a quote, there's

25 a statement you make there, I believe it's in the first

2544

1 paragraph that's not a quotation, about halfway down.

2 Actually, the last sentence of that first paragraph, "Congress

3 also recognized the need to modify prices as market realities

4 dictate, but it not modify its explicit intent to enhance

5 prices to producers?

6   MR. BESHORE: Your Honor, may we provide and water to the

7 witness?

8   MR. CHRIST: I'm okay. Thank you.

9   DR. SCHIEK: Do you need a break?

10   JUDGE CLIFTON: No, it was an attempt to have the witness

11 drink water, but he refused.

12 BY DR. SCHIEK:

13   Q. So market realities, as market realities dictate, I

14 guess the question I had, would one of those market realities

15 that would cause a need to modify prices, be the need for

16 markets for milk used in manufacturing to clear?

17   A. Do the markets need to clear? I think the markets will

18 clear, but it can occur that not everybody is going to be

19 profitable in doing that. From the standpoint of a processor,

20 if he has plant capacity to process milk, he still gets the

21 margin provided by the product price formula in the Milk Order.

22 So he -- he will be protected by that margin that's already

23 built into the Milk Order.

24   Who gets harmed if the market doesn't clear? Well, the

25 processors, if they don't have capacity, may refuse to accept

1 milk. And I think that's happened with different kinds of

2 supply management programs that have been implemented when

3 there's not enough capacity. So sometimes there's not a market

4 for all the milk, mainly due to capacity restrictions.

5   If there is capacity, the milk will be made into

6 products, which will be sold, maybe at a lower price than

7 expected, but the margins are still intact.

8   Q. Okay. So you're making the statement that the plant

9 margins are intact, but would it, would the need for a market

10 to clear necessitate a lower regulated minimum in an area where

11 there is excessive milk supplies?

12   A. A lower regulated milk price to farmers, that will be

13 accomplished through the formula prices for manufacturing milk.

14 If the value of cheese is depressed or butter or powdered milk

15 is depressed, the Class III and the Class IV prices may go

16 down. The margin stays the same. Producers will get less

17 money for their milk through the uniform price, and they will

18 be discouraging from increasing milk production or increasing

19 as fast. But in terms of whether the market will clear or not,

20 as long as there's someone who will buy the cheese and butter

21 and powdered milk, the market will clear.

22   Q. Okay. I think I understand what you are saying there.

23 So it leads to another question. If there's insufficient plant

24 capacity because plant margins aren't adequate, does that

25 require or is that a modifying condition or a market condition,

1 market reality that might necessitate a change in the formula

2 that allows for a larger margin than the existing formula?

3   A. If there are incentives to produce milk but inadequate

4 incentives to process milk, that could -- that could occur.

5 But I know of cases where there has been seasonal surpluses of

6 milk that exceeds local plant capacity, for example, in the

7 Northeast I think this last year, it takes time for the

8 industry to adapt.

9   Now, does that mean that just because there's no place

10 to process the milk that it is not profitable? It just may

11 mean that this was not an anticipated development and there's

12 not been enough time to respond.

13   Q. Okay. So let me turn to page 14 of your testimony.

14 Just skip around a little bit. I think, you know, don't want

15 you to get excited that I'm turning to 14, I might go back to

16 an earlier page.

17   A. You are hoping that I will forget something again.

18   Q. No, I don't think so. But when you talk about orderly

19 marketing conditions, you talk about stability, but you also

20 talk about efficiency, correct?

21   A. That's correct.

22   Q. Okay. So I guess my question is, is it efficient to

23 set a regulated price, regulated minimum price for milk used in

24 manufactured products above the level where markets can clear

25 within a reasonable geography and necessitate the movement of

1   excess supplies over thousand miles say, to find a processing

2   home?

3   A.   You are referring to raw milk.

4   Q.   Raw milk?

5   A.   And you are referring to the same issue we discussed

6   earlier where there's not sufficient plant capacity. Okay.

7   That is an economic question whether part of the year you can

8   afford to ship the milk out of the area or you can construct

9   additional plant capacity for year-round capacity. And there

10 is a trade off there, and I don't know the answer. But there

11 is some point at which it's more efficient to build additional

12 plant capacity which is used some of the time, but not all of

13 the time, and hauling the milk out of the area some of the time

14 but not all of the time.

15   Q.   Okay. Thank you. I'm going to flip back to page 6.

16 And there's a statement in the middle of the page. Actually, I

17 think it starts actually before the middle of the page and then

18 continues through the first major part of this page, in the top

19 part of this page, on depooling. And I think you discuss some

20 of the negative consequences of depooling. And I think in the

21 second paragraph it begins "depooling can do greater damage in

22 California," but the third sentence of that paragraph you say,

23 "if depooling were to occur, it would reduce revenues from

24 higher value manufacturing uses and reduce the uniform price

25 for milk remaining in the pool."

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1   I guess my first question is, doesn't that, wouldn't

2 that also happen in place like the Upper Midwest Order, that

3 impact that you discuss right there?

4   A. That impact would be quite similar. The greater damage

5 that would occur in the California pool is a large or

6 significant portion of the pool revenues are dedicated to

7 quota. And so if you depool out of a smaller pool, it has a

8 bigger relative impact on your residual milk.

9   Q. Okay. When you were at Land O'Lakes, did Land O'Lakes

10 ever depool milk in the Upper Midwest or Chicago region?

11   A. Yes, yes.

12   Q. Were there negative consequences on the market as a

13 result of depooling in the Upper Midwest, from your

14 perspective?

15   A. Yes, the milk that did not depool experienced a lower

16 uniform price than they otherwise would have.

17   Q. But yet Land O'Lakes made the decision to depool

18 because it was in their interest, I suppose?

19   A. Yes, it was the interest of our members, yes.

20   Q. Okay. Page 8 of your statement. You may have already

21 gone into this, and I apologize if you did. So I'm looking,

22 well, actually, this also refers to Table 2 on Exhibit 60, so

23 probably we need both, both page 8 and Table 2.

24   And just, I think I know the answer to this, but I just

25 want to make sure I'm clear. There, if I read this correctly,

2549

1 you have no data here for Idaho, for Arizona, Washington,

2 Oregon, Utah, or New Mexico; is that correct?

3   A. On table 2?

4   Q. On table 2and also on the table, on summary table on --

5 I'm sorry, page 9.

6   A. Page 9?

7   Q. I apologize.

8   A. That's correct. Because we found no counties that met

9 the competitive criteria that I defined in those states.

10   Q. Okay. So I mean that's basically most of the west then

11 what we're talking about?

12   A. That's correct.

13   Q. So what we're comparing really are Eastern counties to

14 California, or to -- well, this is mainly Eastern and

15 Midwestern counties, right?

16   A. Eastern and Midwestern, some Mid-south.

17   Q. Mid-south, okay. Thank you. Just one clarification

18 for me on 60 so I understand. The prices involved in this

19 difference column, that's not just manufacturing classes, is

20 it? That would include all classes?

21   A. No, that's total payment for milk. Total payment for

22 milk. Gross payment compared to minimum Federal Order value at

23 the uniform price of that milk, on that farm, of that

24 composition.

25   Q. Okay. And so some counties might include a lot of

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1 Class I, other counties might include very little Class I?

2   A. Well, the Federal Orders that we now have cover a vast

3 territories. And the Southern Orders would have higher

4 utilization than the Northeast or the Midwest. The Northeast

5 would have higher utilization than the Midwest. So you would

6 have to qualify that by Market Order, that would determine what

7 utilization applies to those prices.

8   Q. Okay. And are premiums typically, let me rephrase the

9 question. So if a bottler, for example, or a proprietary

10 cheese plant were to pay a premium to the coop supplier of its

11 milk for the milk it receives, would that premium, is that

12 premium typically pooled out to all of the coop members, or is

13 it paid just locally to the producers supplying that plant?

14   A. I would say that would be a managerial decision by the

15 milk procurement organization that receives the premium from

16 their customer. And they could choose to retain it as

17 earnings, or they could choose to pay it, and they would pay it

18 if they needed to, to remain competitive, in order to keep

19 their producers happy.

20   Q. Okay. But you don't have a sense of what general

21 practice is in the coops, whether they pool it over all

22 members, or if they were to pay it out, do they pay it out at

23 the same rate to all members or differential rates?

24   A. No, my experience, and again, I have been out of the

25 game for 15 years, but my experience was that you looked at

1 local areas to see what prices were being paid by the

2 competitors, you usually knew what they paid last month, and

3 you didn't know for sure what they were going to pay this

4 month. But then you set your pay prices based on your

5 anticipated competition.

6   Q. Okay. So if I understand that statement correctly, you

7 are saying there is some local market condition factor into

8 these into the overall --

9   A. Yes, yes, it isn't that everybody in the Upper Midwest

10 gets the same price for milk, it is done on a much smaller

11 location basis.

12   Q. Okay. Thank you. That's helpful. I guess page 11, if

13 you will turn there. So I think in this section at the top of

14 the page you are talking about, that the average-size

15 production in terms of production, the average size of the

16 producers in California are higher or greater than the average

17 size of the average producer in the United States; is that

18 accurate for 2014?

19   A. That's correct.

20   Q. And you make the point that larger producers mean lower

21 cost of these services that need to be provided to producers on

22 a per hundredweight of milk basis?

23   A. That's correct. Most of these services are provided

24 per producer, not per hundredweight of milk.

25   Q. Okay. The question I have is, wouldn't that larger

1 herd size, or average size, lead to a lower cost of production

2 of milk, say, in California versus the rest of the U.S. in

3 general because of economies of scale?

4   A. I would agree with that.

5   Q. Okay. Is it possible that lower cost of production in

6 California or in any state that has large herds like that,

7 might lead to a market clearing price that's lower in areas

8 than in areas with high cost of production?

9   A. You would have economic adjustments in a high cost

10 production area. If local prices were not adequate to cover

11 those costs, you would experience a declining milk production

12 industry. In an area where milk production costs are below

13 available prices, you might expect expanding milk production.

14 And I think it's a little more complex in terms of defining

15 cost of production, that incentives to increase or decrease

16 production might be related more to just variable cost. If you

17 have high variable cost, you are much more vulnerable to price

18 variation. If you have low variable cost, you are less

19 vulnerable to price fluctuations.

20   Q. Okay. But if I'm looking at from just from a purely,

21 or economic sort of workings of the economics of the industry,

22 and thinking about long-run costs, I guess the question is,

23 would economic theory suggest that milk prices are something

24 that would be the same across a spatial geography, or is it

25 that the net margins, actual margins from farming would be,

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1   would equalize across regions over time?

2   A. Would milk prices equalize or net margins equalize with

3   variable milk prices is that the correct?

4   Q. Getting back to the cost of production issues, that's

5   how I'm tying that in.

6   A. Okay. I'll address cost of production generally. I

7   have looked at cost of production over the years involved in

8   the dairy industry, because farmers are never getting enough

9   money to cover their costs. So what I found is, there's

10 tremendous variation in every area that I have looked at,

11 between say, the bottom 20 percent of milk producers in

12 profitability and the top 20 percent, or any other division

13 where there are enormous differences in returns to milk

14 production. And it's not so much one party would higher cost,

15 or another party lower cost in different areas, it's dairy

16 farmers in any specific area will show tremendous variation in

17 cost. So to generalize about cost of production, I think is

18 futile, and it really is an individual problem with any local,

19 within any localized area.

20   Q. So relative to an average cost of production in a given

21 region, would it be the case that typically the farmers exiting

22 the industry because of inadequate returns, would be those with

23 the highest cost?

24   A. That's what I would argue, yes. And you have always

25 got a turnover. You have got the higher cost, producers that

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1 have better opportunity for their time and resources, getting

2 out of the business. Other times you got new guys coming in

3 and are really confident that they are going to make a go of

4 it.

5 Q. I have never been that confident. Page 12 of your

6 statement, and actually, this is the culmination of what you

7 began, I think, on page 10. When you talk about factors other

8 than competition also affect the handler's ability to pay, and

9 then --

10 A. Which page are you on?

11 Q. So on 10 you start a long section where you talk about

12 a number of factors, and you just, you start that section with

13 the sentence, "factors other than competition also affect the

14 handlers ability to pay..."

15 A. Yes.

16 Q. And then on page 12, just before the section on Class I

17 differentials, you end with the statement, "thus it is not

18 likely that proposed prices for manufacturing milk will be too

19 high." And I guess the general question here is, what really

20 determines an appropriate price? Is it the handler's ability

21 to pay or is it supply and demand in a given region for milk

22 used in manufacturing?

23 A. I would argue that it is probably the handler's

24 willingness and ability to pay, but that cannot be accurately

25 expressed unless there is sufficient competition to encourage

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the handler to pay as much as he's capable of, or to encourage

him to be more efficient.

Q. Okay. So what you are saying, if I understand that,

your response is that if a handler has a greater ability to pay

for milk, are you saying that eventually that ability to pay at

a given price will foster more competition because it will be

more entries, or am I missing a point?

A. Okay. If there is competition, they will pay more on

the average --

Q. Uh-huh?

A. -- than if there is less competition. However, at any

one point in time, not every buyer of milk has equal ability to

pay, so those who have the greatest ability can pay a

competitive price and still be profitable, whereas people who

are less efficient, may have to pay the competitive price and

not prosper.

Q. Okay. So if I'm in an industry with a mix of plants,

some with a greater ability to pay and some with a lesser

ability to pay, and the amount of milk produced that needs to

be marketed is such that it has to, in order to be marketed, it

has to find it's way to some of those with the lesser ability

to pay. Does that suggest that the market price for that milk,

the underlying price determined by supply and demand, would be,

would leave some handlers with an excess ability to pay?

A. Yes. At any point in time, some handlers can afford to

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1 pay more than others, but under the Federal Milk Order

2 mechanism, if the price of products goes down, the price of the

3 minimum price under the Order goes down, and the margins stay

4 about the same. So the effect of, say, end-product prices has

5 little effect on profitability, what it has an effect on

6 profitability is the efficiency of the plant operation. And

7 that seems to be largely independent of whether it is too much

8 milk or not enough milk.

9   Q. Oh, I see your point. So if -- if I'm a plant operator

10 and my efficiency is not what's assumed in the formula --

11   A. Uh-huh.

12   Q. -- I'm basically struggling to stay in business.

13   A. That's correct. In an environment of high prices or an

14 environment of low prices, largely in a period of low prices,

15 you may have capacity restraints, but competitors will not be

16 as aggressive in trying to secure supply of milk to fill their

17 plants. So there may be extra margins there. You will see

18 smaller premiums than are expressed in Table 2.

19   Q. Okay. Thank you. Appreciate it.

20   JUDGE CLIFTON: Who else has questions for Mr. Christ? I

21 have invited you up. Is everyone fine for to us proceed or do

22 we need to take a break?

23   MR. CHRIST: I'm fine. If he wants to get me a bottle of

24 water.

25   JUDGE CLIFTON: The witness is fine, so we'll continue to

1   hear cross-examination questions for Mr. Christ.

 2   MS. REED: I don't anticipate being too long anyway, it's

 3   one of the benefits of going at the end of everybody else.

 4   CROSS-EXAMINATION

 5   BY MS. REED:

 6   Q.   Kristine Reed, attorney for Select Milk Producers.

 7   I almost hate to get into this this late in the day, so

 8   I apologize a little bit, but I did want to go back over some

 9   of the questions that Mr. English asked you. I'm hoping that

10   we can do this somewhat less adversarially and hopefully, I'm

11   looking to more be a student.

12   On your testimony, Exhibit 58, pages 2 into 3. Again,

13   talking about the issue of parity pricing. You have your own

14   paraphrase initially followed by some language from the Act,

15   both of which reference the role of parity pricing in Order

16   formulation or Order reform.

17   First, I guess I want to look at this from a somewhat

18   broader perspective. Can we talk a little bit, or can I invite

19   you to define for us what your, what the phrase parity price

20   means?

21   A.   Okay. There was a relatively prosperous period in

22   American agriculture between 1910 and '14. And when the

23   Agriculture Act of 1933 was adopted, I don't know if parity was

24   first defined at that time or sometime earlier, but in my

25   professional history, each month, the Department of Agriculture

                                2558

1   calculates parity prices based on what they call the index of

2   prices paid by farmers and the index of prices received by

3   farmers. And the period of 1910 to '14 was 100. So if the

4   period of, if October of 2015 is 300, then milk or milk

5   agriculture prices should be three times as high as they were

6   in 1910 to '14 in order to provide the same purchasing power as

7   they would have in 1910 to '14.

8   Q. Okay. So you anticipated my next couple of questions,

9   which is why you had specifically referenced that period of

10   time from 1910 to 1914. So I think I understand that, and as

11   what you are saying that period provides us with sort of a base

12   period?

13   A. Sort of a base, but we're a hundred years later now,

14   and it's a little obsolete.

15   Q. Right, a little bit. And then as far as the, an

16   explanation or definition of parity pricing then, we're looking

17   at what price a product sells for in relation to the buying

18   power of the farmer producer, then, to both service the farm

19   and also participate. So I was a little confused in hearing

20   the dialogue between you and Mr. English in terms of where we

21   are today with the concept of parity prices.

22   A. Okay. Let me maybe illuminate a little bit about what

23   we were discussing.

24   American agriculture has improved in efficiency and

25   productivity phenomenally since 1910 to '14. And the cost of

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1 input or the things that farmers buy, has not increased as

2 rapidly as farm output. So even though the prices appear low

3 relative to the prices for the same goods in 1910 to '14, they

4 can still be very profitable because productivity improvements.

5   A. When I was a young man, we formed on the Illinois

6 prairie, and if we got 80 bushels an acre that was great. In

7 Minnesota, 200 bushels an acre is very common right now, so

8 tremendous increases in productivity.

9   Q. Okay. Okay. So I assume you have read the proposal,

10 the Cooperatives Proposal Number 1?

11   A. Yes. I have not memorized it.

12   Q. Neither have I. And I hope that I never have enough

13 time on my hands that I can ever actually say that. Something

14 has gone way wrong. But what I did want to talk about with

15 respect to that proposal, was as I read through that proposal,

16 I note that the word "parity," the phrase "parity price"

17 doesn't show up in the proposal. And I wondered if you, what I

18 do notice instead of a discussion of parity pricing, what you

19 see is, among a lot of other things, a comparison of current

20 pricing under the California State system, with pricing under

21 the Federal Order regions. And I wondered first if, well, I

22 guess if you would agree with that, that there is no, that

23 that's not something that's discussed in the proposal.

24   A. Parity price is not discussed. But the Secretary will

25 include a statement about parity prices when a decision is

2560

1 rendered.

2   Q. Okay. So basically, I was going to ask you to offer an

3 explanation for that, and I think you just did. So is parity

4 pricing a national or a regional concept?

5   A. It's done on a national basis. I'm not sure if a

6 calculation is done regionally or not. But there are different

7 parity prices for individual products like milk, and there are

8 also parity prices for all of agriculture. So -- so there is a

9 price for milk based on 1910 to '14, and it's comparing to the

10 index price paid by farmers.

11   Q. Can you help me to determine how that concept of parity

12 pricing, that USDA will look at that, how it relates to the

13 proposed pricing formulas?

14   A. I was not involved in the discussions of the pricing

15 formulas. Although, historically, I have, and it's sort of a

16 recognized aspect of Federal Orders that we're not going to

17 achieve parity prices, they have to be modified based on price

18 of feeds, and available supply of feeds, etcetera, etcetera,

19 and here are reasonable prices based on the undocumented

20 consideration of all those factors.

21   Q. Okay. All right. So in addition to your reference to

22 establishing and maintaining parity prices in the section that

23 you paraphrased of the Act, you also mention protection of

24 consumers as being one of the purposes. How, if you know, will

25 Proposal 1 impact the prices that are paid by consumers?

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1   A.   Proposal Number 1 will not impact the prices paid by

2   consumers for manufactured dairy products because they are

3   traded in a national commodity market. And it depends on

4   national supply and national demand, and international plays a

5   role in that as well.

6   Class 1, as I understand it, the proposed differentials

7   are aligned with the price structure in the rest of the United

8   States, and they are little bit higher than the Class I

9   differentials applied under the state program today, so there

10 may be a marginal increase in costs of milk for fluid use. But

11 that may or may not be so depending on if and how much

12 over-order premium is being paid today, and I don't know that

13 number.

14   Q.   Okay. You also mentioned the goal or purpose of

15 promoting an orderly flow of products to the market. I'm not

16 asking about how the proposals would impact that, but just the

17 current state of the market in California. And I was wondering

18 if you had an opinion about whether there was scarcity in

19 either the Class I market in California as far as getting

20 products to consumers or in any other product classification?

21   A.   The only scarcity that I even have indirect knowledge

22 of it, is that the occasionally there is not enough plant

23 capacity to handle the current milk production, and that

24 disrupts an orderly flow of product to the market. But that

25 question is broader than that.

1   The milk can flow to alternative outlets, and we

2   talked, we heard some discussions the last couple of days about

3   feeding it to calves and that sort of thing. So, but that is a

4   question about the orderly flow, is there a place to sell it?

5   Q.   Okay. I want to shift gears over to looking at page 9

6   of your testimony. You provided us with a table, I guess it

7   was Exhibit 60. I just noted that you indicated that you

8   requested this information or this particular table from the

9   Order 30 MA several years ago. And I just wondered whether it

10   was in anticipation of this hearing or if there was an entirely

11   separate reason for it.

12   A.   Absolutely not. Nothing to do with this. I gave a

13   talk at a Minnesota, Wisconsin Dairy Marketing Meeting, I don't

14   remember the title of the program, but it was just a new idea

15   for setting the minimum prices under Federal Milk Marketing

16   Orders. How do you find the right price for milk going into

17   cheese and butter and other products? And I believe that it

18   was possible to discover a price for milk, it had nothing to do

19   with the price for cheese, or butter, or powdered milk, but for

20   milk, that people near competitive conditions are willing and

21   able to pay.

22   And so I developed this concept, and I kept fooling

23   around with it for about five years. So that's where these

24   data came from. And I just picked up what I had obtained in

25   the 2012.

1   Q. Okay. Well, thanks for the explanation. You can't be

2   too sure when it comes to a California Order proposal, because

3   I have seen some in my own office that went back way longer

4   than that, so I know this issue has been out in the industry

5   for a long time.

6   Drawing your attention, then, to page 11 of your

7   testimony. Again, in this section you were providing some

8   reasons to support the concept that prices in California would

9   not be too high or, I think in other words, that plants could

10   afford to pay the proposed prices. But specifically, in the

11   middle of the page you're talking about a fourth factor about

12   balancing in the market. In your last sentence there you make

13   a statement that ends, so there is less "give-up" cost incurred

14   by the California milk plant, milk manufacturing plants. I

15   just wanted to, I am not exactly clear what you mean about

16   that. I just wanted you to explain.

17   A. Okay. That's -- a plant is most efficient when it

18   operates at a hundred percent of capacity.

19   Q. Sure.

20   A. If there is less milk available, there is some capacity

21   that is not being used. And there is a significant cost to

22   providing capacity, and if the capacity is not used, there's no

23   revenue to compensate for the cost of maintaining that

24   capacity. So give-up cost is what you pay when you have no

25   production to utilize the capacity.

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1   Q. Okay. Thanks.

2   Okay. And then in Exhibit 59, which is your resume,

3   during the period of 1978 to 2000 you offered that you had

4   participated in numerous Federal Milk Marketing Order hearings,

5   and I think earlier you mentioned Order Reform and some others

6   as well. I just wondered if you had, had been a participant in

7   the last promulgation hearing?

8   A. Well --

9   Q. Which I think was during that time?

10   A. We had a discussion of this, of what was the last

11   promulgation hearing. And it might have been the Upper Midwest

12   hearing in the early '70's I don't know.

13   Q. I think we have had discussion of Idaho?

14   A. I don't know. The last promulgation, that may be, that

15   may be. I did not participate in a promulgation hearing, in

16   memory, other than the Upper Midwest Consolidation.

17   Q. Okay. All right. Well, I figured you were one of our

18   best shots for that, so I thought I would ask.

19   A. Again --

20   Q. -- only because of your vast and long experience in the

21   industry.

22   A. As illuminated, not everything is on this paper.

23   There's a bunch of stuff I forgot.

24   Q. All right. That's all I have, thanks.

25   JUDGE CLIFTON: Who else has questions for Mr. Christ?

1   Mr. English?

2   MR. ENGLISH: Chip English, and strictly follow up on the

3   Exhibit 60, just for clarification of the record.

4   CROSS-EXAMINATION

5   BY MR. ENGLISH:

6   Q. This is, strictly speaking, according to footnote 1,

7   basically a difference between the Federal -- the word Federal

8   is not in footnote 1 -- but the Federal minimum order price at

9   test and the locations. Correct?

10   A. Yes.

11   Q. Okay. And so you have got several pages, starting at

12   page 10 going into page 13, with counties from Pennsylvania,

13   correct?

14   A. Yes.

15   Q. Okay. Are you aware of an entity called the

16   Pennsylvania Milk Marketing Board?

17   A. Yes, I am.

18   Q. And are you aware that Land O'Lakes at your, in your

19   time at Land O'Lakes, Land O'Lakes had operations in

20   Pennsylvania, correct?

21   A. That's correct.

22   Q. Okay.

23   A. After the merger with Atlantic Dairy.

24   Q. And Pennsylvania Milk Marketing Board maintains an

25   over-order premium, that is to say a Pennsylvania over-order

                              2566

1 premium, paid by Class 1 processors for Pennsylvania-produced,

2 Pennsylvania-processed, and Pennsylvania-sold milk, correct?

3   A. That's correct.

4   Q. Okay. So to the extent that Pennsylvania has a

5 regulatory price add-on, that is not captured in that

6 difference starting on page 10 into page 13, correct?

7   A. This is strictly Federal Order obligations.

8   Q. So if it is true that Pennsylvania in this timeframe of

9 2008 through 2011, maintained, I'm not going to try to quantify

10 it, but an over-order premium on Class I milk produced,

11 processed, and sold in Pennsylvania, that simply isn't

12 considered in this calculation, correct?

13   A. No, I don't track exactly where the money came from,

14 but the money was certainly available to pay producers.

15   Q. But in terms of a competitive analysis, it would have

16 been affected by the regulations of Pennsylvania, correct?

17   A. Maybe in some counties, but I look at the list, I know

18 a few counties and where they are located in Pennsylvania.

19 Lancaster, Burkes, for example, are both on the list, and they

20 are outside the scope of the Pennsylvania Milk Marketing

21 Agency. There may be other counties, or maybe most of them

22 outside the scope, I don't know.

23   Q. Yeah. If that's incorrect, if Pennsylvania rules do

24 encompass and pay a premium on Lancaster milk, then --

25   A. I don't know.

2567

1   Q. You don't know?

2   A. I don't know. I think not, but I don't know for sure.

3   Q. Do you know whether Virginia maintains a base plan that

4 imposes on entities selling milk in Pennsylvania, a premium

5 price above the Federal Order price?

6   A. Would you restate that?

7   Q. I will restate it. I think I dropped the word

8 California in there, and I apologize.

9   A. Pennsylvania.

10   Q. Or I dropped Pennsylvania in there, whichever I dropped

11 in there. Okay. So are you aware that Virginia maintains a

12 base plan that attempts to collect premiums on milk sold in

13 Virginia?

14   A. I know that Virginia has a state milk program. I have

15 never studied the details. But I believe it has to do with

16 something similar to the California quota plan where some

17 people are paid on the basis of ownership of base or quota.

18   Q. Do you know whether or not there's actually, as opposed

19 to just a redistribution of proceeds, there's actually a higher

20 price imposed on Class I processors selling milk in Virginia,

21 to pay for that?

22   A. I don't know the answer, but I suspect that that's the

23 case, but I don't know the answer.

24   Q. And again, you didn't -- you didn't ask Market

25 Administrator to look that, the Market Administrator looked

1 strictly at Federal Order minimums versus gross State prices?

2   A. That's correct.

3   Q. Okay. During this timeframe, are you aware of whether

4 there were premiums paid for milk that dairy farmers asserted

5 was rBST free -- and that's lower case r, capital B, capital S,

6 capital T -- rBST free milk?

7   A. I have no personal knowledge of that, but it is

8 possible.

9   Q. And if they were paid, that isn't captured in

10 Exhibit 60 in terms of the distinguishing between the

11 Federal Order minimum price and the gross price, correct?

12   A. No, the gross price would probably include any premiums

13 paid. This does not make distinctions between quality, volume,

14 or just higher component prices. There's a variety of farms in

15 which these payments could be made, but these are payments over

16 and above the minimum required by the Federal Milk Marketing

17 Order.

18   Q. And so similarly, it doesn't include, to add to that

19 list, it doesn't include if a state has some regulatory price

20 that is higher than the Federal price, correct?

21   A. That's a possibility, yes.

22   Q. And to the extent, if at all, in 2008 to 2011, organic

23 milk commanded a price that was different or higher than the

24 Federal minimum, that also wouldn't be included, correct?

25   A. Yeah, that would be another form of premium that a

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 1   buyer could choose to pay.

 2       Q.  Thank you.  That's all I have.

 3        MR. VETNE:  Thank you, your Honor.  Thank you, Chip, for

 4   asking -- John Vetne, Hilmar Cheese -- for asking the Virginia

 5   question.

 6                        CROSS-EXAMINATION

 7   BY MR. VETNE:

 8       Q.  Paul, you said you don't know much about the Virginia.

 9   Do you know enough about the Virginia base plan to know that

10   base could be acquired by non-Virginia dairy farmers, as well

11   as Virginia dairy farmers?

12       A.  No, I did not know that.

13       Q.  I sat done for lunch, there was one area of questions I

14   forgot to ask you.

15           You indicate in your CV that you had attended numerous

16   hearings during '78 to 2000.  Do you recall a series of

17   hearings that were held after Congress legislated Class I

18   differentials that were different than USDA had created through

19   the rule making process?

20       A.  I don't recall those hearings.  I know they occurred,

21   but I must have been there, but I don't remember what I did or

22   where I did it.

23       Q.  And in that case, I have no further questions.

24                        CROSS-EXAMINATION

25   BY MS. TAYLOR:
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1   Q. Good afternoon, Mr. Christ. Sue Taylor from Leprino

2   Foods.

3   I would like to focus a few questions on your testimony

4   starting on about page 8, a third of the way down. First, I

5   would like to confirm my understanding, which is that in this

6   part of your testimony you're trying to argue that the

7   Class III formula price is not too high for the West, because

8   areas outside of California in the Western States, dairy

9   products series have grown at a faster rate in cheese

10   production than in California.

11   A. That, my argument is that these plants do pay the

12   prices that we propose for California, and they have not been

13   discouraged from expanding by having to pay those prices.

14   Q. Thank you. Have you looked at the states that are

15   specifically in that dairy product survey for the Western

16   States and compared them with the Federal Order regulatory

17   areas?

18   A. I just looked, I think I extracted California and

19   Idaho. Idaho is not part of a Federal Order area, therefore

20   they are not subject to the minimum prices now paid under

21   Federal Orders, and therefore, they were removed. The other

22   states are largely regulated by Federal Orders and do pay the

23   minimum prices provided by the Order, and so they -- so what's

24   relevant, are they discouraged or encouraged to expand cheese

25   production. And this suggests that they are willing and able

1 to expand cheese production faced by those prices.

2   Q. Okay. Can we talk specifically then about the Federal

3 Order areas within that Western geography. Pacific Northwest,

4 what states does that cover?

5   A. Well, I don't -- I don't remember all the counties, but

6 it is basically Oregon and Washington.

7   Q. Okay. Arizona?

8   A. Arizona is the State of Arizona, it maybe some trivial

9 territory outside, but I don't know. I don't -- I don't have

10 that burned into my brain.

11   Q. Okay. The Southwest order?

12   A. The Southwest is Texas, New Mexico.

13   Q. And within the Western States that you're

14 characterizing in here, which of those states?

15   A. I think New Mexico would be in there, but I'm trying to

16 visualize the map in dairy products. I -- Texas may not be in

17 the Western area. I think it is not. But New Mexico would be.

18   Q. Okay. And the Central Order, which states within the

19 Western dairy products?

20   A. That would be Colorado, and going North, Wyoming,

21 Montana. Montana is not in there. I wonder why we didn't take

22 Montana out, but we didn't.

23   Q. That leads me to my next question.

24   A. Okay.

25   Q. So -- Utah?

1   A.   Utah would be in the Western area.

2   Q.   In the Western area for dairy products.

3   A.   Uh-huh.

4   Q.   Does it fall under Federal Order regulation?

5   A.   They used to be a Great Basin Order, centered around

6   the Salt Lake City market, but I can't answer that question. I

7   don't -- I don't think it's part of the Central Order and I

8   don't think it's part of the Southwest.

9   Q.   Thank you. And Nevada?

10   A.   Nevada -- Nevada I think has some milk pooled in

11   Arizona, but certainly Clark County, Nevada is not part of the

12   Federal Order.

13   Q.   I would like to turn specifically to the cheese

14   production and your understanding of the cheese production in

15   the states in the West, and particularly those states that you

16   believe are heavily influenced by Class III pricing, and for

17   which the Class III pricing would be binding on the major

18   cheese makers. Would you agree, I believe you have already

19   testified to this effect, that cooperatives are not bound by

20   the minimum pricing provisions of Federal Orders?

21   A.   No, they can -- they can choose to to pay their

22   producers directly through pay price or indirectly through

23   earnings.

24   Q.   Okay. Thank you. So let's start with the Pacific

25   Northwest. Are you aware of major commodity cheese production

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1 in the Pacific Northwest that is not done by, not produced by

 2 Cooperatives?

 3   A. I'm not familiar with the market structure in the

 4 Pacific Northwest, so I don't know whether to answer yes or no.

 5   Q. Arizona, same question.

 6   A. The question is whether it is operated by Cooperatives?

 7   Q. Correct. The cheese production in Arizona, cooperative

 8 versus proprietary.

 9   A. Okay. I do not know who produces cheese in Arizona.

10   Q. New Mexico?

11   A. New Mexico, DFA had some kind of deal with a private

12 firm one of the cheese plants, but I think, my impression is,

13 most of them are proprietary.

14   Q. And Colorado?

15   A. Colorado, I know of a proprietary cheese operation

16 called Leprino. I don't know of any coop plants.

17   Q. Okay. Thank you. Would you agree, then, that to the

18 extent that you have identified a few proprietary areas where

19 there may be some cheese making, but largely have not

20 identified areas where the Federal Order is enforced in the

21 West, where there is proprietary cheese making outside of

22 those, say, New Mexico and Colorado, that, in fact, the

23 testimony that starts on page 8 may be drawing the wrong

24 conclusion?

25   A. Your implication is that a lot of the cheese produced

2574

1 in the Western area outside of California and Idaho is not

2 subject to Federal Order minimum price regulation. Is that

3 correct?

4 I do not know how much is and is not subject to Federal

5 Order minimum price regulation, but some of it certainly is.

6 Q. Thank you.

7 JUDGE CLIFTON: Are there other questions for Mr. Christ?

8 Any before I ask for redirect? There are none. Mr. Beshore?

9 MR. BESHORE: Before redirect, I would like to ask for an

10 afternoon break.

11 JUDGE CLIFTON: I'm ready for one myself.

12 MR. BESHORE: All right.

13 JUDGE CLIFTON: Let's take about 15 minutes. Do you know

14 that it is almost 4:00? Please be back and ready to go at

15 4:15.

16 (Whereupon, a break was taken.)

17 JUDGE CLIFTON: We're back on record at 4:17. Mr. Beshore?

18 MR. BESHORE: Thank you, your Honor. Marvin Beshore.

19   REDIRECT EXAMINATION

20 BY MR. BESHORE:

21 Q. Good afternoon, Mr. Christ. Just a couple of questions

22 on redirect examination here, if I might.

23 First of all, you were asked by one of the questioners

24 on cross-examination, something about productivity of

25 agricultural production in Southern Illinois, and in your youth

1   versus today. And you talked about bushels, but you didn't say

2   what you were talking about. Can you clear that up for the

3   record?

4   A. In Southern Illinois, if you look out, you see corn.

5   And so this is bushels of corn, 80 bushels of corn in my youth,

6   and 200 as being common today.

7   Q. Thank you. Now, in terms of your participation in the

8   Federal Order hearings, you referred, it is in your resume, and

9   you were asked a question or two on cross-examination about

10 whether you participated in a promulgation hearing such as this

11 one, previously. But I'm not sure what you said, but you

12 testified to participation in the consolidation hearings, two

13 of them. In fact, having a major role, I believe, at two

14 consolidation hearings. Do you recall that?

15   A. Yes, I do.

16   Q. All right. Now, isn't it correct that in a

17 consolidation hearing, you have to do everything in terms of

18 making a record and testifying about provisions in an order

19 that you do in a promulgation hearing, that is, you are really

20 creating a new order?

21   A. That's my understanding that the requirements are very

22 close to a promulgation hearing.

23   Q. And, in fact, let's talk about the Minnesota

24 consolidation Order. I mean, you had a role in requesting that

25 hearing and in testifying at that hearing, correct?

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1   A.   That's correct.

2   Q.   And you merged what, four -- was it four or five orders

3   involved in that hearing?

4   A.   Yes, we merged four orders in Minnesota, and a year

5   later we merged four separate orders into one Iowa Order.

6   Q.   Okay. So talk about Minnesota first. When you were

7   advocating and testifying at the hearing for the merger of

8   those orders, did you, in fact, have to present what you

9   desired for the new order from A to Z in every respect?

10   A.   As far as I recall, it was a complete development of an

11   order from A to Z.

12   Q.   And same thing with respect to Iowa?

13   A.   That's correct.

14   Q.   Okay. And you had a lead role in both of those?

15   A.   I was a very active participant in both.

16   Q.   Now, you were asked on cross-examination by Mr. Vetne,

17   Mr. English at least, maybe Mr. Vetne, both -- you were

18   confronted with some of your prior statements, that prior

19   testimony or letters that you had signed.

20   Do you recall that?

21   A.   Yes, I do.

22   Q.   Okay. Now, when -- let's talk about the letters. When

23   you were working for Land O'Lakes, your extended career, and

24   you wrote to regulators in Washington requesting, stating a

25   position or requesting some action with request to agricultural

2577

1 policy, you signed the letter on Land O'Lakes letterhead, was

2 that your personal professorial academic position, Mr. Christ?

3   A. That was not my personal position. I participated in

4 the debate within Land O'Lakes about what position we should

5 adopt. And eventually, it was a decision, either made by the

6 Dairy Committee or the Board, which is most likely on issues

7 like that, or a collection of Senior Management. But most

8 likely, a decision supported by the Dairy Committee of our

9 Board of Directors.

10   Q. In other words, the Board called the shots, and you

11 carried them out.

12   A. We would hold a discussion, they would make a decision,

13 and I would do my best to implement it.

14   Q. Okay. And as times evolved and the industry changed

15 and Land O'Lakes changed, did your positions, over time,

16 sometimes evolve and change?

17   A. Our positions did evolve and change, especially

18 associated with mergers that we -- I think it was about 1997 we

19 merged with Atlanta Dairy Coop, and there was some revision of

20 policy at that time. And we merged with Dairymen's Cooperative

21 Creamery from California, '98, '99, I don't remember exactly

22 when. But, again, our policy was modified because of new

23 interests being brought into the organization.

24   Q. Okay. And you have been here the last couple of days

25 in this hearing, have you? Have you been in the hearing?

1   A. I have been hearing, this is the third day, yes.

2   Q. And you heard -- did you hear Dr. Erba's testimony

3 earlier?

4   A. Yes, I did.

5   Q. And has Land O'Lakes gone through some of the evolution

6 of positions and thought processes and direction from the Board

7 as he described in CDI?

8   A. Yes, we have. As the players changed representing

9 different regions and different local interests, we have

10 modified our positions, at least during the time I was onboard

11 through most of 2000.

12   Q. Okay. And in the, by the way, in the Atlanta hearing

13 you were -- at that time you were testifying as an advocate on

14 behalf of Dean Foods?

15   A. Yes, I had been retired and doing some consulting

16 services, and for positions that I was comfortable with, I was

17 happy to advocate for Dean Foods.

18   Q. Now, I just want to ask you about Exhibit, Table 2

19 which is Exhibit 60, I think, you know, a question or two.

20   Do you have that?

21   A. Yes.

22   Q. Okay. Now, the data represented in Table 2 is compiled

23 by the Market Administrator at your request and with the

24 criteria that you specified as you have indicated the HHI index

25 of .33, correct?

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1   A.   That's correct.

2   Q.   Okay. Now, there is, and of course since it was based

3 on criteria that the data was to meet the criteria that you

4 specified, it doesn't represent data for the entire Federal

5 Order, Federal Milk Order system, correct?

6   A.   It represents, what is represented on page 2 is only

7 data for those counties that met the criteria that I specified.

8   Q.   Okay. And by definition, the counties that are not

9 included because of the criteria you specified, they are

10 counties in which there is less competition for the purchase of

11 milk from the dairy farms, correct?

12   A.   That's what I would believe based on my conversations

13 and instructions to the Market Administrator.

14   Q.   So, in other words, those counties, assuming the Market

15 Administrator carried out the request as you made it, and as

16 he, as they indicated its representative, but the counties that

17 are not on here would be counties in which buying was more

18 monopsonistic as you've described, correct?

19   A.   That's correct. These are the most competitive

20 counties available, all of which fell below the threshold of

21 .33 Herfindahl Index.

22   Q.   So the counties that are less competitive, economic

23 theory would say that price levels in those counties to the

24 producers would tend to be less, lower, correct?

25   A.   That's correct. That the fewer players or the more

2580

1   concentrated the market, you would expect lower prices to

 2   suppliers.

 3   Q. Now, you were asked whether the counties represented in

 4   states such as Pennsylvania or Virginia, whether those prices

 5   could be impacted by state regulatory programs.

 6   Do you recall that?

 7   A. I remember.

 8   Q. Okay. Now, I just want to ask you about a few other,

 9   some other states in the data. Looking at Exhibit 60, Table 2,

10   and taking the State of Minnesota, is there any state

11   regulatory program in Minnesota that would affect the prices

12   reflected on Exhibit 60 paid to producers in Minnesota?

13   A. No.

14   Q. Let's move to Wisconsin. Is there any state regulatory

15   program in Wisconsin that would impact the prices paid to dairy

16   farmers in the State of Wisconsin?

17   A. No.

18   Q. Illinois, is there any state regulatory program in

19   Illinois that would impact prices paid to dairy farmers in

20   Illinois?

21   A. No.

22   Q. Michigan, is there any state dairy program in the State

23   of Michigan that would impact the prices paid to producers in

24   the State of Michigan?

25   A. No.

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1   Q. Indiana, is there any state regulatory program that

2   would affect the prices paid to producers in the State of

3   Indiana?

4   A. No.

5   Q. Ohio, is there any state regulatory program that would

6   affect the prices paid to producers in the State of Ohio?

7   A. No.

8   Q. Thank you, Mr. Christ, I have no further questions.

9   JUDGE CLIFTON: Thank you, Mr. Beshore.

10   Does anyone have any further questions of Mr. Christ?

11   There are none. Mr. Christ, thank you so much. You may step

12   down. You have been a big help. We appreciate it. All right.

13   I would now invite any administrative announcements.

14   MS. MAY: Guess what? Tonight we get to move. So the good

15   news is that rather than having to -- oh yeah, my name is

16   Laurel May -- rather than taking it all out of here, they are

17   going to let us park all of our equipment in this board room

18   across the hall. So if you want to move your chair over there,

19   that kind of thing, and the sound equipment, we can keep it

20   there rather than having to take everything back to the hotel.

21   This room will be used tonight and that room will be used

22   tonight, so we can't use either one. Tomorrow we'll be back in

23   Liberty, though.

24   JUDGE CLIFTON: Now, those of you who laughed when she said

25   if you want to take your chair, those of you -- all of you are

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 1  sitting on card table chairs.  I understand that.  I will move

 2  my chair.

 3        Now, I understand that Mr. Hollon would be our next

 4  witness; is that correct, Mr. Beshore?

 5     MR. BESHORE:  That is correct.

 6     JUDGE CLIFTON:  And we can get a good 20 minutes of

 7  testimony in, so I would suggest that we do so, unless you

 8  think that would not be a good idea, Mr. Beshore.

 9     MR. BESHORE:  Well, we're certainly prepared -- we're

10  certainly prepared to go forward.  I would say that we will

11  barely scratch the surface of Mr. Hollon's testimony in that

12  time.  He has an extensive statement plus a set of tables, but

13  we can, you know, we can -- we can start.  But it will, it's

14  going to take us a few minutes just to distribute and go from

15  there.

16     JUDGE CLIFTON:  Now, distributing sounds good.  What

17  subjects will he cover in this portion of his testimony?

18     MR. BESHORE:  The overall subject covered in this is the

19  pooling provisions of proposed Order, overall topic.

20     JUDGE CLIFTON:  Would you be willing to do the distribution

21  tonight so people can take it home with them -- everyone is

22  laughing.  Homework -- I like homework.  I realize you would

23  have to check again tomorrow morning to see if there was

24  anybody who did not yet get a copy because they weren't here

25  now.
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1   MR. BESHORE: I would be willing to do that under the

2 express understanding that there would be full and complete

3 reciprocity of this type of circumstance as the hearing, as the

4 hearing goes on. In other words --

5   JUDGE CLIFTON: There are no guarantees, Mr. Beshore.

6   MR. BESHORE: Well, then I think --

7   JUDGE CLIFTON: This would be a magnanimous gesture on your

8 part.

9   MR. BESHORE: Well, I think we should start with Mr. Hollon

10 in the morning in that case, after CDFA.

11   JUDGE CLIFTON: Now, the California Department of Food and

12 Agriculture witness, is that person going to be here at 9:00

13 in the morning?

14   MR. HILL: Yes.

15   JUDGE CLIFTON: All right. That person will probably be on

16 the stand for at least a matter of hours, wouldn't you

17 estimate, Mr. Beshore?

18   MR. BESHORE: My estimations are really bad for this

19 hearing, as my, you know, colleagues will attest. But I would

20 concur with that, for whatever that's worth, yeah, I think so.

21   MR. FRANCIS: Will Francis, USDA. We are in the process of

22 making copies of what CDFA will present as an exhibit. There

23 are 29 individual tables and approximately 275 pages, and we

24 suspect that they will go through in detail to describe all of

25 those documents. I don't know how long it will take, and we

1 hope the printing company that we sent it to is able to get

2 everything printed. If not, we will do our best to make

3 limited paper copies available.

4   MR. HILL: We still have the statement. I was going to

5 read it again, as necessary, so here we go. The statement is:

6   CDFA will be present on October 8th for the limited

7 purpose of entering reports into the hearing record, developed

8 in response to requests from interested parties. CDFA will

9 only answer questions regarding the compilation of the data

10 contained in these reports in order to remain neutral and avoid

11 being associated with a particular proposal.

12   And, of course, October 8th is tomorrow.

13   MR. VETNE: John Vetne. Thank you for making paper copies

14 available, it makes an easier reference than going to the

15 computer. But for those who might be listening, who aren't

16 going to get paper copies, the CDFA data, all of the material

17 requested was not on their website until a few days prior to

18 this hearing starting, and then it disappeared for awhile, and

19 now it is back on. So presumably all of the documents, all of

20 the data that's requested that is going to be produced in paper

21 form, is currently available on the CDFA Dairy Marketing

22 Division web page, and there's a little section there you click

23 information relevant to Federal Milk Marketing Order, and

24 there's probably 30 or 40 documents responsive to requests. So

25 they can be accessed by those listening. I just want to make

1 sure people knew that. Thank you.

2   JUDGE CLIFTON: Thank you, Mr. Vetne, that's good.

3   MR. ENGLISH: Your Honor, during an earlier break there was

4 discussion among counsel and the Department, and we recognized

5 that the length of the document at 276 pages was such that we,

6 for our part, agreed that we would try to share copies. But I

7 think the limited number may be of course, 20, three for

8 Meredith, and one for you, one for the court reporter, one for

9 the witness, that leave 14, but we assure you that we're going

10 to work with that in this room, and not cause that, make that

11 an an issue. We don't want to kill anymore trees than we have

12 to, and that's a lot of documents. We're more interested in

13 getting it. And we're going to work with everybody and we are

14 appreciative of the Department making as many copies as they

15 can, but we understand there may not be one for every person in

16 the room.

17   JUDGE CLIFTON: All right. Let us defer Mr. Hollon's

18 testimony until after we have completed the California

19 Department of Agriculture testimony, which, as I understand it,

20 has to be completed tomorrow. This witness is available for

21 just one day, as I understand it, from what Mr. Hill read. So

22 we will soldier on to get that done. All right, then, is there

23 anything else for the good of the order before we call it a

24 day? All right.

25   Now, when we break down, you can take what you want

1   into the Board Room, which is just across the hall from the

2   back door, and leave it there overnight. And then you will

3   need to move it in in the morning so that we're ready on time

4   for the California Department of Food and Agriculture witness.

5   All right. We'll go off record now at 4:37.

6   (Whereupon, the evening recess was taken.)

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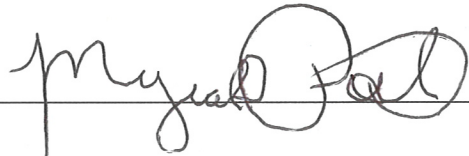
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I am the reporter that stenographically recorded the testimony in the foregoing proceeding and the foregoing transcript is a true record of the testimony given.

Dated: October 26, 2015

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