

**Before the United States Department of Agriculture  
Agriculture Marketing Service**

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MILK IN THE PACIFIC NORTHWEST AND  
WESTERN MARKETING AREAS; HEARING  
ON POOLING

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Docket No. AO-368-A30,  
AO-380-A18; DA-01-08

Excerpts of Transcript Testimony by California Department of Food & Agriculture  
Officials Kelly Krug and Robert Horton from the Upper Midwest Hearing  
Regarding Pooling Amendments (Docket No. AO-361-A35; DA-01-03)

Submitted on Behalf of Dean Foods Company

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**GRIEVANCE BOARD**

**UNITED STATES DEPARTMENT OF AGRICULTURE**

**IN RE:**

**UPPER MIDWEST**

**Docket No. AO-361-A35**

**MILK MARKETING ORDER**

**DA-01-03**

Hearing held on the 26th day of June 2001

at Radisson Hotel South & Plaza Tower

7800 Normandale Boulevard

Bloomington, MN

TRANSCRIPT OF PROCEEDINGS

**BEFORE: THE HONORABLE JILL CLIFTON**

**APPEARANCES:**

GREGORY COOPER, GINO TOSI, WM. RICHMOND, MARVIN BESHORE,  
JOHN VETNE, ESQUIRE, RICHARD LAMERS, CHARLES ENGLISH,  
SYDNEY BERDE, VICTOR HALVERSON, NEIL GULDEN, ROBERT E.  
VANDER LINDEN, RODNEY CARLSON, CURTIS KURTH, DENNIS  
TONAK, BILL DROPIK, KELLY KRUG, ROBERT HORTON, CARL  
CONOVER, JIM HARSDORF, BILL HUGHES, JAMES HAHN, PETER  
HARDIN

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1 ADMINISTRATIVE LAW JUDGE: Thank you. Both  
2 Mr. Krug and Mr. Horton are sworn in. Mr. Krug, you may  
3 proceed.

4 \*\*\*

5 KELLY KRUG,  
6 having first been duly sworn, according to the law,  
7 testified as follows:

8 MR. KRUG: Thank you, Judge Clifton, USDA  
9 staff, and interested parties. My name is Kelly Krug,  
10 I'm the Director of Marketing Services for California  
11 Department of Food and Agriculture. The operation of  
12 CDFA's pricing and pooling system occurs in the  
13 Marketing Services Division. With me today is Robert  
14 Horton, Chief of the Milk Pooling Branch. We were  
15 requested by USDA to participate at this Hearing to  
16 provide information on the operation of the pooling  
17 system administered by CDFA. The CDFA takes no position  
18 on the petitions at the Hearing. Mr. Horton has  
19 prepared an overview the California Department of Food  
20 and Agriculture's pooling program that we are able to  
21 present in the record. In fact, it was put in the  
22 record this morning by one of the Attorneys and I think  
23 that was Hearing Exhibit #18. We also, well, our  
24 participation today is to provide factual and technical  
25 public data and we're not authorized to provide

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1       opinions, speculation, or discuss matters that are  
2       before litigation with the Department. Thank you.

3                   ADMINISTRATIVE LAW JUDGE: Thank you, Mr.  
4       Krug. If you'd hand the microphone to Mr. Horton.

5   \*\*\*

6                                   ROBERT HORTON,  
7       having first been duly sworn, according to the law,  
8       testified as follows:

9                   MR. HORTON: Thank you. The Gonzalves Milk  
10       Pooling Act, which went into effect on July 1, 1969  
11       authorizes the Secretary of the California Department of  
12       Food and Agriculture to operate a statewide pooling  
13       system under specific guidelines. These statutes  
14       provide for the formulation and adoption of the milk  
15       pooling plans for market milk. The California pooling  
16       system is similar to the Federal Orders except  
17       California has a quota system. During the preliminary  
18       stages of formulating a plan, basic milk production was  
19       gathered to establish two benchmarks for each producer,  
20       production base and pool quota. Production base and  
21       pool quota were established for each producer by milk  
22       fat and solids non-fat on an average daily basis. The  
23       production base was computed by dividing the total  
24       production during the base period by the number of days  
25       milk was produced. Pool quota was established as 110

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1 percent of the Class I utilization accounted for during  
2 the base period, divided by the number of days in that  
3 period the producer actually shipped Class I  
4 utilization. The amount by which the production base  
5 exceeds pool quota was designated as base. Producer's  
6 production base and pool quota is transferable with some  
7 restrictions. Market milk shipped by a producer through  
8 a pool handler cannot be defined as quota milk or  
9 overbase milk.

10 \*\*\*

11 [Off the record]

12 [On the record]

13 \*\*\*

14 MR. HORTON: A cooperative association is  
15 treated as a single producer for both producer payment  
16 and pool settlement purposes. The daily production base  
17 and pool quota entitlements for members of a cooperative  
18 association belong to the individual producers but is  
19 assigned to the custody and control of the cooperative  
20 association. As in Federal Orders, the California Order  
21 is designed to promote orderly marketing conditions by  
22 applying a uniform pricing system throughout the market.  
23 The pooling system provides the sharing among producers,  
24 the value of all milk uses. California has a pricing  
25 system, which handlers pay for bulk milk based on their

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1 monthly usage. This usage is accumulated by the pooling  
2 system statewide to determine producer prices.  
3 Producers are paid on their allocated quota base and  
4 overbase by components as determined by the producer's  
5 actual butterfat and solids not fat. Since cooperatives  
6 are treated as a single producer, the individual  
7 producer daily production base and pool entitlements are  
8 added together to determine the cooperative's pool  
9 settlement. In January 1994, the California legislature  
10 adopted a major milk pooling reform language at the  
11 request of producers. The value between the quota price  
12 and the overbase price was fixed at \$1.70 a  
13 hundredweight. This change was determined to be a more  
14 equitable method by producers to share all revenue  
15 contained in the pool. Prior to the amendments the  
16 difference between quota and overbase prices fluctuated  
17 greatly in the range of \$5 a hundredweight to on  
18 occasion overbase price being more than the quota price.  
19 The other changes made by this legislation was to fix  
20 the base price at the same level as the overbase price.  
21 All market milk produced and marketed through a pool  
22 plant in California is pooled. To become a pool plant a  
23 California handler or a cooperative must have direct or  
24 indirect Class I or Class II usage. A California non-  
25 pool plant is a plant that does not qualify as pool

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1 plant. A non-pool cheese plant can qualify as a pool  
2 plant if they have contract producers and ship milk each  
3 month to a pool plant that produces Class I or Class II  
4 products. If a pool plant transfers or diverts milk to  
5 a non-pool plant, the milk is pooled because it's  
6 marketed through a pool plant. In California, all  
7 cooperatives are qualified to be pool plants and all  
8 their members market milk is pooled except market milk  
9 shipped directly to handlers out of state. Milk shipped  
10 directly out of state by a producer, including a  
11 cooperative acting for their member, is not pooled, and  
12 not accounted for in the California pooling system. For  
13 the purpose of this Hearing I present the attached table  
14 comparing milk prices for Class 4-B cheese milk and the  
15 California overbase price. The table covers the period  
16 of September 1999...

17 ADMINISTRATIVE LAW JUDGE: Yes, let's go off  
18 record just a moment, and may I interrupt you...

19 MR. HORTON: Sure.

20 ADMINISTRATIVE LAW JUDGE: ...while we do  
21 that.

22 \*\*\*

23 [Off the record]

24 [On the record]

25 \*\*\*

1 ADMINISTRATIVE LAW JUDGE: Back on record now  
2 at 2:37. I'd like to ask the Court Reporter if this is  
3 Exhibit 26.

4 COURT REPORTER: It is.

5 ADMINISTRATIVE LAW JUDGE: All right. Mr.  
6 Horton, you may resume.

7 MR. HORTON: This table shows the  
8 period of September 1999 through April 2001 and it shows  
9 the differences between the overbase price and the Class  
10 4-B cheese price. September was chosen because it was  
11 the last time that the 4-B price exceeded the overbase  
12 price. For the months of October 1999 through April  
13 2001 the overbase price exceeded the Class 4-B price by  
14 at least 45 cents a hundredweight and as much as \$2.28 a  
15 hundredweight. This concludes my testimony. Mr. Krug  
16 and I will be happy to answer any questions regarding  
17 how the California pool works.

18 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.  
19 Horton. I wanted to make sure that anyone asking a  
20 question will indicate whether it's directed to one of  
21 these gentlemen in particular or whether either of them  
22 may answer. Who would like to ask the first question?  
23 Mr. English will be first. Thank you.

24 \*\*\*

25 BY MR. ENGLISH:

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1 A. Yes.

2 Q. And would I be correct that Page 10,  
3 Table 4-A and 4-B appears each month and the only  
4 difference is you've updated for the next month and then  
5 you have the prior year data as well.

6 A. Yes.

7 Q. Okay.

8 A. It's a monthly table that we update.

9 Q. So...

10 \*\*\*

11 ADMINISTRATIVE LAW JUDGE: And that was Mr.  
12 Horton.

13 MR. KRUG: Krug.

14 MR. ENGLISH: Krug.

15 ADMINISTRATIVE LAW JUDGE: I'm sorry. Mr.  
16 Krug. Thank you.

17 \*\*\*

18 BY MR. ENGLISH:

19 Q. The first set of columns on Table 4-A are  
20 labeled Pool Milk. Would this then be the all market  
21 milk produced and marketed through a pool plant in  
22 California?

23 A. Yes.

24 Q. Okay. Now...

25 \*\*\*

1 ADMINISTRATIVE LAW JUDGE: It will...

2 MR. ENGLISH: That again...

3 ADMINISTRATIVE LAW JUDGE: It will help if  
4 you'll identify yourself because you're both speaking  
5 into the same mic so there's no differentiation.

6 \*\*\*

7 BY MR. ENGLISH:

8 Q. So that was Mr. Krug again. The second  
9 set of columns are labeled Grade A milk not pooled with  
10 a footnote. And may I just for a moment, as I  
11 understand it, what is totaled in that number is milk  
12 that is shipped direct from the farm to out of state  
13 plants and milk that is shipped to exempt  
14 producer/handlers under your system. Correct?

15 A. It's Mr. Krug. Yes. That is correct.

16 Q. Okay. The third set of columns then are  
17 basically the summation of the first two sets of  
18 columns. Correct?

19 A. Mr. Krug, yes.

20 Q. Turning to Table 4-B for a moment, the  
21 third set of two columns, Production Leaving California,  
22 2000-2001. Is milk -- With a caveat in a moment in  
23 terms of what may be left out. -- but is milk that is  
24 delivered direct from a California dairy ranch to a non-  
25 California plant. Correct?

1           A.    That is correct.  This is Mr. Krug and  
2           there are two components.  The information we obtained  
3           from our own plants in California and information from  
4           Federal Order Market Order Administrators who provide  
5           some of that information.

6           Q.    Now the footnote indicates that these are  
7           lower limits, that in essence as I understand it some of  
8           the milk that leaves California direct from the ranch to  
9           a non-California plant is not captured within that data.  
10          Correct?

11          A.    We're uncertain if it's all captured or  
12          not.  We know the figures we have in here we feel are  
13          reliable, there may be some that is not captured.

14          Q.    And that was Mr. Krug again.  Sorry.  To  
15          your knowledge if something has not been captured your  
16          belief is it's a relatively small number.  Correct?

17          A.    Yes.  This is Mr. Krug.

18          Q.    And would I be correct that if you take  
19          the third set of columns from Table 4-B that those  
20          numbers are contained in the second set of columns of  
21          Table 4-A.  That those numbers are subsumed within the  
22          second set of columns, Grade A Milk not Pooled, Table 4-  
23          A.

24          A.    Mr. Krug, yes.

25          Q.    Is there to your knowledge during the

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1 year 2001 quantities of Grade A milk produced on  
2 California dairy ranches received by California plants  
3 that is not being pooled on the California system?

4 A. This is Mr. Horton. I would say that the  
5 vast majority of all Grade A market milk produced in  
6 California and delivered to California plants is pooled.  
7 There is a small amount that farms the cheese that is  
8 not pooled.

9 Q. Do you have an approximate, you know, a  
10 range of a percentage or approximate percentage for  
11 that?

12 A. It would have to be very small.

13 Q. Would very small be less than one million  
14 pounds a month?

15 A. I would assume so.

16 Q. So that would mean other than one million  
17 pounds of milk that isn't pooled for that reason, exempt  
18 producer handler milk and milk that is direct shipped  
19 and represented outside of California and is represented  
20 on Table 4-B, that all other Grade A milk produced in  
21 California is pooled.

22 A. That would be correct.

23 \*\*\*

24 MR. ENGLISH: I have no further questions.

25 Again I thank you for your attendance.

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1 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.  
2 English. Any other cross examination of either of these  
3 witnesses? Mr. Beshore?

4 \*\*\*

5 CROSS EXAMINATION

6 BY MR. BESHORE:

7 Q. Either Mr. Krug or Mr. Horton. Would  
8 audited information with respect to any data in the  
9 California system be available to the Federal Order  
10 system if it were important in implementing a regulation  
11 such as Proposal 1?

12 A. It's Mr. Krug. Are you speaking of  
13 aggregate numbers or are you speaking of...

14 Q. No, I'm speaking of individual producer  
15 numbers or individual handler numbers.

16 A. That our department would deem to be  
17 confidential.

18 Q. Okay. So the information would not be  
19 available?

20 A. Correct.

21 Q. Okay. With respect -- quota you say is  
22 owned by individual producers but, and I'll address this  
23 to Mr. Horton, you've got the microphone, owned by  
24 individual producers but assigned to and utilized by  
25 cooperative associations. Did I understand that

1 correctly?

2 A. This is Mr. Horton. Yes. That's  
3 correct.

4 Q. Okay. How would -- is base and overbase  
5 handled the same way?

6 A. Those are pricing amounts and so  
7 depending on the entitlements for all the co-ops  
8 members, they would be settled with the pool based on  
9 the aggregate of all their members entitlement.

10 Q. Okay. For an individual producer, is his  
11 entitlement to minimum payments in California determined  
12 in part by the proportion of his production, which is  
13 base and overbase?

14 A. I'm not sure I understand.

15 Q. I'm not sure I understand. If I'm a  
16 California milk producer, is my -- the payments I  
17 receive at the end of the month for milk determined in  
18 part by whether I own quota or not?

19 A. Yes.

20 Q. Okay. To the extent I own quota I'm paid  
21 more for that volume of milk. Is that correct?

22 A. That's correct.

23 Q. Okay. Now to the extent that my  
24 production is deemed base or overbase, how does that  
25 affect what I receive for my milk production?



1 that handlers must pay by class. Correct?

2 A. That's correct.

3 Q. And in detail that's based on solids, not  
4 fat, received by the handler, butterfat received by the  
5 handler, in the case of fluid plants, a little extra for  
6 the fluid carrier. Correct?

7 A. Yes, the prices are applied to the amount  
8 of milk that the -- by class that the handler processes.

9 Q. Okay. And all of the money in all of the  
10 classes of milk, including the revenue from fluid  
11 carrier, all of it goes into a pool of money which is  
12 then divvied out to farmers. Correct?

13 A. That's correct.

14 Q. Okay. And in order to divvy the money  
15 out to farmers, one thing you need to do is to make sure  
16 quota holders get their guaranteed \$1.70 and that's the  
17 quota price per pound times 8.7 pounds. Correct?

18 A. Are you talking about, speaking of how  
19 the \$1.70 is arrived at?

20 Q. The \$1.70 is the hundredweight equivalent  
21 at standardized milk for whatever the legislature did  
22 and...

23 A. Actually it's based on 19-and-a-half  
24 cents a pound for solids, not fat only.

25 Q. Right. And multiplied by 8.7 is roughly

1       \$1.70?

2                   A.    That's correct.

3                   Q.    Okay.  So after all of this money is  
4 gathered and put in a pot you need to reserve \$1.70 a  
5 hundredweight standardized milk for quota holders.  So  
6 you multiply the quota of non-fat pounds times \$1.70 and  
7 put that aside for a minute.

8                   A.    That's correct.

9                   Q.    And you take all the money and divvy it  
10 up amongst all the solids, not fat pounds for all the  
11 milk that's pooled in California, and that in essence is  
12 what the overbase and base price are now.  Correct?

13                   A.    That's correct.

14                   Q.    And you add back the \$1.70 to the quota  
15 holders?

16                   A.    That's correct.

17                   Q.    So all producers marketwide share pro  
18 rata revenue and Class 4-A, 4-B, III, II, and I.  
19 Correct?

20                   A.    That's correct.

21                   Q.    Okay.  Now when a handler accounts to the  
22 pool, sort of like the Federal system but the accounting  
23 is a little different, the accounting to or from the  
24 fund, the settlement fund, is simply the difference  
25 between the handlers classified obligation and the

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1 producers entitlement for a mixture of quota and non-  
2 quota milk. Correct?

3 A. That's correct.

4 Q. And sometimes the handler pays in and  
5 sometimes if the classified use value is less than the  
6 producer's entitlement to their share of the pool, the  
7 handler draws out so the producer can get paid the  
8 amount?

9 A. That's correct.

10 Q. Okay. And in the case the handler draws  
11 from the pool, the class -- in that case his classified  
12 value is less than the aggregate quota and the overbase  
13 draw of the producer so money is drawn out. What does  
14 the Department do to assure that the producers get the  
15 classified value of that handler in addition to the pool  
16 draw. Is there an audit system that assures that both  
17 of those payments are made?

18 A. Yes, we have an audit program.

19 Q. Okay. And let's say for example that  
20 some California milk happens to be pooled somewhere in  
21 the Federal Order system but stays in California. Does  
22 it matter to CDFA pool auditors and regulators if some  
23 of the payments that went directly to producers that  
24 count against the handlers classified price obligation  
25 that some of that revenue happened to come from a

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1 Federal Order pool?

2 A. I'm not sure I understand exactly what  
3 your question is.

4 Q. Okay. Let me try to give an example.  
5 Without identifying the mix, let's say that a handler's  
6 classified price obligation for a month is \$12. Are you  
7 with me so far?

8 A. Yes, I am.

9 Q. Whatever the mix there's probably a lot  
10 of cheese in there. And let's say that all of his  
11 producers, mostly overbase, their entitlement is 12.50.

12 A. Okay.

13 Q. Right. So that handler would draw 50  
14 cents from the pool.

15 A. That's correct.

16 Q. The California pool. Right?

17 A. Right. The California pool.

18 Q. The California pool. Let's say that some  
19 of that milk was also associated with a Federal Order  
20 pool so that the handler drew 50 cents from a Federal  
21 Order pool. Now in your auditing process you want to  
22 make sure that the handler pays \$12 out of his own  
23 pocket plus the 50 cents received from the California  
24 pool. Correct?

25 A. Yes, we make sure that the producer is

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1       paid his minimum pricing.

2                   Q.    Which is 12.50?

3                   A.    Correct.

4                   Q.    And 50 cents comes from your pool and \$12  
5       would come from the handler. My question to you is, it  
6       doesn't matter to you does it whether 50 cents of that  
7       \$12 came from a Federal Order pool source. As long as  
8       the handler actually forks over \$12 from whatever source  
9       he might get it. Are you able to answer that question?

10                  A.    Well, I'm not sure because the milk from  
11       my understanding of being here today...

12   \*\*\*

13                  ADMINISTRATIVE LAW JUDGE: Mr. Horton, please  
14       speak right into the mic.

15                  MR. HORTON: Yes. What we're speaking here  
16       today is that this milk that is being pooled in the  
17       Upper Midwest is cooperative milk and we do not get into  
18       the payments to individual members of a cooperative.

19   \*\*\*

20       BY MR. BESHORE:

21                  Q.    Okay. And the aggregate you don't get  
22       into whether the cooperative is paid \$12 in the  
23       aggregate to its members or not?

24                  A.    That's correct.

25                  Q.    Okay. So you actually don't do that part

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1 of the accounting. You make the 50 cents available from  
2 the pool and then it's really none of your business what  
3 happens to any of the revenues after that.

4 A. Not to their members.

5 Q. Okay. So whatever that draw is it  
6 doesn't matter if it's -- for California enforcement  
7 purposes. It doesn't matter if monies drawn from a  
8 Federal pool are distributed to California farmers  
9 providing whatever competitive benefit that might in  
10 California, or distributed to farmers in the Midwest,  
11 you don't follow that money as part of your program?

12 A. No, we don't.

13 Q. Okay. If it were a proprietary handler  
14 however you would follow that money?

15 A. If it was a proprietary handler we would  
16 make sure that the producer was paid the minimum price  
17 and also their contract price.

18 Q. Okay. So the \$12 portion of my example  
19 you would actually -- you would look to make sure that  
20 the \$12 had been paid?

21 A. That's correct.

22 Q. Okay.

23 \*\*\*

24 MR. BESHORE: Thanks. That's all I have.

25 MR. HORTON: Thank you.

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1 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.  
2 Vetne. Mr. Berde?

3 MR. BERDE: On Page 2, second paragraph...

4 ADMINISTRATIVE LAW JUDGE: Can you -- I think  
5 if you'll just tip it down...

6 MR. BERDE: Yes. Okay.

7 ADMINISTRATIVE LAW JUDGE: ...it will pick you  
8 up fine.

9 \*\*\*

10 BY MR. BERDE:

11 Q. On Page 2, the second full paragraph,  
12 last sentence in which you state, "Milk shipped directly  
13 out of state by a producer, including a cooperative  
14 acting for their member, is not pooled and not accounted  
15 for in the California Pooling System." Do you see that?

16 A. Page 2?

17 Q. I'm looking, well, maybe it's Page --  
18 yes, Page 2, the middle paragraph.

19 A. Here it is.

20 Q. Testimony of Robert Horton I'm looking  
21 at, and the...

22 A. Okay. I'm with you.

23 Q. You've got me? -- Okay. -- now with  
24 respect to that milk there is no what has been referred  
25 to as double dipping is there? In other words, there is

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1 no Pool Draw at all with respect to that milk?

2 A. Yes, if the milk is shipped directly out  
3 of state by a producer, including a co-op...

4 Q. Yes.

5 A. ...it is not pooled in California.

6 Q. Okay. Now let's take the circumstance of  
7 a producer whose relationship to base, overbase, over  
8 quota is such that he holds no California marketing  
9 rights let's call them for a general term. Is there a  
10 producer whose relationship between production and over  
11 quota, overbase is such that such a producer would have  
12 no draw from the -- between the Uniform price and the  
13 surplus price?

14 A. Well, the producer doesn't get a draw  
15 from the pool.

16 Q. Well, let's call the producer a co-op  
17 with respect to that milk. Who gets the, well, a  
18 producer ultimately realizes the draw doesn't he?

19 A. They would in their price that they were  
20 paid.

21 Q. Yes, well, I'm talking about the  
22 circumstance. Is there a circumstance where a  
23 producer's production would not result in any Pool Draw?

24 A. If the milk was utilized in a higher  
25 usage product, such as Class I, there would probably be

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1 a payment into the pool.

2 Q. Let's suppose all of it is going for  
3 manufacturing and that producer owns no quota or base.  
4 Would such a producer be entitled to anything out of the  
5 pool?

6 A. It would depend on where he ships his  
7 milk. If it was going for -- if it's going through a  
8 pool source and it's being used in Class 4-B cheese then  
9 that milk is drawing out of the pool even if he has no  
10 quota.

11 Q. Yes, and the Pool Draw in that case goes  
12 to the plant does it not?

13 A. That's correct.

14 Q. Okay. And if the -- you would consider  
15 the co-op the same as a plant in that circumstance would  
16 you not?

17 A. For pool settlement purposes...

18 Q. Yes.

19 A. ...yes.

20 Q. Yes. Very good. Thank you.

21 \*\*\*

22 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.  
23 Berde. Any other questions for the California  
24 witnesses? Yes, Mr. Beshore.

25 \*\*\*

1 BY MR. BESHORE:

2 Q. Just one other question, Mr. Horton.  
3 Milk entering California, is that pooled?

4 A. We account for milk coming in from other  
5 sources. The handler receiving the milk accounts for  
6 the usage and the receipts of that milk.

7 Q. Is the milk pooled?

8 A. That whole subject is subject to  
9 litigation right now.

10 Q. Okay. Okay. So the 74 million pounds of  
11 milk in April 2001 entering California reflected on  
12 Table 4-B of Exhibit 13 is handled in the manner that  
13 you just testified to I take it.

14 A. That's correct.

15 Q. Okay. And if I understood your answer,  
16 the handler, you require the handler to account for the  
17 milk. At what price might I ask?

18 A. The handler is charged how the milk was  
19 used and there's a credit to the handler on the pool  
20 obligation at a plant lend not to exceed the quota price  
21 and not to fall below the overbase price.

22 Q. So it's an individual handler pool on  
23 that milk between the quota price and the overbase price  
24 value?

25 A. Yes, depending on the individual  
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1 handler's credit it would depend on where the milk went.

2 Q. Okay. Thank you.

3 \*\*\*

4 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.

5 Beshore. Any further question? Yes, Mr. Tosi.

6 MR. TOSI: I just have one quick question. Do  
7 you have any direct knowledge of California producers  
8 who are pooled on the Upper Midwest Order at the same  
9 time being pooled on the California State Program  
10 receiving two payments? One minimum payment from the  
11 State and then one that comes from being pooled on the  
12 Upper Midwest?

13 MR. HORTON: I have no direct knowledge.

14 MR. KRUG: And I don't either.

15 MR. TOSI: Thank you.

16 ADMINISTRATIVE LAW JUDGE: Mr. Cooper?

17 \*\*\*

18 BY MR. COOPER:

19 Q. Yes, a couple of questions. When we're  
20 talking about quota milk here it's not like a particular  
21 portion of a producer's milk is designated quota milk or  
22 non-quota milk is it? This is just a payment method.  
23 So if he's got three truckloads of milk sitting in his  
24 farm you can't say the first truck is the quota truck  
25 and the other two are non-quota. Am I correct?

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1 A. Yes, you're correct.

2 Q. So when we talk about only non-quota milk  
3 being attached to a Federal Order or a quota milk being  
4 attached we're I guess dealing in meaningless terms  
5 because we can't determine which truckload of milk is  
6 quota and which is non-quota.

7 A. That's correct.

8 Q. Okay. Secondly as I understand it the  
9 producer owns the quota. Is that correct?

10 A. Yes, the producer owns the quota.

11 Q. Now how about if the producer is a member  
12 of the co-op. Does the co-op own the quota or does  
13 producer member of the co-op owns it?

14 A. The producer retains title to the quota.  
15 It is as I testified is assigned to the cooperative.

16 Q. So there's no legal requirement on the  
17 co-op to pay more to a producer who owns a lot of quota  
18 versus a producer who owns very little quota although  
19 the guy might quit the co-op obviously.

20 A. I'm not sure how the individual co-ops  
21 pay their members.

22 Q. Okay. But there's no requirement under  
23 your program that they pay more to the producer who has  
24 more quota?

25 A. No, there's no requirement.

1 Q. Okay. Next item. Is it within your  
2 regulatory power to exclude producers from pooling under  
3 the State Order if they're also pooled under a Federal  
4 Order?

5 A. This is Mr. Krug. We wouldn't have  
6 jurisdiction over what they're doing in the Federal  
7 Order.

8 Q. No, I'm saying it's -- right here we're  
9 talking one of the proposals here is that we not pool  
10 under a Federal Order a producer who is also pooled  
11 under a State Order. Would you have authority under  
12 your program to not pool under a producer under your  
13 California State Order because they're pooled a Federal  
14 Order?

15 A. It would be speculation for me to say but  
16 I don't feel we've got jurisdiction on that.

17 Q. Okay. Thank you.

18 \*\*\*

19 MR. COOPER: I have no further questions.

20 ADMINISTRATIVE LAW JUDGE: Thank you, Mr.  
21 Cooper. Are there any other questions for the  
22 California witnesses? Is there any objection to the  
23 admission into evidence of Exhibit 26? There being  
24 none, Exhibit 26 is admitted into evidence. Mr. Horton  
25 and Mr. Krug, thank you and I presume you'll be leaving

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