

UNITED STATES DEPARTMENT OF AGRICULTURE

 In the Matter of: *
 *
 PROPOSED CHANGES *
 WESTERN AND PACIFIC *
 NORTHWEST MILK ORDERS *

Tuesday,
 April 16, 2002

Salt Lake City, Utah

The above entitled matter came on for
 hearing, pursuant to notice at 8:30 a.m.

BEFORE: JIM CLIFTON,
 Administrative Law Judge

APPEARANCES:

On behalf of the USDA:

GARRETT B. STEVENS
 Office of the General Counsel

GINO TOSI
 ERIN FEUILLET
 RICHARD CHERRY
 Order Formulation Branch
 Dairy Programs

I N D E X

<u>WITNESSES:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Garrett Stevens	11			
John Mykrantz	16 282	47 66 77 93 97 100 103 287	295	
Ronald Dean	112			
Daniel McBride	124	141 145 146 266 273 275 278	279	
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1 M O R N I N G S E S S I O N

2 (8:45 A.M.)

3 JUDGE CLIFTON: This record is being made in
4 Salt Lake City, Utah. It is Tuesday, April 16, 2002.

5 This is a rulemaking hearing. It concerns
6 proposed changes to Western and Pacific Northwest Milk
7 Orders.

8 My name is Jill Clifton. I am an
9 Administrative Law Judge with the United States
10 Department of Agriculture. And my function at the
11 hearing is to gather in the evidence. They consider it
12 certifying the record, which I do once we have the
13 exhibits and the testimony gathered, I certify that
14 record to the Secretary and the decision is made by
15 individuals in the Department and ultimately the
16 Secretary, herself, without my assistance. So, I am
17 here to conduct this proceeding.

18 I would like to take the appearances of those
19 representatives of the United States Department of
20 Agriculture, who are here and I would like each of
21 them, please, to, I want people who are gathered to see
22 them as well as hear them, so, I am mindful of the fact
23 that there are microphones. I would ask that each of
24 them please step to the podium, where there is a
25 microphone, but face the assembly that is gathered here

1 and introduce yourself. Starting with Counsel, please.

2 MR. STEVENS: Your Honor, my name is Garrett
3 B. Stevens. I am with the Office of General Counsels,
4 the U.S. Department of Agriculture.

5 And I would like to say, if I could, Mr.
6 Cooper, who most of us know here is retired from the
7 Government after 30 years of faithful service and I
8 just would like to note for the record, that he is not
9 here and that I am. I must say he is a wonderful
10 colleague to work with, as know many of you would
11 agree. He is in the loving arms of his family in
12 Mississippi now, if you can believe that, a good
13 Fordham boy down in Mississippi, but he is down there
14 and he is enjoying his retirement. And he sends the
15 best to you all.

16 JUDGE CLIFTON: Thank you. I know we will all
17 miss Mr. Cooper very much. And I understand that he
18 and his wife are going to raise a few horses, is that
19 correct, Mr. Stevens?

20 MR. STEVENS: I understand that. Like a good
21 husband he is doing what his wife tells him to do.
22 Well trained, well trained.

23 JUDGE CLIFTON: All right, thank you.

24 MR. TOSI: Good morning, I am Gino Tosi. I am
25 with the Order Formulation Branch of Dairy Programs,

1 USDA, Agricultural Marketing Service. And for the
2 court reporter, my first name is spelled G-I-N-O, last
3 name Tosi, T as in Tom, O-S-I.

4 There are three of us here today from the
5 Order of Formulation Branch. Appearing here for the
6 first time is Erin Feuillet, who is relatively new to
7 our Order Formulation Staff and she came to us after an
8 extension internship with us and we are very happy to
9 have her onboard and also Mr. Richard Cherry, and they
10 will come up and introduce themselves.

11 JUDGE CLIFTON: Thank you. Yes, please
12 approach the mike, but I would like Mr. Stevens also to
13 spell his name for the record. I should have asked
14 that.

15 MR. STEVENS: I could spell, I think.
16 S-T-E-V-E-N-S, last name. Garrett, G-A-R-R-E-T-T,
17 middle initial B.

18 JUDGE CLIFTON: Thank you.

19 MS. FEUILLET: Good morning. My name is Erin
20 Feuillet. I am with Order Formulation Dairy Programs
21 with the United States Department of Agriculture.
22 My name E-R-I-N, last name F as in Frank,
23 E-U-I-L-L-E-T.

24 JUDGE CLIFTON: Would you spell your name
25 again, please? You have all the vowels.

1 MS. FEUILLET: F-E-U-I-L-L-E-T.

2 JUDGE CLIFTON: Would you say it again,
3 please?

4 MS. FEUILLET: Feuillet.

5 JUDGE CLIFTON: Thank you.

6 MS. FEUILLET: You are welcome.

7 JUDGE CLIFTON: That is great.

8 MR. CHERRY: Good morning. My name is Richard
9 Cherry, spelled R-I-C-H-A-R-D, C-H-E-R-R-Y. Working in
10 Order Formulation with the Dairy Programs, with the
11 United States Department of Agriculture.

12 JUDGE CLIFTON: I am going to ask each of you,
13 if you will, as you testify, if you are a witness, and
14 as you make presentations and arguments if you are
15 counsel, to help the Court Reporter with the spellings
16 as we go along. I would like to reduce transcript
17 errors and there are terms that a peculiar to this
18 industry, so if you are aware that you are introducing
19 these ideas for the first time, if you will make sure
20 the spelling accompanies your presentation.

21 All right. I have had some discussions
22 before we went on record with people about the order in
23 which we might proceed. Several of you have noticed
24 that Mr. Vetne has not yet arrived. He is planning to
25 come in this afternoon. He requested that we proceed

1 in order of the proposal numbers. And we have another
2 proposal that we handle issues that are identical in
3 both the Pacific and the Western, Pacific Northwest,
4 and the Western Regions simultaneously, which makes a
5 lot of sense to me. So, that is what I would like to
6 do, but I would like to hear from any of you, if you
7 have any objection to that.

8 Also, we thought if the Government would
9 proceed first with the statistical information that
10 they provide, then we could get that done, that should
11 not, since Mr. Vetne has all the statistics sent to
12 him, that should not deprive him of any of the
13 information that his client needs.

14 So, I would hear now if anyone has any other
15 ideas. Also, we have agreed to take at nine o'clock
16 tomorrow morning a State official, whose time is
17 somewhat limited. And so, I would like to hear if
18 anyone else has any scheduling proposals or concerns or
19 objections to what I have identified thus far.

20 Mr. Beshore?

21 MR. BESHORE: I don't have any, I think I
22 agree with that completely, but just for clarification.
23 The Proposals 1 and 2 and Proposals 9 and 10 are the
24 set of identical issues or similar issues with respect
25 to the two orders, which I assume it is being suggested

1 would be handled as a group first. Is that correct?

2 JUDGE CLIFTON: Well, as a group and not until
3 Mr. Vetne arrives, is what I would like to do.

4 MR. BESHORE: Well --

5 JUDGE CLIFTON: Because he would be involved
6 in that.

7 MR. BESHORE: Well, I think he is involved in
8 everything and if he wants to be involved, he has got
9 to be here. Not to be impertinent, but, I think they
10 need to be handled as a group and I agree the
11 Government should, the Government statistics, we should
12 proceed with that first, but, if he is not going to be
13 here until this afternoon, we are going to be ready to
14 go before that, and there are a lot of us here that are
15 ready to go.

16 JUDGE CLIFTON: Are there any other proposals
17 that would not involve --

18 MR. HOLLON: The best not to involve him.

19 JUDGE CLIFTON: That is the best set not to
20 involve him? All right. Would you identify yourself
21 for the record, so we have got your name.

22 MR. ENGLISH: I am Charles English for Dean
23 Foods.

24 JUDGE CLIFTON: No, I am sorry, the speaker
25 who said that is the best set not to involve him.

1 MR. BESHORE: That was Elvin Hollon,
2 H-O-L-L-O-N. Who is Dairy Farmers of America's witness
3 and representative, Director of Fluid Marketing and
4 Market Analysis.

5 JUDGE CLIFTON: All right. Thank you, Mr.
6 Beshore.

7 Mr. English?

8 MR. ENGLISH: Thank you, Your Honor.

9 While I am obviously sympathetic to Mr.
10 Vetne, I think it is a little tough for us for us to
11 all have come here and not start the hearing. I would
12 suggest if we move, you know, the Government and
13 apparently Mr. Vetne is fine with that, I suspect that
14 in this particular incident, I may be wrong, but, I
15 think that the Marketing Administrator witness is going
16 to be explaining a number of pieces of data to a number
17 of people and it may very well take a good period of
18 time anyway. Then at least see if maybe we can get
19 started on, you know, one, two, nine, and ten, which
20 are logically the ones to start. And it really makes
21 no sense to talk about one and two without talking
22 about nine and ten. They really are literally
23 identical provisions for different orders. But, I
24 think that if we get started at least as the Marketing
25 Administrator, we can then deal with the issue of what

1 time it is when the Marketing Administrator is off, and
2 how that works as opposed to necessarily saying now, we
3 are going to do X or Y.

4 JUDGE CLIFTON: All right, very good. Thank
5 you, Mr. English.

6 All right, then who is the proponent or who
7 represents the proponents of Proposals 1 and 2 and 9
8 and 10?

9 MR. MARSHALL: Good morning, my name is Doug
10 Marshall, I am the Senior Vice President of Northwest
11 Dairy Association in Seattle. We are the proponents of
12 Proposals number 1 and number 10. And those are
13 identical proposals. I have no comment on Proposals 2
14 and 9 and to how that should be considered, but, I
15 would think most of us would have expected that one,
16 two, nine and ten all would have been heard as a
17 package.

18 JUDGE CLIFTON: Very fine, thank you.

19 Mr. Beshore?

20 MR. BESHORE: Yes, Dairy Farmers of America is
21 the proponent of Proposals 2 and 9. And you know, they
22 ought to be heard with one and ten or in sequence.

23 JUDGE CLIFTON: Good, thank you.

24 All right, Mr. Stevens, I would invite you
25 now to go forward with presentation of the statistical

1 information and any other part of the evidence that you
2 would like to present.

3 MR. STEVENS: Your Honor, if I may, I think
4 before we begin, we need to take a few exhibits in the
5 beginning, starting with Exhibit 1, which would be the
6 Notice of Hearing and I have four copies of that.

7 Would you like for me to give you one and
8 give three to the reporter?

9 JUDGE CLIFTON: That is fine, yes. Thank you.

10 MR. STEVENS: That is one. I would like that
11 marked as Exhibit 1. It is a copy of the proposed
12 rules that was published in the Federal Register.

13 (The document referred to
14 was marked for identification
15 as Exhibit 1.)

16 MR. STEVENS: And number two, let me put these
17 in the right order. Number two is the Notice to
18 Governors of the Conduct of the Hearing.

19 JUDGE CLIFTON: You are not near a mike, Mr.
20 Stevens.

21 MR. STEVENS: All right. I will make sure
22 that I am.

23 (Pause.)

24 MR. STEVENS: I will just go through them and
25 then I will give you the copies.

1 Number two is the Notice of Governors. I
2 have four copies that.

3 (The document referred to
4 was marked for identification
5 as Exhibit 2.)

6 MR. STEVENS: Number three is a Notice of
7 Press Release that is issued by AMS, concerning the
8 holding of this hearing.

9 (The document referred to
10 was marked for identification
11 as Exhibit 3.)

12 MR. STEVENS: And number four is a notice, is
13 a determination, mailing notice of the hearing.

14 (The document referred to
15 was marked for identification
16 as Exhibit 4.)

17 MR. STEVENS: These are documents that are
18 introduced at the beginning of each hearing.
19 Obviously, the Notice of the Hearing is self
20 explanatory. The Notice to the Governors gives them
21 notice that the hearings are being held. And this is
22 given, this notice is given to the Governors of the
23 State of Arizona, California, Colorado, Idaho, Montana,
24 Nevada, New Mexico, Oregon, Utah, Washington and
25 Wyoming.

1 The --

2 JUDGE CLIFTON: Can everyone in the back hear
3 Mr. Stevens? All right.

4 MR. STEVENS: All right, well, I am speaking
5 into the mike. This is a, the first one is the Notice
6 of Hearing. Do you understand that? Notice of
7 Hearing. That is the first one.

8 The second one is Notice to the Governors,
9 where we notify the governors of the states that I just
10 mentioned, that this hearing is being held.

11 The third one is a Notice of a Press Release,
12 that is issued to newspaper and other news media to
13 inform them of the holding of this hearing.

14 The fourth one is mailing of Notice of
15 Hearing to Interested Parties. I believe the Marketing
16 Administrator's Office representative can describe what
17 this is, it is a notice to interested parties,
18 handlers, regulated parties under the Order, that such
19 a hearing is being held so that they have notice of the
20 hearing.

21 JUDGE CLIFTON: Mr. Stevens, let me ask you to
22 try something. If you remain seated and speak right, I
23 think the problem is you are so tall, and speak right
24 into the microphone at your table. Let's see if the
25 system will carry that sound to the back.

1 MR. STEVENS: Blame my parents. Genetic flaw.
2 All right, we will do it one more time for
3 the record.

4 JUDGE CLIFTON: No, I don't think you need to
5 do it again.

6 MR. STEVENS: Okay.

7 JUDGE CLIFTON: Now is that sound carrying
8 better to the back? Yes, it is. All right.

9 MR. STEVENS: Okay.

10 JUDGE CLIFTON: Now, you mentioned, Mr.
11 Stevens, AMS, if you will state what that stands for?

12 MR. STEVENS: Sure, AMS is the Agricultural
13 Marketing Service, which is a part of the U.S.
14 Department of Agriculture, that concerns itself with
15 the Federal Milk Order among other programs.

16 JUDGE CLIFTON: All right. And you may need
17 to be a little closer to the mike, if you will.

18 MR. STEVENS: Okay.

19 JUDGE CLIFTON: All right, is there any
20 objection to the admission into evidence of any of
21 these Exhibits 1 through 4? There being none,
22 Exhibits 1 through 4 are hereby admitted into evidence.

23

24

25

1 (The documents referred to,
2 having been previously marked
3 as Exhibits 1 through 4
4 were received in evidence.)

5 JUDGE CLIFTON: Mr. Stevens?

6 MR. STEVENS: Now, Your Honor, we would like
7 to call John Mykrantz to the stand, if we could,
8 please.

9 JUDGE CLIFTON: Welcome. If you would be
10 seated, please. I will swear you in.
11 Whereupon,

12 JOHN MYKRANTZ
13 having been first duly sworn, was called as witness
14 herein and was examined and testified as follows:

15 JUDGE CLIFTON: Thank you. Now, we need to
16 make sure everyone can hear you, so, just please state
17 slowly your name and spell it for the record.

18 THE WITNESS: My name is John, J-O-H-N,
19 Mykrantz, spelled M-Y-K-R-A-N-T-Z.

20 JUDGE CLIFTON: All right. I do think you are
21 going to have to be close to that microphone for it to
22 pick up. So, if you will keep that in mind.

23 Mr. Stevens.

24 MR. STEVENS: Thank you, Your Honor.

25 DIRECT EXAMINATION

1 BY MR. STEVENS:

2 Q Mr. Mykrantz, could you describe briefly for
3 the record your position and duties entailed in that
4 position?

5 A My title is Marketing Specialist. I work with
6 U.S.D.A., AMS Dairy Programs, the Federal Milk Market
7 Order Office in Bocado, Washington, which relates the
8 Pacific Northwest, Arizona, Las Vegas and Western
9 Marketing Areas. And I oversee pool payroll and
10 economic analysis.

11 Q So, in the course of your duties, do you
12 prepare documents for use in Federal Milk Order
13 Hearings?

14 A I do.

15 Q And have you prepared documents for the
16 hearing today?

17 A I have.

18 Q And did you bring those documents with you,
19 do you have them with you at the witness stand?

20 A I did bring them.

21 Q Could you tell us briefly what you have
22 prepared? Just give us what you have prepared for the
23 hearing today. Just tell us what you have prepared.

24 A Do you want me to describe the publications?

25 Q Just the names at this point, just the titles

1 of the documents that you have prepared.

2 A We have one document entitled "Compilation of
3 Statistical Material, Federal Milk Marketing Order
4 Number 124, Pacific Northwest Marketing Area."

5 Here is a "Compilation of Statistical
6 Material, Federal Milk Marketing Order number 135,
7 Western Marketing Area."

8 Q Let me interrupt you there. The first
9 document you described as a compilation of materials
10 for the Pacific Northwest and Western, for the Pacific
11 Northwest, excuse me, not the Western area.

12 A Correct.

13 Q Do you have a copy to give to the Judge or
14 should I prepare her, present her with a copy? Do you
15 have an extra copy there that she can use?

16 A I don't have an extra copy, but there is a
17 copy in the back.

18 Q There are copies in the back, all right.

19 (Pause.)

20 MR. STEVENS: Your Honor, if we might have a
21 minute, I just want to make sure that you get a set to
22 use during the course of the hearing. We are going to
23 ask, obviously, for these to be marked for
24 identification and subsequently admitted after, after
25 discussion of the documents.

1 JUDGE CLIFTON: Thank you, Mr. Stevens. I
2 appreciate that. Also, this would be a good time, Mr.
3 Stevens, for you to give the other copies, I have
4 interrupted you, of one, two, three and four to me and
5 the Court Reporter.

6 MR. STEVENS: Yes.

7 JUDGE CLIFTON: And let's go off the record
8 for just a moment.

9 (Off the record.)

10 JUDGE CLIFTON: Back on the record. Let's
11 begin again.

12 Thank you. This record resumes at
13 approximately 9:08. Mr. Stevens?

14 MR. STEVENS: Yes, Your Honor. To recap a
15 little bit, we have given certain copies to the
16 Reporter and to Your Honor and we will do these one by
17 one and hopefully mark them for identification and then
18 ask some questions about them and have the witness be
19 allowed, subject to cross examination.

20 I think, the document that I am describing is
21 a document with an orange cover. Consisting of 21
22 pages, the last page being a fold out map of some kind.
23 I would like that marked for identification as Exhibit,
24 where are we, five.

25 JUDGE CLIFTON: Five.

1 MR. STEVENS: Thank you, Your Honor,
2 Exhibit 5.

3 (The document referred to
4 was marked for identification
5 as Exhibit 5.)

6 MR. STEVENS: And the next document I believe
7 is the one with the purple cover, which we would like
8 marked for identification as Exhibit 6. And that is
9 entitled "Compilation of Statistical Material, Federal
10 Milk Marketing Order Number 135, Western Marketing
11 Area. A document consisting of amazingly 21 pages with
12 the last page being a map of some sort.

13 (The document referred to
14 was marked for identification
15 as Exhibit 6.)

16 (Pause.)

17 MR. STEVENS: We would like marked as Exhibit
18 number 7 a document that I will present to Your Honor
19 and the Reporter. I will describe it as an aqua cover.

20 JUDGE CLIFTON: Yes, you may approach.

21 (Pause.)

22 JUDGE CLIFTON: Thank you.

23 (Pause.)

24 MR. STEVENS: If anyone wants copies of these
25 exhibits and does not have them, we have them in back,

1 please pick them up.

2 MR. STEVENS: Thank you, Your Honor, they are
3 available in the rear of the hearing room.

4 (Pause.)

5 MR. STEVENS: The document I would like marked
6 for identification is Exhibit number 8, is the aqua
7 covered document. I am sorry, seven is analysis of
8 Hauling Charges and Producer Milk by location and size
9 range of production, Pacific Northwest and Western
10 Federal Orders. A document consisting of 19 pages, and
11 I believe there is also an introductory page. I would
12 like that marked for identification as Exhibit 7.

13 (The document referred to
14 was marked for identification
15 as Exhibit 7.)

16 (Pause.)

17 MR. STEVENS: Your Honor, I have more
18 material, that certain parties asked for material to be
19 prepared for the hearing. I have a copy of these for
20 you and a copy which I will give to the Reporter and I
21 will make sure that sufficient copies are available for
22 the record.

23 I will make sure I give them to you in the
24 order in which I have --

25 (Pause.)

1 MR. STEVENS: I believe they are in the same
2 order, Your Honor, but, the first one that I would
3 mark, I would like marked for identification is Exhibit
4 8.

5 JUDGE CLIFTON: Now, let me make sure. The
6 Court Reporter also has a copy of these now?

7 MR. STEVENS: I am about to give them to him,
8 yes.

9 JUDGE CLIFTON: Okay. He will need to have
10 them to mark them as you go. All right.

11 MR. STEVENS: I believe he has the four that
12 we am going to do right now.

13 JUDGE CLIFTON: Very good.

14 MR. STEVENS: We will have to give him extra
15 copies in, at a later time, but we will make sure --

16 JUDGE CLIFTON: That is fine, as long as he
17 has one to mark. All right.

18 MR. STEVENS: Yes, Your Honor.

19 All right, Exhibit 8 for identification, we
20 would like that marked. It is entitled "Statistical
21 Material Prepared at the Request of Elvin Hollon."

22 (The document referred to
23 was marked for identification
24 as Exhibit 8.)

25 MR. STEVENS: The next document is, we would

1 like marked for identification as Exhibit 9, is
2 entitled "Statistical Material Prepared at the Request
3 of John Vetne."

4 (The document referred to
5 was marked for identification
6 as Exhibit 9.)

7 MR. STEVENS: The next document, Your Honor,
8 we would like marked as identification as Exhibit 10,
9 is a document entitled "Statistical Material Prepared
10 at the Request of Charles English, Jr., Esquire."

11 (The document referred to
12 was marked for identification
13 as Exhibit 10.)

14 MR. STEVENS: We would also like marked for
15 identification as Exhibit 11, a document entitled
16 "Statistical Material Prepared at the Request of David
17 Larson."

18 (The document referred to
19 was marked for identification
20 as Exhibit 11.)

21 BY MR. STEVENS:

22 Q John, are there any other documents that you
23 have prepared, that you would me to introduce for
24 identification?

25 A No, but I don't have a copy of those last

1 four.

2 Q Okay. We will make sure you do.

3 (Pause.)

4 BY MR. STEVENS:

5 Q Now, John, you have copies of all the
6 documents that we had marked for identification so far?

7 A I do.

8 Q And there are no others that you would like
9 marked for identification at this time.

10 A No.

11 Q I think the easiest way to approach this,
12 John, is if you will take the documents, starting with
13 the first that we have marked for identification and
14 making sure that the record reflects which document you
15 are talking about, explain briefly what each of these
16 documents are. And then if you might, after you
17 explain each one, in brief terms, then I may ask you
18 some questions about document. And of course later,
19 the Parties will have the opportunity to examine you on
20 these documents. Is that okay?

21 A Okay.

22 Q All right. Let's start with the first
23 document, I believe it is marked for identification as
24 five, "Compilation of Statistical Material, Federal
25 Milk Marketing Order Number 124, Pacific Northwest

1 Marketing Area." That has a table of contents, does it
2 not?

3 A Correct.

4 Q Okay. Tell us briefly what is contained in
5 this document?

6 A All of the data in this compilation is based
7 on records obtained from the Marketing Administrator
8 Office and relate to the Pacific Northwest Milk
9 Marketing Order, Federal Milk Marketing Order number
10 124. Most of the data were derived from the monthly
11 handler reports received utilizations and producer
12 payrolls that handlers submit to the Marketing
13 Administrator on a monthly basis. Some of the data in
14 the tables were compiled using whole numbers and then
15 rounded for inclusion in the tables in abbreviated
16 forms. Therefore, in some instances, data may not add
17 to rounding.

18 The Compilation of Statistical Material
19 Prepared for this Hearing, consists of 21 pages, plus
20 front and back cover pages and a table of contents.
21 There are eight tables and one map in the compilation.
22 And I will describe these.

23 Table one, which is on pages one through five
24 is a list of handlers, plants and cooperative
25 associations on the Pacific Northwest Order in December

1 of 2000. This list contains the complete names and
2 addresses of handlers and cooperatives. For handlers
3 with multiple plants, the complete address the
4 organization headquarters is listed and individual
5 plants are listed by city, state, pricing zone and
6 plant type. Names and addresses in other portions of
7 the exhibit may appear in abbreviated form.

8 Table 2 on page six is an alphabetical
9 listing of pool distributing plants, pool supply
10 plants, partially regulated distributing plants and
11 producer handlers for December 2000. Each plant is
12 listed by name, state, county, and pricing zone. Also
13 listed are cooperative associations acting as handlers,
14 acting as handlers. The plants from this table are
15 shown on the map on page 21, at the end at this
16 compilation. I will describe the map later in my
17 testimony.

18 Table 3 on page seven shows the pounds and
19 percentage of producer milk by class and in total for
20 the four classes of utilization in the Pacific
21 Northwest Order for the month of January 2000 through
22 September 2001. Annual totals are shown for 2000 and
23 year to date totals are shown for calendar year 2001.
24 The pounds of producer milk in this table are based on
25 pounds reported on handler reports and do not represent

1 totals that have been audited. These pounds of milk
2 and their associated components are used to compute the
3 monthly producer price differential on or before the
4 14th of the following month.

5 Table 4 on pages eight and nine, contains the
6 class prices for the Pacific Northwest Order for each
7 month of January 2000 through September 2001. The
8 prices are given for components in the class, the skim
9 milk equivalent value for the components and at 3.5
10 percent butter fat as announced by the Market
11 Administrator. Component prices are on a per pound
12 basis, skim and 3.5 percent butter fat prices are on
13 100 weight basis. The Class 1 price is the price
14 announced for King County, Washington and includes a
15 Class 1 differential of \$1.90 per hundred weight.
16 Annual and year to date averages are given for each
17 column.

18 Table 5 on page 10 provides prices for
19 producer payments for each month of January 2000
20 through September 2001 and annual and year to date
21 averages. Minimum prices to producers under the Order
22 consists of four items. The four items include butter
23 fat, protein, other solids, which are on a per pound
24 basis, and the producer price differential which is on
25 a per hundred weight basis. The Statistical Uniform

1 Price also on a per hundred weight basis, is provided
2 for informational purposes only.

3 Table 6 on page 11, shows the pounds and
4 percent of producer milk by state for January 2000
5 through September 2001. These pounds are based on
6 producer payrolls submitted by handlers and subjected
7 to a primarily audit. These pounds may be somewhat
8 different from the pounds shown in Tables, Table 3 on
9 page seven, which are based on pounds from handler
10 reports of receipts and utilizations. Milk from Nevada
11 and Wyoming was pooled on Federal Order 124 during some
12 of the months of the period shown. And is included in
13 Utah, and Idaho totals for those months, respectively.
14 The data for Nevada and Wyoming are restrictive.

15 The second part of Table 6 on page 12,
16 represents the data on page 11 on a percentage basis.
17 Footnote two mentions the month October 2001, but it
18 should read September 2001. That is a minor
19 correction.

20 Q Why don't you note that so everybody, go over
21 that one more time just to make sure that --

22 A Okay. On the second part of Table 6, on page
23 12, strike that.

24 Footnote 2 on page --

25 Q I believe it is 12. Is it 12?

1 A Footnote 2 mentions the month October 2001,
2 and that is on page 12. It should read September 2001.

3 Q So, it would read and June through September
4 2001.

5 A Correct.

6 Q Would that also be true on page 11?

7 A That is true, also.

8 Q On footnote 2 on page 11.

9 A That is correct.

10 Table 7 and 8 provide the number of producers
11 and the pounds of producer milk by state and county for
12 January 2000 through September 2001. Table 7 and 8
13 show the same information as Table 6, but broken down
14 the county level and in addition show the number of
15 producers. The state totals in Table 7 and 8
16 correspond to the state totals in Table 6 on page 11.
17 Table 7 reflects the data for 2000 and begins on page
18 13 and runs through page 16. Table 8 reflects the data
19 for 2001 year to date, and begins on page 17 and runs
20 through page 20.

21 Some counties within states are combined to
22 prevent the disclosure of restricted data. A number
23 that represents the information of fewer than three
24 producers is restricted. Several footnotes are listed
25 at the end of Table 7 on page 20, indicating data that

1 is restricted for a number of the counties that are
2 combined with adjoining states data. The restrict --

3 Q Let me stop you there. You said table, what
4 table are you talking about now on page 20?

5 A Table 7.

6 Q Okay.

7 A The restricted data is identified in the
8 table or in the footnotes and is included in the state
9 totals as noted and in the grand total for each month
10 for the market.

11 Q Is that, would that conclude your explanation
12 of the document marked for identification as Exhibit 5?

13 A No. The last page of the document is a map
14 of the marketing area. The heavy black line marks the
15 boundary of the marketing area. The counties not shaded
16 are counties from which milk originated and was pooled
17 on the Pacific Northwest Order in December 2000.

18 Also shown on the map is the location of the
19 different types of regulated plants. These plants are
20 identified with symbols as shown in the box in the
21 lower right hand corner of the map. For example, in
22 King County, Washington, we can see there are three
23 symbols of black dots within circles. Each black dot
24 within a circle indicates the approximate location of
25 one pool distributing plant. Two of the four partially

1 regulated distributing plants are not shown on the map.
2 They are located in Los Angeles County, California, and
3 are included in the map index on page six.

4 That would conclude my testimony on this
5 exhibit.

6 Q Okay. All right, do you have an explanation
7 of the document marked for identification as Exhibit 6?

8 A I do.

9 Q Could you give that to us now? Starting with
10 the Table of -- Well, you have an explanation of it,
11 could you just give that to us now.

12 A Okay. Similar to Exhibit 5, all the data in
13 this compilation is based on records obtained from the
14 Market Administrator Office and relate to the Western
15 Milk Market Order, Federal Milk Marketing Order number
16 135.

17 The same comments that I had pertaining to
18 that exhibit also pertain to this exhibit about the
19 origin of the data.

20 The Compilation of Statistical Material
21 Prepared for this Hearing consists of 21 pages plus
22 front and back covers and a table of contents. There
23 are eight tables and one map in the compilation. And I
24 will go over these now.

25 Table 1, which is on pages 1 through 5 is a

1 list of handlers, plants, cooperative associations and
2 cooperative associations on the Western Order in
3 December 2001. This lists contains the complete names
4 and addresses of handlers and cooperatives. For
5 handlers with multiple plants, the complete address of
6 the organization headquarters is listed. And individual
7 plants are listed by city, state, pricing zone and
8 plant type. Names and addresses in other portions of
9 the exhibit may appear in abbreviated form.

10 Table 2 on page six is an alphabetical
11 listing of pool distributing plants, priority bulk tank
12 handlers, partially regulated distributing plants and
13 producer handlers for December 2001. Each plant is
14 listed by name, state, county and pricing zone. Also
15 listed are cooperative associations acting as handlers.
16 The plants from this table are shown on the map on page
17 21 at the end of the compilation and I will describe
18 the map later.

19 Table 3 on page seven shows the pounds and
20 percentage of producer milk by class, and in total for
21 the four classes of utilization on the Western Order
22 for the months of January 2000 through December 2001.
23 Annual totals are shown for each year. The pounds of
24 producer milk in this table are based on pounds
25 reported on handlers' reports and do not represent

1 totals that have been audited. These pounds of milk
2 and their associated components are used to compute the
3 monthly producer price differential on or before the
4 12th of each month.

5 Table 4 on pages eight and nine, contain the
6 class prices for the Western Order for each month of
7 January 2000 through December 2001. The prices are
8 given for components in the class, the skim milk
9 equivalent value for the components and at 3.5 percent
10 butter fat as announced by the Market Administrator.
11 Component prices are on a per pound basis. Skim and
12 3.5 percent butter fat prices are on a hundred weight
13 basis. The Class 1 price is the price announced for
14 Salt Lake County, Utah and includes a Class 1
15 differential of \$1.90 per hundred weight. Annual
16 averages are given for each column.

17 Table 5 on page 10 provides prices for
18 producer payments for each month of January 2000
19 through December 2001 and the annual averages.
20 Minimum prices to producers under the order consist of
21 four items. The four items include butter fat,
22 protein, other solids, which are on a per pound basis,
23 and the producer price differential, which is on a per
24 hundred weight basis. The statistical uniform price
25 also on a per hundred weight basis is provided for

1 informational purposes only.

2 Table 6 on pages 11 and 12 shows the pound
3 and percentage of producer milk by state for January
4 2000 through December 2001. These pounds are based on
5 producer payrolls submitted by handlers and subjected
6 to a primarily audit. These pounds may be somewhat
7 different from the pounds shown in Table 3 on page
8 seven, which are based on pounds from handler reports
9 of receipts and utilizations. In three months, between
10 January 2000 and December 2001, data for either
11 California or Colorado was restricted and included with
12 the data for the other state. Data for Nevada and
13 Wyoming were also restricted and are included with the
14 data for, data of Utah and Idaho, respectively.

15 The second part of Table 6 on page 12
16 represents the data on page 11 on a percentage basis.

17 Table 7 and 8 provide the number of producers
18 and pounds of producer milk by state and county for
19 January 2000 through December 2001. Table 7 and 8
20 show the same information as Table 6 but broken down to
21 the county level and in addition, show the number of
22 producers. State totals in Tables 7 and 8 correspond
23 to the state totals in Table 6 on page 11. Table 7
24 reflects the data for 2000 and begins on page 13 and
25 runs through page 16. Table 8 reflects the data for

1 2001 and begins on page 17 and runs through page 20.

2 Some counties within states are combined to
3 prevent the disclosure of restricted data. A number
4 that represents the information fewer than three
5 producers is restricted.

6 Several footnotes are listed at the end of
7 Table 7 and 8 on pages 16 and 20 respectively.
8 Indicating data that is restricted for a number of the
9 states that are combined with other states data. The
10 restricted data is identified in the table or in the
11 footnote and is included in the state totals as noted.
12 And in the grand total for each of them, each month for
13 the market.

14 The last page of the document is a map of the
15 marketing area. The heavy black line marks the
16 boundary of marketing area. The counties not shaded
17 are counties for which, from which milk originated and
18 was pooled on the Western Order in December 2001. Also
19 shown on the map is the location of the different types
20 of regulated plants. These plants are identified by
21 symbols as shown in the box, in the lower right hand
22 corner of the map. For example, in Salt Lake County,
23 Utah we can see that there are four symbols of black
24 dots within circles. Each black dot within a circle
25 indicates the approximate location of one pool

1 distributing plant. One of the five partially
2 regulated distributing plants is not shown on the map.
3 It is located in Fort Worth, Texas and is included in
4 the map index on page six.

5 I don't think I have anything further at this
6 point on Exhibit 6.

7 Q All right. Do you have some information on
8 Exhibit 7?

9 A Exhibit 7 is entitled "Analysis of Hauling
10 Charges and Producer Milk by Location and Size Range of
11 Production, Pacific Northwest and Western Federal
12 Orders, May 2001 with Comparisons to May of Previous
13 Years."

14 The staff paper 02-01 authored by Chris
15 Warner of the Market Administrator Office and it is
16 dated February 2002. Hauling charges in milk
17 production were examined for over 1750 producers in May
18 of 2001. The milk represented in this study was
19 producer milk Grade A pooled on the Pacific Northwest
20 and Western Orders. In May 2001 a large volume of
21 Grade A historically associated with an eligible to be
22 pooled were qualified on the Western Order, was not
23 pooled due to price relationships. The eligible milk
24 not pooled is restricted information but is
25 incorporated in some parts of this study, where its use

1 does not result in the disclosure of restricted
2 information. Hauling charges, stop charges, and milk
3 production were obtained from producer payrolls
4 submitted by handlers to the Market Administrator
5 Office. The terms milk production and producer milk in
6 this study are used synonymously. Hauling charges in
7 this paper are given on a per hundred weight basis.
8 The reference to a particular year refers to May of
9 that year. Some comparisons to previous years are
10 reported but due to changes in Federal Order boundaries
11 and order provisions, beginning January of 2000, these
12 comparisons may be bias.

13 Q John, may I ask you to explain the terms stop
14 charges?

15 A A stop charges based on my understanding is a
16 charge that a handler or a hauler may charge a dairy
17 farmer for each pickup at the farm. It is typically a
18 fixed dollar value. It is not associated with the
19 volume of milk being picked up. It is not on a per
20 hundred weight basis. It is a flat charge.

21 Q All right. Continue.

22 A There was one comment I had about one
23 conclusion that is on page two, fifth paragraph, the
24 second sentence. There is a statement made concerning
25 why hauling charges were higher in 2000 versus 2001.

1 The sentence reads "Higher fuel prices in late 1999
2 through 2000 compared to 2001". Let me rephrase that.

3 The sentence reads, "Higher fuel prices
4 in late 1999 through 2000 compared to 2001 fuel prices
5 probably was a factor in the lower hauling rates."
6 Upon further review and examination of average fuel
7 price information, from the Energy information
8 Administration and their web site is the normal
9 <http://www.eia.doe.gov>, fuel prices actually appeared
10 to have been slightly higher in 2001 than in 2000.

11 JUDGE CLIFTON: Could you repeat that website,
12 please?

13 THE WITNESS: <http://www.eia.doe.gov>.

14 JUDGE CLIFTON: Dot gov at the end?

15 THE WITNESS: Dot gov.

16 BY MR. STEVENS:

17 Q Do you have anything further with respect to
18 the document marked for identification as Exhibit 7?

19 A I have nothing further.

20 Q Now we are going to move to the --

21 JUDGE CLIFTON: Mr. Stevens?

22 MR. STEVENS: Yes.

23 JUDGE CLIFTON: Let's take these three first.

24 MR. STEVENS: Sure.

25 JUDGE CLIFTON: Before you go on to the

1 others.

2 MR. STEVENS: Absolutely.

3 JUDGE CLIFTON: I would like to invite any
4 cross examination. Mr. English? Let's go off the
5 record for just a moment.

6 (Off the record.)

7 JUDGE CLIFTON: On the record.

8 MR. STEVENS: Thank you, Your Honor.

9 BY MR. STEVENS:

10 Q Okay. We are going to move the documents
11 prepared by the MA at the request of specific parties.
12 I believe you have copies, do you not?

13 A I do.

14 Q All right. I am looking at the document that
15 we have marked for identification as Exhibit 8,
16 Statistical Material Prepared at the Request of Elvin
17 Hollon.

18 A The information in the packet entitled
19 Statistical Material Prepared at the Request of Elvin
20 Hollon was put together by the Market Administrator
21 Office. It was not prepared with support of or in
22 opposition to any proposals.

23 Mr. Hollon requested that the MA Office put
24 together a table identified as Table 1, an alphabetical
25 list of selected types of handlers by month and type,

1 Western Order, Federal Milk Marketing Order 135, Year
2 2000 through 2001. The handlers shown in Table 1 are
3 arranged alphabetically by type for this period.

4 Q And could you tell us just for the record
5 what, what are the different types? Are there many or
6 are there a few that you could describe for the record?

7 A There is a variety of types of plants. A D
8 would denote a pool distributing plant. B would denote
9 priority bulk tank handler. C would be cooperative.
10 M would be cooperative pool manufacturing plant.
11 P would be producer handler. N would be partially
12 regulated distributing plant. O is other order plant.
13 E is an exempt plant.

14 Q Thank you.

15 A The next item in the packet entitled Map 1 is
16 a map of producer milk pooled on the Western Order by
17 county for the month of September 2001. September 2001
18 was chosen because all eligible milk was pooled on the
19 order in that month. So data is organized in ranges
20 and represents the information as published in the
21 Hearing Statistics for the same month.

22 The next map, Map 2, is a map of populations
23 by county for the Western Order, Federal Order 135
24 Marketing Area. The source of the data is the 2000
25 Census. Population numbers are broken up into ranges

1 generally showing where there are relatively more
2 people and relatively fewer people.

3 The next table entitled Table 2, shows the
4 population figures according to the 2000 U.S. Census by
5 county for the Wester Order, Federal Order 135
6 marketing area. The data in this table was used in
7 creating Map 2 on the previous page.

8 The last map, Map 3, shows the location of
9 the major cities in the marketing area of the Western
10 Order and pool and non pool manufacturing plants that
11 received milk that was priced under the order for the
12 month of December 2001. Actually it is not pool and
13 non pool, it is just non pool manufacturing plants.

14 Q Okay. Is that what you have for Exhibit 8?

15 A That is all I have, yes.

16 Q All right. Could you tell us about the
17 document marked for identification as Exhibit 9,
18 Statistical Material Prepared at the Request of John
19 Vetne.

20 A The information in the packet entitled
21 Statistical Material Prepared at the Request of John
22 Vetne was put together by the MA Office. It was not
23 prepared in support of or in opposition to any
24 proposals.

25 Mr. Vetne requested --

1 JUDGE CLIFTON: And the MA Office is?

2 THE WITNESS: MA stands for Market
3 Administrator.

4 JUDGE CLIFTON: Thank you.

5 THE WITNESS: Mr. Vetne requested that the MA
6 Office put together a number of tables with the, the
7 numbered request is identified at the time of each
8 table, with the table's title listed second.

9 The title of Table 1, no, the title of the
10 Table of Request 1 is producer milk received by plants
11 located in Idaho and pooled on the Southwestern Idaho,
12 Eastern Oregon Order, Federal Order 135, Great Basin,
13 Federal Order 139 and Western Order Federal Order 135.
14 The months chosen were months when all milk was pooled,
15 all eligible milk. The pounds of milk are shown by
16 class and total and less restricted information
17 represents fewer than three handlers.

18 The title of the table of Request 5 is
19 Information on Eligible Milk Pooled and Not Pooled by
20 Month for Southwestern Idaho, Eastern Oregon, Federal
21 Order 135, Great Basin Order, Federal Order 139 and
22 Western Order Federal Order 135. That is for 1999
23 through 2002 to date.

24 The table indicates for each month whether
25 all eligible milk was pooled or not. If all eligible

1 was not pooled, the quantity of eligible milk not
2 pooled is shown unless it reflects fewer than three
3 handlers. There was a correction to this table. If
4 you look at the months described at the, above the
5 information, there is two Januaries, both for 1999,
6 2000 and 2001. The second month should have read
7 February. And similarly the far right, November 1999,
8 2000 and 2001 and 2002 are duplicated. The last
9 column should read December of the respective year.

10 BY MR. STEVENS:

11 Q Just to emphasize that, John, so that as I
12 look at the document the second block on that series of
13 blocks, should be changed from January to February.

14 A Correct.

15 Q And the last block in that series of blocks
16 on the right hand margin, should be changed from
17 November to December.

18 A Correct.

19 Q And then the document is correct by months.

20 A Yes.

21 Q Thank you.

22 A The title of the Table of Request 9 is Pounds
23 of Milk Reported as Class I Packaged in Area Sales by
24 Handlers in the Southwestern Idaho, Eastern Oregon
25 Order, Federal Order 135 and Great Basin Order, Federal

1 Order 139 Marketing Areas, May and November of 1999.

2 The title of Table of Request 10 is Pounds of
3 Milk Reported as Class I Packaged in Area Sales by
4 Handlers in the Western Order, Federal Order 135, May
5 and November 2000 and 2001 in Area Sales by Idaho and
6 Utah Pool Plants are broken out separately.

7 The title of the Table of Request 14 is
8 Diversion Limits, Number of Handlers Diverting, Pounds
9 of Milk Diverted and Pounds of Milk Pooled by Category
10 of Diversion Less than 80 Percent and Greater than 80
11 Percent. Selected months 1999 through 2001. The
12 information is shown by category in this table unless
13 it reflects fewer than three handlers in which case it
14 is restricted. And the restricted is denoted by an R.

15 The title of the Table of Request 19 is
16 Estimated Impact of 70 Percent Diversion Limits on the
17 Producer Price Differential and Previously Eligible
18 Milk Not Pooled Due to 70 Percent Diversion Limits.
19 Selected months 2000 and 2001. Western Order, Federal
20 Order 135. The producer price differential and the
21 uniform price are shown as announced and as a
22 recalculated based on a 70 percent diversion limit. The
23 difference between the two is also shown. The pounds
24 of the previously eligible milk not pooled due to the
25 70 percent diversion limits is shown in the far right

1 hand column.

2 I don't think I have anything further on that
3 one.

4 Q Okay. All right, let's move onto the
5 document marked for identification as Exhibit number
6 10, Statistical Material Prepared at the Request of
7 Charles English, Jr., Esquire.

8 A The information in the package entitled
9 Statistical Material Prepared a the Request of Charles
10 English, Jr., Esquire, Thelen, Reed and Priest, LLP,
11 Washington, D.C., was put together by the MA Office.
12 It was not prepared in support of or in opposition to
13 any proposals.

14 Mr. English requested that the MA Office put
15 together a number one table. The title of the Table is
16 Classification of Producer Milk, Pooled by Priority
17 Bulk Tank Handlers, Western Order, Federal Order 135
18 for 2001. Again, information is restricted if it
19 represents fewer than three handlers. And that was the
20 case for January 2001 through March 2001 and August
21 2001 through December 2001.

22 Q Do you also mean July? Am I --

23 A Yes.

24 Q July through December.

25 A July through December 2001.

1 Q Thank you.

2 A And that is all I have.

3 Q All right, let's move on to the document
4 marked for identification as Exhibit 11, Statistical
5 Material Prepared at the Request of David Larson.

6 A The information in the packet entitled
7 Statistical Material Prepared at the Request of David
8 Larson was put together by the MA Office. It was not
9 prepared in support of or in opposition to any
10 proposals.

11 Mr. Larson requested that the MA put together
12 one table. The title of the table is Estimated Impact
13 of 80 Percent Diversion Limits on the Producer Price
14 Differential and Previously Eligible Milk Not Pooled
15 due to 80 percent Diversion Limits. Selected months,
16 2000 and 2001. Western Order, Federal Order 135.
17 Producer price differential and the uniform price are
18 shown as announced and as recalculated based on an 80
19 percent diversion limit. The difference between the
20 two is also shown. The pounds of previously eligible
21 milk not pooled due to 80 percent diversion limits is
22 shown in the far right hand column.

23 And that is all I have on that.

24 Q John, could you state for the record now with
25 respect to Exhibits 5 through 7, these were prepared by

1 the Market Administrator Office.

2 A Yes, they were under my supervision.

3 Q And they are, the documentation there, the
4 data in those documents comes from official records of
5 the Market Administrator Office?

6 A Correct.

7 Q They are not offered in favor or against any
8 proposal in this hearing.

9 A No, they were not.

10 Q And with respect to the Exhibits 8 through
11 11, that were prepared, they were prepared by the MA on
12 request of certain parties.

13 A They were not prepared in support of or in
14 opposition to any proposal and are based on records of
15 the Market Administrator Office.

16 Q Come from official records of the MA Office.

17 A Correct.

18 MR. STEVENS: Your Honor, at this time I have
19 no further questions of the witness. I offer the
20 witness for cross examination.

21 JUDGE CLIFTON: All right, who would like to
22 begin the cross examination of Mr. Mykrantz? Mr.
23 English. Thank you. And even though I have recognized
24 you are Mr. English, and you are one of the requesters
25 of the Statistical Information, so we have your full

1 name, would you state it as well.

2 MR. ENGLISH: The name is Charles English, I
3 am an attorney in Washington, D.C. For the purpose of
4 these proceedings, representing Dean Foods Company in
5 this hearing, doing business as Dairies, Inc.

6 CROSS EXAMINATION

7 BY MR. ENGLISH:

8 Q Mr. Mykrantz, thank you for this data. And I
9 have a number of questions, both clarifying and then
10 some technical questions. If I could start with
11 Exhibit 9 for a moment. Actually let me back up for
12 one second.

13 You sent out materials to people in advance
14 of the hearing that are very similar to the materials
15 admitted today, correct?

16 A Correct.

17 Q Did those materials change in any material
18 way since you sent them out to us other than the
19 descriptions of the changes you have already made in
20 Exhibit 9, today?

21 A There was one additional change that I
22 overlooked. In Exhibit 9, the Statistical Material
23 Prepared at the Request of John Vetne. The request
24 number 10 in area of Class I sales by Idaho Plants,
25 Utah Plants and other order plants and producer handler

1 exempt plants for Orders 135, 2000 through 2002. There
2 was a change in the number from May 2001 in the column
3 entitled "Other Order PRDP and Exempt Plants." I do
4 not recall what the original number was, but the new
5 number which is in the documents that we have here
6 today, is one million, 171 thousand.

7 BY MR. ENGLISH:

8 Q A clarification question in that same Exhibit
9 9, Request 14, if you would go there for one second. I
10 want to look at the headings. The first heading was
11 Handlers diverting less than 80 percent, the second was
12 handlers diverting more than 80 percent and the third
13 heading listed here is handlers diverting more than 80
14 percent. What would appear to me at least the third
15 heading is really the combination of the first two,
16 when you do the math.

17 A It is.

18 Q So, would it, would there be another way of
19 describing that third heading as, you know, handlers
20 diverting milk or I mean, I am just wondering if that
21 third heading needs clarification for the record.

22 A The third heading is handlers diverting
23 producer milk. Perhaps if you had --

24 Q Turn to, what, the second page of that, I am
25 sorry. I apologize, the second page of it. So that

1 heading used to be the same as the first page?

2 A Correct.

3 Q Okay.

4 A It should be handlers diverting producer
5 milk.

6 Q Okay. Let me just ask you. You labeled
7 these requests one, five, nine, ten, 14 and 19 by Mr.
8 Vetne. Would it be fair to say there were requests
9 two through four and six through eight, and 11 through
10 13 and at least 15 through 18 and maybe more that were
11 made?

12 A Mr. Vetne submitted some requests and we used
13 his numbering system to identify the data, so that we
14 could keep track of it.

15 Q Does that also mean, though, there was some
16 data that he requested that is either found somewhere
17 else or that you were unable to provide?

18 A We were unable to provide any other data to
19 Mr. Vetne.

20 Q Was that request he made in writing?

21 A Yes.

22 Q Is that a document we can at least have to
23 look at? I am not suggesting making it an exhibit yet,
24 but, is that a document that we could have sometime
25 during this hearing so we can look at that to see the

1 request?

2 A I would have to check. I believe it would be
3 available.

4 Q I would appreciate that very much if I could
5 see it as soon as possible.

6 Turning for a moment, I am going to try to
7 group these questions as much as I can, Mr. Mykrantz,
8 both to help myself and also to focus where I am going
9 with them. So, I guess what I would like to start with
10 is the issues that will arise, but again a technical
11 level with Proposals 1, 2, 9 and 10. And so I was
12 going to ask some questions about some of the issues
13 that might arise there.

14 Starting with Exhibit 5, there is milk
15 associated with Pacific Northwest, that is produced in
16 the two northern counties of California, correct?

17 A Correct.

18 Q And would it be fair to say that the milk
19 associated with Pacific Northwest Order, that is
20 produced in those two northern counties, has been
21 historically associated with Pacific Northwest Order
22 for some number of years?

23 A Yes, it has.

24 Q Okay. Would it be a fair characterization to
25 say that generally most, if not all of that milk

1 produced in those two northern counties of California
2 is picked up at the farms in Del Mateo and Cisque, and
3 delivered into plants in Southwestern Oregon?

4 A I would say the vast majority moves across
5 the border to plants in Southern Oregon.

6 Q Okay. By Southern Oregon would that include
7 the plants down there in Douglas, Josephine, and
8 Jackson County?

9 A Yes.

10 Q Okay. And turning to Exhibit 7, regarding
11 analysis of hauling charges. And page one of the
12 actual discussion. In the first paragraph there is a
13 sentence in the middle that reads "In May 2001
14 producers located in Southern Idaho, Eastern Oregon and
15 Utah were pooled on the Pacific Northwest and Western
16 Orders simultaneously." And then lower down there is
17 a parenthetical that says "i.e. a producer pool on both
18 orders is counted once." How is it, you know,
19 technically, if you can, tell me that producer can be
20 pooled simultaneously on both the Pacific Northwest and
21 Western Orders?

22 A A producer can be pooled on multiple orders.
23 His milk cannot be pooled simultaneously on two Federal
24 Orders.

25 Q So --

1 A There would be a distinction between say the
2 first 15 days of the month and the last 15 days of the
3 month. The two pieces couldn't be pooled
4 simultaneously on both orders but the first 15 days
5 could be pooled to one order and the last 15 days
6 pooled to another order.

7 Q So, assuming for the moment the
8 hypothetically that a producer produced a million
9 pounds of milk during the month and produced evenly
10 throughout the month, you would have under that
11 scenario, 500,000 pounds pooled under the Pacific
12 Northwest Order and 500,000 pounds pooled under the
13 Western Order, correct?

14 A That is possible.

15 Q But, as you say you wouldn't have, if it is a
16 million pound producer, when you added those two
17 numbers up, the amount that is pooled on the Pacific
18 Northwest and the amount pooled on Western Order, it
19 wouldn't exceed the total number of pounds the producer
20 predicts, correct?

21 A Correct.

22 Q And that is what you mean by saying that you
23 are not pooling the same milk twice, correct?

24 A Correct.

25 Q Turning to page two of the hauling charge

1 document and in a way reference back to my questions a
2 few moments ago about the milk in Northern California,
3 in the middle of that page, there is a sentence that
4 reads, "California producers pooled on the Western
5 Order in May 2001 are not the historical supply
6 producer milk for the Western Order." I take that it
7 would be a fair characterization to say that sometime
8 to May 2001, in fact, during 2000 and before, the milk
9 that is now pooled on the Western Order from California
10 producers was not associated with the Western Order or
11 its predecessor, Great Basin Order.

12 A I guess both of those are correct.

13 Q Where, if you know, prior to 2001, if
14 anywhere in the Federal Order system were California
15 producers who are now pooled on the Western Order
16 historically supplying their milk?

17 A I don't have any information on that.

18 Q The next sentence on page two, says "The
19 California milk supply pooled on the Western Order is
20 different than the milk historically pooled on the
21 Pacific Northwest Order from Northern California." Is
22 that just a restatement of what we have been talking
23 about, that the milk in the two counties in Northern
24 California has been going into Southwestern Oregon for
25 some number of years, but the milk that is now or

1 associated with the Western Order, does not have that
2 basis of being associated with the order?

3 A I guess the two groups are distinct and they
4 have a different length of historical association with
5 the orders.

6 Q Well, what does that, so I take it this
7 document was also prepared, you know, under your
8 direction and control, correct?

9 A Yes.

10 Q Okay. So, what does that statement mean
11 beyond what it says in the written word concerning how
12 we understand that milk coming or being associated with
13 this market from California that is now associated with
14 the Western Order?

15 A The milk from Northern California has had a
16 longer historical relationship with the Fed Order than
17 the Southern California milk.

18 Q I note that higher up on that page, the
19 hauling charges associated with the milk from Northern
20 California that is moving into Southwestern Oregon,
21 that hauling charge is on average 66.51 cents, correct?

22 A Where was that on the page?

23 Q It is in the second paragraph.

24 A Yes, that is true.

25 Q Yes, okay. And on the other hand the milk

1 associated with the Western Order that is from
2 California, that average haul rate is 30.55 cents,
3 correct, that is in the next paragraph?

4 A That is correct.

5 Q Would it be fair to say that the closest
6 plant for that Southern California milk, the closest
7 pool plant for that Southern California milk, to
8 actually physically move to from Southern California,
9 and be received at a pool plant in the Western Order
10 would be Salt Lake City?

11 A Not necessarily. There is a or was a pool
12 distributing plant in Southern Utah, Western Quality.

13 Q Is that plant there today?

14 A It is not currently a pool distributing
15 plant.

16 Q Has it been a pool distributing plant?

17 A Yes, it has.

18 Q In 2001?

19 A Yes.

20 Q Where is that plant listed in Exhibit 6? Is
21 it not listed because Exhibit 6 is just plants that
22 were pool plants in December 2001?

23 A That is correct.

24 Q Okay. Do you know what month that plant was
25 a pool distributing plant?

1 A Western Quality Food Products, LLC, Cedar
2 City, Utah was a pool distributing plant beginning
3 January 2000 through November 2001.

4 Q And in what county is that plant? Do you
5 know? Is that going to be on the map as a pool
6 manufacturing plant now or as a non pool manufacturing
7 plant or it is not on the map?

8 A Western Quality Foods is a non pool plant
9 beginning December 2001.

10 Q Regardless, then that would be the closest
11 plant to Southern California, for that milk that is
12 associated with the Western Order?

13 A In November of 2001, it was the closest
14 plant.

15 Q Okay. Do you know whether the distance from
16 Southern California to that plant is greater than or
17 equal to or less than the distance from the two
18 counties in Northern California into Southwestern
19 Oregon?

20 A I would have to look at an Atlas.

21 Q Based on the Market Administrator's
22 examination of records, would it be a fair
23 characterization to say that the maturity of the milk
24 associated with the Western Order that is pooled for
25 producers producing milk in California from San

1 Francisco down to Los Angeles, is actually received at
2 plants in California?

3 A I would say the vast majority stays in
4 California.

5 Q Thank you, sir.

6 (Pause.)

7 JUDGE CLIFTON: Mr. English, would this be a
8 good time for about a 15 minute break?

9 MR. ENGLISH: Absolutely, Your Honor.

10 JUDGE CLIFTON: All right, good, let's come
11 back, if you will, at 10:26. Thank you.

12 (Whereupon, a short recess was taken.)

13 JUDGE CLIFTON: Faxes here for Amy Clapper.
14 Is Amy Clapper here?

15 UNIDENTIFIED SPEAKER: She said I could grab
16 them.

17 JUDGE CLIFTON: Okay. Would you please?

18 (Pause.)

19 JUDGE CLIFTON: All right. This record
20 resumes at approximately 10:27.

21 Before you resume, Mr. English, I didn't make
22 it clear, but I want everyone to realize that everyone
23 is entitled to ask questions of each witness if you
24 wish. Whether you are a presenter of a proposal or
25 not, if you have questions to ask, feel free. All I

1 would ask is that you come to the podium and identify
2 yourself before you begin to examine the witnesses.

3 Mr. English.

4 MR. ENGLISH: Thank you, Your Honor. Also I
5 am perfectly happy to have people come up and spell me
6 and do this for awhile and I can come back and cross
7 off questions that get asked. But, let me close out a
8 few areas and then I might sit down and let some other
9 people work on this for awhile.

10 JUDGE CLIFTON: All right, thank you.

11 BY MR. ENGLISH:

12 Q Mr. Mykrantz, continuing on Exhibit 9 for a
13 moment and Request 9 of Exhibit 9. There is a, this is
14 a listing of pool plant Class 1 package in area sales
15 and there is a, for the Great Basin Order prior to
16 Federal Order Reform, what one might say is a dramatic
17 change in numbers from May of '99 to November of '99.
18 Pool plant distribution of 65 million, almost 66
19 million in May dropping to 49 million in November and
20 other order partially regulated plants, going from 10
21 million in May to 20 million in November. Without
22 going into details of exactly the numbers, is it true
23 that at least one portion of the change in the numbers
24 from month to month is explained by a plant that was a
25 fully regulated plant in May, not qualifying as a fully

1 regulated plant in November of '99?

2 A That is true. Smith Food and Drug in Salt
3 Lake City did not qualify as a pool distributing plant
4 in several months in late 1999.

5 Q Let me just ask a couple of questions about a
6 slightly different issue. In May of 1999 the Great
7 Basin Order would have included a facility in Clark
8 County, Nevada, correct, a pool plant in Clark County,
9 Nevada?

10 A I believe that is true.

11 Q Okay. And is it true that by November of
12 1999 as a result of legislation, that plant was no
13 longer a pool distributing plant? Was no longer
14 regulated effectively?

15 A I do not recall the exact month when Anderson
16 Dairy became an exempted plant.

17 Q But, if it occurred around October 1 of 1999,
18 that could also explain some of the numbers here,
19 correct?

20 A Yes.

21 Q Okay. To the extent milk today is received
22 at a plant in Clark County, to your knowledge, is it
23 pooled on any Federal Order? If that milk is received
24 at a plant located in Clark County?

25 A I believe there, on occasion, is some milk

1 moving to Anderson Dairy that is pooled.

2 Q But, that would, you would agree with me that
3 the vast majority of the milk received at that plant
4 is not pooled?

5 A I would stick with my first statement.

6 Q Turning for a moment to Exhibit 10, the
7 exhibit prepared in response to my request. And
8 obviously looking at the three months for which there
9 is data. Can you -- Let me back up for a moment.

10 As the order is presently drafted, or
11 written, there is a limitation on diversions, correct?

12 A Correct.

13 Q And that limitation is 90 percent?

14 A Correct.

15 Q Can you explain how in April, May and June,
16 the pounds of milk that are not Class 1 exceed 90
17 percent?

18 A The 90 percent diversion limit is based in
19 part on deliveries to pool distributing plants.
20 Therefore, I guess if the pool distributing plant had
21 Class 2, 3 or 4 use, then it could exceed the 90
22 percent.

23 Q If the pool distributing plant did not have
24 Class 2, 3, 4 use, are there other ways as the order is
25 presently drafted that these numbers could exceed 90

1 percent?

2 A I don't believe so.

3 Q With respect to the priority bulk tank
4 handler provision, is there requirement then that milk
5 both touch base at a pool distributing plant and not
6 exceed the diversion limitations?

7 A I guess to become qualified a producer needs
8 to have delivered one day's production to a pool plant.
9 And I guess once that is accomplished, the producer
10 becomes qualified and its milk can be diverted to a non
11 pool plant.

12 Q Up to the diversion limitations?

13 A Correct. And be pooled on the order.

14 Q To your knowledge, with respect to these
15 priority bulk tank handler numbers, did 10 percent of
16 the milk pooled by bulk tank handlers actually move to
17 pool distributing plants?

18 A I would say for priority bulk tank handlers,
19 yes.

20 Q Once it moves to priority bulk tank, I am
21 sorry, to a pool distributing plant, is there any
22 provision in the order with regard to whether, I am
23 sorry, to what happens if the milk is pumped into the
24 pool distributing plant and pumped back out and goes to
25 another facility?

1 A I guess we track the movement of milk. Can
2 you restate your question?

3 Q The answer to the earlier question, I
4 believe, was that, you know, you did understand that at
5 least 10 percent of the milk of a pool of priority bulk
6 tank handlers was delivered to pool distributing
7 plants, correct?

8 A Yes, eligible milk.

9 Q And my next question is, is there any
10 provision in the order with respect to what, if
11 anything, happens in a regulatory sense if after the
12 milk is delivered at the pool distributing plant, it is
13 reloaded, and taken somewhere else, either to the
14 priority bulk tank handler or to someone else.

15 A That is a possibility.

16 Q Okay. And again, okay, so it is a
17 possibility that it can happen and I guess my next
18 question is, if it happens is there any consequence to
19 that regulatorily at the moment?

20 A I don't believe so. We don't keep track of
21 why people receive milk at plants.

22 Q Are you familiar with the term net shipments
23 provision?

24 A I believe that is part of one proposal.

25 Q Okay. But, you understand what the term

1 means?

2 A Yes.

3 Q Okay. And it effectively means that in making
4 determinations about qualifying shipments, one would
5 look at the amount that is received and actually
6 physically processed at that plant as opposed to
7 received and then leaves the plant, is that a fair
8 characterization of what a net shipment provision would
9 do or is allowed?

10 A I believe that is correct.

11 Q And so, tying together for a moment, there is
12 presently at least no net shipment provision with
13 respect to priority bulk tank handler shipments,
14 correct?

15 A Other than what might exist in the pool
16 distributing plant qualification.

17 Q And is there something in that qualification
18 that would limit that?

19 A A pool distributing plant or to use a pool
20 distributing plant to qualify a producer, the pool
21 distributing plant needs to process 25 percent of its
22 physical receipts into Class 1 products or transfer its
23 Class 1 to another pool plant.

24 Q So, as an effective cap, if you will, if
25 someone were shipping in and shipping out, nonetheless,

1 of the milk shipments received a minimum of 25 percent
2 of raw milk would have to be processed into Class 1
3 products, correct?

4 A Correct.

5 Q With respect to milk received today at pool
6 distributing plants that is milk accounted for by
7 priority bulk tank handlers, does the Market
8 Administrator examine whether or not the pool
9 distributing plant pays minimum class prices for the
10 milk received from priority bulk tank handler?

11 A The price that the priority bulk tank handler
12 receives from the pool distributing plant?

13 Q I was actually asking it the other way, which
14 is to say the payment made by the pool distributing
15 plant is that payment audited as to its level in terms
16 of minimum class payments?

17 A It can be audited but we don't dictate that
18 it is of a certain level or not.

19 Q Are you presently auditing it?

20 A I believe we are.

21 Q When you say you can't dictate it is at a
22 certain level, does that mean that regardless of
23 whether you look at it, you cannot, if it happens to be
24 less than minimum class prices, enforcement on class
25 prices?

1 A That is true.

2 Q Turning to a moment to Exhibit 1, the Notice
3 of the Hearing. Proposal number 14 submitted by the
4 Market Administrator. Let me first say that I, as
5 someone involved in these proceedings, I am grateful to
6 the Market Administrator who is prepared to step up to
7 the plate and look at some issues and make suggestions.
8 And I really do appreciate that.

9 As to Proposal number 14, what is the change
10 that would be made, technically, if adopted?

11 A Proposal 14 rewords the last part of the
12 first sentence of 1135.11 to read as follows: "For the
13 account of such person to a pool plant described in
14 1135.7(a) or 1135.7(b) of another handler." Instead of
15 the way it currently reads, "For the account of such
16 person to the pool plant of another handler." The
17 purpose of this proposed change is to clarify that the
18 1135.11 handler should be associated with the pool
19 through a pool distributing plant as described in 7(a)
20 and 7(b), not just any pool plant. The old
21 Southwestern Idaho, Eastern Oregon Order was not
22 changed when the Great Basin, the old Federal Order 139
23 pool manufacturing plant language was added to it.

24 Q Are there presently any pool manufacturing
25 plants on this order?

1 A No, there is not.

2 Q Okay. So, this is proposed change is
3 designed to address an issue that might arise in the
4 future as opposed to one that presently or has existed
5 in the past?

6 A I think it is more a clarification.

7 Q Okay.

8 (Pause.)

9 MR. ENGLISH: Your Honor, I think this is a
10 convenient time for me to take a break and let others
11 cross examine. I do want to come back but a little
12 later and I may, I certainly will cross off questions
13 as I go along if they are asked by others. Thank you.

14 JUDGE CLIFTON: Thank you, Mr. English.

15 Who would like to be next to ask questions of
16 this witness, Mr. Mykrantz?

17 MR. MARSHALL: Thank you, Your Honor. I am
18 Doug Marshall with Northwest Dairy Association.

19 CROSS EXAMINATION

20 BY MR. MARSHALL:

21 Q Good morning, John.

22 A Good morning, Doug.

23 JUDGE CLIFTON: Mr. Marshall, I know your
24 spellings of your names are probably the conventional
25 ones, but would you spell each of your names for us,

1 please.

2 MR. MARSHALL: Glad to, Your Honor. Douglas
3 is spelled D-O-U-G-L-A-S, and Marshall is spelled
4 M-A-R-S-H-A-L-L.

5 JUDGE CLIFTON: Thank you.

6 BY MR. MARSHALL:

7 Q First, Mr. Mykrantz, would you be intending
8 to stay throughout the hearing?

9 A I have a flight that leaves late in the
10 evening on Thursday, about 7:00 p.m.

11 Q So if issues should arise during the hearing,
12 you would be available to testify at least through
13 Thursday.

14 A Correct.

15 Q Thank you.

16 With respect to the exhibit on Order 135,
17 that was would be Exhibit 6. There is a map.

18 And I notice in that there are three counties
19 shown in Colorado in white color, which are counties
20 with producer milk. And on page 19 of that same
21 exhibit, we see a list of the areas from which producer
22 milk is shown and I see zeros by Colorado. In another
23 one of your exhibits shows that the amount of milk from
24 Colorado has been in and out of this Western Federal
25 Order.

1 A Correct.

2 Q Okay. My question is to where does that milk
3 normally find itself delivered? In one of your
4 exhibits you have a denotation of non pool plants in
5 various locations. And I do not see anything shown for
6 Colorado in that exhibit. Can you orally tell us
7 whether there are any plants in the general vicinity of
8 those three Colorado counties that are shown, that
9 would qualify as either a distributing plant or a
10 supply plant or other type of plant?

11 A To be qualified on the order at least one
12 day's production would need to move to a pool
13 distributing plant. After they are qualified then they
14 can go to a non pool plant.

15 Q I understand. And in one of your exhibit
16 does it not, do you not have an exhibit somewhere that
17 tells us where those non pool plants are for the most
18 part in the order area?

19 My question is, my ultimate question is where
20 is that milk often go in Colorado? And you have got
21 other exhibits, more than one, showing plants
22 throughout the market area and I don't see a Colorado
23 plant listed, either in the list of plants or in one of
24 the maps that shows where all of the plants are. For
25 example, in the map, in your Pacific Northwest exhibit,

1 we see plants all over the Western United States shown
2 but nothing in Colorado. And in the Exhibit 6 --

3 A I think in the month of December 2001, the
4 producer milk originating from farms located in
5 Colorado was restricted and included in another county.

6 Q Okay. I understand why in that particular
7 month you don't show any milk. My question, John,
8 maybe you can't help me, is there not a distributing, a
9 non pool plant somewhere in the Western Colorado area
10 to which that milk normally is delivered? And that
11 would be a non pool plant?

12 A I think there is a number of non pool plants
13 in Colorado.

14 Q Can you identify --

15 A I guess, just off hand, antidotally there is
16 Columbine Creamery, there is LaCreamto, Fort Morgan.

17 Q Do you know what county that, do you know
18 what county that would be in?

19 A I believe they are in and around Fort Morgan.

20 Q Okay. Fort Morgan is where, which county is
21 that, do you know?

22 A If I am not mistaken it is near Denver.

23 Q Okay. You are telling me that there might be
24 some other non pool plants in Western Colorado. Could
25 you continue?

1 JUDGE CLIFTON: Let me clarify. Do you want
2 only Western Colorado?

3 MR. MARSHALL: Your Honor, ultimately what I
4 want is to figure out where the milk that is pooled
5 from Western Colorado is delivered on a regular basis.

6 JUDGE CLIFTON: So, if it is delivered within
7 Colorado, even if it is not Western Colorado, you do
8 want that information?

9 MR. MARSHALL: I would be happy to have that,
10 if John would give it to me.

11 THE WITNESS: I would say the vast majority of
12 the milk from Colorado moves to non pool plants in
13 Colorado. I don't think I have any specific
14 information as to exactly what non pool plant that milk
15 may be moving to.

16 BY MR. MARSHALL:

17 Q And I can understand that. My question is in
18 what counties would those plants be?

19 A I guess I don't have that information at this
20 point.

21 Q Okay. On the map that shows, at the very end
22 of your Exhibit, I think it is number eight, the study
23 on hauling charges. Excuse me, it is Exhibit 7, thank
24 you, I have been corrected. The number of counties
25 identified specific, is there any significance to

1 counties having its name there versus not having a name
2 there? For example, I am curious about Yuma County in
3 Colorado. Why is that shown and specifically called
4 out by name?

5 A What page was that on?

6 Q The very last page, I think it is 19.

7 MR. BESHORE: Which exhibit is that?

8 MR. MARSHALL: That would be the top left,
9 Exhibit 7.

10 (Pause.)

11 BY MR. MARSHALL:

12 Q Do you follow my question, John? Is there
13 any significance to Yuma County being identified by
14 name in Colorado whereas its neighboring counties are
15 not?

16 A I do not believe there is a reason why it is
17 specifically identified.

18 Q Do you know of any producer milk that has
19 been pooled from that county?

20 A No.

21 Q Or any plant to which producer milk is
22 delivered in that county?

23 A I don't believe so.

24 Q All right. Let me turn to Exhibit number 9,
25 which is the material prepared for John Vetne. And this

1 refers specifically to the page, that shows the
2 depooling of eligible milk. Do you have some
3 corrections to show to that, the page would be --

4 A After looking at the information for the
5 Western Order, for the Year 2000 and 2001, I believe
6 that the data for 2001 is duplicated back into the Year
7 2000. And we are currently getting information from
8 our office that will, we can provide and clarify
9 exactly what should be reported for the Year 2000.

10 Q I would be happy to reserve any questions
11 until you have that data.

12 Last area of inquiry refers to both Exhibit
13 number 9 and Exhibit number 11 in which you attempt to
14 make a projection of the impact of the 70 percent and
15 90 percent diversion limitations, hypothesized by the
16 questioners in your, to whom you have responded. Now,
17 are you, do you recall those pages of those two
18 exhibits?

19 A Was that request number 19 of John Vetne
20 and --

21 Q I refer to 19 of Mr. Vetne's and I think it
22 is the only page of the Exhibit 11, requested by Mr.
23 Larson. There is some attempt in those two to indicate
24 the estimated impact, I think is the term you used, of
25 the 70 percent or 80 percent diversion limitations.

1 A Correct.

2 Q A little bit about your background, John.
3 You are an economist by training, are you not?

4 A I am.

5 Q An economist often uses statistics in their
6 work and I would like to draw a distinction between
7 economics and statistics here for present purposes.

8 A Okay.

9 Q Statistics would be utilization of existing
10 data. Economics would include, as I would see it, an
11 analysis of things that might happen if rules were
12 changed. In this estimation that you have provided,
13 the impact of 70 percent diversion limitations, have
14 you simply done a statistical evaluation of current
15 milk movements and made a judgement about pounds
16 pooled, etc., assuming no milk were to move differently
17 because of the 70 percent diversion or the 80 percent
18 diversion limitation?

19 A Correct. What we did in both cases was look
20 at how milk moved and was diverted historically,
21 applied a new 70 percent or 80 percent diversion limit
22 to those historical milk movements, to arrive at what
23 might have been true had those rules been in place. It
24 does not take into consideration any institutional
25 factors that might have existed or developed due to

1 those different rules.

2 Q As an economist now, rather than merely a
3 statistician, would you believe that if the rules
4 changed, the milk would continue to move as it
5 historically had or do you believe that the imposition
6 of different diversion rules would change the way milk
7 would move?

8 A I would have to say that as an economist, the
9 behavior of certain handlers might change under
10 different rule scenarios. And I can't really predict
11 exactly what those changes in behavior might be.

12 Q So, I would be correct then in concluding
13 from your testimony this morning that one might not
14 want to be confident that those pages accurately
15 estimate what would happen with a rule change, but are
16 limited to merely historical analysis based on current
17 milk movement patterns, is that correct?

18 A I believe they are estimates, but, should be
19 treated with certain caveats.

20 Q And those caveats would be with what?

21 A Mainly the possibility that institutional
22 changes could affect and institutional changes in the
23 different rules, would cause handlers to behave
24 differently.

25 MR. MARSHALL: Great, thank you. That is all

1 I guess I have for you at this point. I would look
2 forward to talking later about Exhibit 9 after it is
3 corrected with respect to depooling.

4 And also the first part of my questioning
5 with respect to non pool plants, maybe the best way of
6 putting the request would be to refer you to the very
7 last page of Exhibit 8, and the map that was prepared
8 for Mr. Hollon, therein, which show in diamonds a
9 number of non pool manufacturing plants and the
10 question would be can you show non pool manufacturing
11 plants in Colorado that might be relative to the
12 pooling of milk or the disposition of milk, much as you
13 have in California, even though in both cases,
14 California and Colorado, there are, the non pool plants
15 really aren't regulated in any way by this order.

16 A I guess that is a possibility. I guess if
17 you could choose a month, we might be able to make that
18 available.

19 Q Well, how any month in which, well, December
20 of 2001, would appear to be the month that you have
21 used in this one and I notice in your own exhibit, I am
22 sorry, that would be your Exhibit 6, on the very last
23 page, there is a map indicating that during that month
24 of December there was milk from Colorado pooled on the
25 Western Order. And so that milk would have gone

1 somewhere and I would think the diamonds can show up on
2 the Exhibit 8 map to correspond to whatever was going
3 on at that point. Just as it has been for, just as it
4 has been done for California. That is my request.

5 A Okay. I will look into it.

6 Q Thank you. Well, let me, let me just ask, if
7 I may then, a question regarding Federal Order number
8 124 and it is very similar in terms of its statistical
9 content. I do notice that in the Table 7 there that
10 shows milk from various sources, there is no reference
11 to Colorado, is there?

12 A Could you repeat that?

13 Q Yes. With respect to your Exhibit number 5,
14 Pacific Northwest Order, and Table 7, let's say for
15 example on page 13, or page 15. There is no reference
16 to Colorado. Correct?

17 A There is no reference to Colorado.

18 Q And I conclude from that that with respect to
19 the year shown there was no milk from Colorado pooled
20 on the Pacific Northwest Order, is that accurate to the
21 best of your knowledge?

22 A Yes.

23 Q Are you aware of any milk being pooled since
24 these exhibits, since the time frame covered by these
25 exhibits, any milk pooled under the Pacific Northwest

1 market from the State of Colorado?

2 A I believe in February 2002, we did see milk
3 from Colorado being pooled on the Pacific Northwest
4 Order.

5 Q So in this similar compilation of producer
6 milk by state and county, is prepared for a time frame
7 that includes February, at least February of the Year
8 2002, we will see the State of Colorado.

9 A Yes.

10 Q Identified.

11 MR. MARSHALL: All right, that is the only
12 questions I have for now. Thank you very much.

13 JUDGE CLIFTON: Thank you, Mr. Marshall.

14 Just for my own information, were the people
15 in the back able to hear Mr. Marshall and his
16 questions? All right, good. And were you able to
17 hear the witness? All right, good.

18 All right, who else would, yes, Mr. Beshore,
19 you may proceed.

20 MR. BESHORE: Thank you, Your Honor. It is
21 Marvin Beshore, M-A-R-V-I-N, B-E-S-H-O-R-E. Attorney
22 from Harrisburg, Pennsylvania, representing Dairy
23 Farmers of America.

24 CROSS EXAMINATION

25 BY MR. BESHORE:

1 Q Mr. Mykrantz, I would like to first turn to
2 Table 1 of Exhibit 8, which was your information
3 prepared for Elvin Hollon.

4 In combining the data that we have on Table
5 1, or let me talk about priority bulk tank handlers, on
6 Table 1, if we can. And make sure I understand how we
7 can utilize the information on this table with the
8 information that you have provided in several other, in
9 another exhibit or two about the utilization of milk in
10 prioirty bulk tank handler units. In, if I can find
11 that exhibit, you -- there are three handlers on Table
12 1 of Exhibit 8 identified as operating prioirty bulk
13 tank handler units, is that correct? Or did I miss
14 any?

15 (Pause.)

16 THE WITNESS: Yes, there are three.

17 BY MR. BESHORE:

18 Q And they are Glanbe Foods in Twin Falls,
19 Idaho, Jerome Cheese Company of Jerome, Idaho, and
20 Sorento Lactalis in Nampa, Idaho, correct?

21 A Correct.

22 Q Now, if you compare that information with
23 Table 1 of Exhibit 10, the information which you
24 prepared for Mr. English, with respect to his request,
25 in each month of 2001, which is the second page of

1 Table 1 of Exhibit 8, that tells us who the priority
2 bulk tank handlers were and whose information you
3 compiled on Table 1 of Exhibit 10, correct?

4 A Correct.

5 Q So, that in the only months where you had
6 actual data, April, May and June of 2001, that
7 represents the aggregate operations of Glanbe, Jerome
8 and Sorento Lactalis during those months, correct?

9 A Correct.

10 Q Now in the months where you show restricted
11 information on Exhibit 10, but indicate a "B" in the
12 month column on Exhibit 8, would I be correct in
13 understanding that for instance in January of 2001 on
14 Exhibit 8, both Glanbe and Jerome reported and pooled
15 milk on their priority bulk tank units during that
16 month?

17 A Correct.

18 Q Okay. And the same would apply in every month
19 where there was a "B" indicated on Table 1 of Exhibit
20 8.

21 A Yes.

22 Q Okay. Let me ask you about another category
23 handler, Table 1 of Exhibit 8. The, the legend at the
24 bottom has "M" for cooperative pool manufacturing
25 plant. But, I do not believe that, at least in 2001,

1 there are any cooperative pool manufacturing plants
2 indicated, is that correct?

3 A That is correct.

4 Q Okay. And in 2000, for a portion of the year
5 there were cooperative pool manufacturing plants, is
6 that correct?

7 A That was in January through August 2000.

8 Q January through August.

9 A That is correct.

10 Q Okay. Now, am I correct that in order to be
11 a cooperative pool manufacturing plant on the Western
12 Order, the plant must be physically located in the
13 marketing area, correct?

14 A That is correct.

15 Q Okay. And that is part of the order language
16 definition.

17 A Yes, it is.

18 Q Okay. Are there any, the order language, the
19 Order 135 language, provides for pool supply plants to
20 be pool plants under the order, does it not?

21 A Yes, it does.

22 Q Okay. I don't, is pool supply plant
23 identified in the legend on Table 1 here as a --

24 A No, it is not.

25 Q Okay. And why is it not?

1 A There were no pool supplies as such in the
2 Year 2000 or 2001.

3 Q No pool supply plants.

4 A Correct.

5 Q Okay. And what does the order require for a
6 plant to be a pool supply plant?

7 A I believe a pool supply plant in order to be
8 qualified on the Order would have to deliver a fixed
9 percentage of its milk receipts to pool distributing
10 plants.

11 Q Would it also, it could be a manufacturing
12 plant, could it not, cheese plant?

13 A That is correct.

14 Q Or a butter fat plant? Okay.

15 And it would need to have a Grade A milk
16 permit, I assume.

17 A Yes, it would.

18 Q Okay. And if it then delivered what the order
19 requires on that, that would qualify all of the Grade A
20 milk at that facility for the pool, correct?

21 A It would qualify the milk that was eligible.

22 Q Okay. And that would be any Grade A dairy
23 farmer delivering milk to that pool plant, would it
24 not?

25 A Correct.

1 Q But, no, no cheese plants or other
2 manufacturing plants qualified and pooled their
3 producer milk as supply plants on the Order, correct?

4 A No.

5 Q Okay. Let's look again at Table 1 of Exhibit
6 10. By the way, Glanbe, Jerome, the three priority
7 bulk tank handlers are all operators of cheese plants,
8 manufacturing plants at their locations in Idaho, is
9 that correct?

10 A Yes.

11 Q Now, when, if a, under the 90 percent
12 diversion requirements presently in the order, if the
13 operator of a cheese plant releases, delivers one
14 million pounds of its supply to a Class 1 facility
15 which uses, retains that supply and uses it in Class 1
16 products, let's assume it is, that is all, that is the
17 entire supply for that plant, a million pounds, 100
18 percent of its Class 5 is Class 1. Okay. How many
19 pounds would be qualified by, through the 90 percent
20 diversion to be pooled as producer milk on the order?

21 A Up to nine million pounds, say the producer
22 priority bulk tank handler delivers one million pounds
23 to a pool distributing plant, the priority bulk tank
24 handler would also have the capability of pooling
25 another nine million pounds for a total of 10 million

1 pounds to a non pool plant.

2 Q Okay. So the present diversion limitation
3 says, if you deliver a million pounds for Class 1, you
4 can keep an additional nine million and manufacture
5 cheese, correct, in essence, in so many words?

6 A You can deliver nine million pounds to a non
7 pool plant and pool that diverted milk on the order.

8 Q And if you are a cheese plant operator,
9 manufactured into cheese.

10 A Correct.

11 Q Okay. And in that, if that is what was going
12 on here, the Class 2, 3 or 4 utilization percentage on
13 this exhibit would be 90 percent, correct? I am talking
14 about Exhibit 10.

15 A Under the scenario you laid out, that would
16 be true.

17 Q Okay. Now, if to the extent that the
18 distributing plant to which this milk is being
19 distributed, has necessary Class 2 or Class 3 or 4
20 utilization, just as a factor of its operation,
21 shrinkage, and inventory, let's assume that it is Class
22 1 utilization for the, it has 100 pounds of Class 1
23 sales, a million pounds of Class 1 sales, but some
24 necessary Class 2, 3 or 4 as any plant would have,
25 would it tend to have a 90 percent Class 1 utilization

1 or greater, if it wasn't making any ice cream or
2 cottage cheese, or other products at the plant?

3 A A pool distributing plant needs to have at
4 least 25 percent of its physical receipts used in Class
5 1. So, 75 percent could be used in Class 2, 3 or 4.

6 Q Okay. But, let's assume this is just, that
7 this distributing plant, assume with me for a moment,
8 doesn't manufacture any products, doesn't process any
9 products other than Class 1. It would still have a
10 little bit of utilization in Class 4, probably or 3.

11 A Typically, a distributing plant has excess
12 cream, which it then markets to some other handler.

13 Q So, if it was only processing Class 1
14 products, but received producer milk, its utilization
15 is going, Class 1 utilization is going to be, what, in
16 the neighborhood of 90 percent or greater?

17 A Or greater.

18 Q Okay. So, in order for these bulk tank
19 handlers to have 95, 97 percent Class 2, 3 or 4, they
20 have got to be delivering to a distributing plant that
21 is a little different than that, what we talked about,
22 correct? Or you wouldn't be able to pool that much
23 milk, okay.

24 Now, I think Mr. English asked you this, but
25 I want to make sure, if the milk, if the cheese plant

1 delivers, has a customer that has a million pounds of
2 Class 1 sales and that is all, and that is all it does
3 at its plant, if that cheese plant delivers two million
4 pounds to that facility, and takes back a million of it
5 after it is received in and pumped back out, now, it
6 could take that second million back to its cheese plant
7 and make cheese, correct?

8 A Theoretically, yes.

9 Q Theoretically, yes, I think we are talking
10 just in concept here, theoretically. And the
11 utilization at that plant, at that Class 1,
12 hypothetical Class 1 plant would be now instead of 90
13 to 100 percent, it would be 45 to 50 percent Class 1,
14 correct?

15 A Correct.

16 Q And it would still be a distributing plant
17 under the Order because it is more than 25 percent,
18 correct?

19 A Correct.

20 Q But, now the cheese plant could, instead of
21 being pool 10 million pounds of diverted milk, it could
22 pool or nine million pounds, I should say of diverted
23 producer milk, it could pool about 18 million pounds of
24 diverted producer milk, correct?

25 A Theoretically, that is correct.

1 Q Theoretically. And then the utilization in
2 that priority bulk tank unit instead of being 90
3 percent Class 2, 3 and 4 would be about 95 percent
4 Class 2, 3 and 4 or so.

5 A I guess it would be roughly similar to the
6 data in the table.

7 Q Let me go to the question or two on the
8 exhibits that you prepared for John Vetne, which has
9 been marked as Exhibit 9.

10 The response to inquiry five, which is
11 information on eligible milk pooled and not pooled, I
12 want to make sure that I understand hopefully the
13 record is clear with respect to how you determined what
14 milk was eligible. And I hope I am not repeating what
15 has already been covered here. How did you define
16 eligible milk exactly for this exhibit?

17 A Eligible milk can be pooled on the Order.
18 And that means that it is a milk from a dairy farmer
19 who has had at least one day's production moved to a
20 pool distributing plant and that producer has retained
21 associated with the Federal Order through time.

22 Q So, this --

23 A By the pooling of at least one load of milk
24 on the order in successive months.

25 Q By definition, would this eligible milk not

1 pooled necessarily be diverted milk to non pool plants?

2 A Typically, when a handler does not pool
3 eligible milk, it is for reasons of price. And
4 typically, that is milk diverted to a non pool plant.

5 Q Because the handler has the option of
6 reporting or not reporting that milk on its pool
7 report, correct?

8 A Correct.

9 Q Okay. Milk that is actually delivered to a
10 pool plant, it doesn't have the option of reporting or
11 not reporting or pooling or not pooling. It has got to
12 be pooled if the producer was eligible.

13 A There are treatments of the milk coming into
14 pool distributing plants whereby if it is not producer
15 milk, the pool distributing plant handler is penalized.
16 Whereby, the pool is made whole and the pool
17 distributing plant handler is indifferent to whether it
18 is producer milk or not producer milk. So,
19 theoretically, milk of a producer could go into a pool
20 distributing plant, milk of a dairy farmer could go
21 into a pool distributing plant and not be pooled.

22 Q By option of the reporting handler?

23 A Yes.

24 Q Okay. Would it be fair to say that the, you
25 know, the vast majority, you might have used that

1 phrase one time, I will try it again, the vast majority
2 of the eligible milk not pooled as shown on your
3 response to question five of John Vetne, was diverted
4 milk.

5 A Correct, to non pool plants.

6 Q Okay. And again, so there is no question,
7 this is milk that was completely eligible to be pooled
8 but was not pooled by the handler simply because he
9 made more money by not pooling it than by pooling it,
10 correct?

11 A I can't really get into why a handler would
12 pool or not pool milk. There are financial advantages.
13 I don't have any intimate knowledge of how handlers
14 make their money.

15 Q Well, presumably if all you had to do was
16 put the plant, put the milk, you know, let's take the
17 183 million in November, or in October of 2001, if all
18 you had to do to collect let's say a draw of a dollar a
19 hundred weight of the pool on that milk, if all you had
20 to do was put it on your report, you would probably put
21 it on your report, if you were a reasonable --

22 A If I were a handler, I might do that. Unless
23 I had some other considerations.

24 Q The "R"s on the exhibit indicate that there
25 was volumes of eligible milk not pooled those months by

1 either one or two handlers, reporting handlers, is that
2 correct?

3 A Fewer than three handlers.

4 Q Okay. Now, let me turn, turn if you would
5 to, to the response to question 14, Exhibit 9, which is
6 the information you provided to Mr. Vetne's question
7 with respect to analysis of diversion, diversions.

8 In 1999 the -- If I understand this, the
9 aggregate percentage of milk diverted is 93 and 94
10 percent in those months, is that correct?

11 A That is correct.

12 Q And what was the diversion limit on the order
13 at that time?

14 A As you can read in footnote two, under the
15 section for Southwestern Idaho, Eastern Oregon, Federal
16 Order 135, in footnote two, effective December 1, 1989,
17 1135.13 at three, four, five and six were suspended for
18 an indefinite period. Effectively there was no
19 diversion limits.

20 Q So, in that, during those periods of time,
21 make sure I understand what was going on and this is
22 the Southwestern Idaho, Eastern Oregon Order, during
23 those periods of time, in order to pool milk on the
24 Order, all that needed to be done was the producer
25 needed to have his milk delivered one day to a pool

1 plant.

2 A Correct.

3 Q And from that period on, the milk just had to
4 be reported as diverted to a non pool plant, and it
5 would be pooled. Is that correct?

6 A Correct.

7 Q Okay. Now in, if you turn to the next page,
8 January, the same information for 2000 and 2001. Now,
9 if, in 2001 if I am reading this, noting this
10 information correctly, there was about the same total
11 amount of milk or more pooled by diversion as there was
12 in 1999 when there were no diversion limits at all, is
13 that correct? Three hundred million in June, 363
14 million in November? In fact, November 2001, you had
15 the same amount of diverted milk pooled on the Order,
16 363 million as in November of 1999 when there was no
17 diversion limits at all?

18 A That is true. But, there are two different
19 orders.

20 Q You had the additional diversions from Great
21 Basin aggregated, is that -- is that what you are
22 saying?

23 A No, I think it would be difficult to make
24 that comparison. Institutionally, Southwestern Idaho,
25 Eastern Oregon in combination with the Great Basin is

1 different than the Western Order.

2 Q Okay. Let me turn to Table 8 of Exhibit 6.
3 Which is the information which you compiled with
4 respect to the sources of producer milk by state and
5 county in the Western Order. And I would like to look
6 at 2001, which is Table 8, 2000 is Table 7.

7 I note that in Idaho and I am looking at the
8 second half of the year in 2001, in Idaho there are, in
9 some cases huge fluctuations in volume with the same
10 number of producers in a county. For instance, the
11 last county, Twin Falls, in October there are 21
12 producers and 10 million, 934 thousand pounds of milk
13 pooled. And in November there are 21 producers pooled
14 with 33 million, 615 thousand pounds of milk pooled.
15 Can you shed any light upon those differences in
16 volume, for the same number of producers in the same
17 county in sequential months?

18 A I guess we count a producer if he or she is
19 qualified on the order. Meaning that they have at
20 least one load of milk pooled. If only or if all of
21 the dairy farmers in Twin Falls County were eligible
22 and pooled, you probably might see a number -- That is
23 similar to say, July.

24 Q Of?

25 A 2001. In October, based on the numbers

1 here, I believe some eligible milk was not pooled.

2 Q Would the same, would the same thing apply to
3 the, again, October, November difference in pooling
4 from 34 producers in Jerome County who pooled 30
5 million in October and 52 million in November?

6 A We have got a similar case.

7 Q And those, the smaller amounts of pooling in
8 those cases, are situations where in likelihood it was
9 economically advantageous to the handler not to report
10 the milk and pool it.

11 A I might assume that.

12 Q Okay. By the way if a producer is, what
13 happens if a producer who is eligible to be pooled is
14 not reported as pooled at all for a given month, do
15 they lose their association with the order?

16 A They do.

17 Q They do. So, that if a handler wants to
18 report whatever milk it chooses to report to its best
19 economic interest each month, it still has to at least
20 report one day of production from each of its qualified
21 producers on the pool in order to retain their
22 association.

23 A That is correct.

24 (Pause.)

25 MR. BESHORE: May I have, those are the

1 questions I have at the moment. I assume maybe some
2 other questions and if I have anything else, I will
3 have an opportunity to come back later.

4 JUDGE CLIFTON: Yes.

5 MR. BESHORE: Okay.

6 JUDGE CLIFTON: Certainly, everyone may come
7 back if they have additional questions. And anyone may
8 recall Mr. Mykrantz if necessary.

9 All right, whatever questions do you have
10 now? Yes, Mr. Marshall?

11 BY MR. MARSHALL:

12 Q Just two follow up questions, Mr. Mykrantz,
13 on the last line of inquiry.

14 With respect to the term "eligible milk", I
15 am now confused. And so I would ask this question.
16 With respect to your statistics on the Western Order,
17 milk was concurrently being pooled on Pacific
18 Northwest.

19 A Milk of a producer can be split between
20 orders. Under the Pacific Northwest Order, all of a
21 producer's milk would need to be pooled somewhere. If
22 you are going to pool on the Pacific Northwest Order
23 one day, the remaining days would have to be pooled on
24 another order to cause that producer to be, to have
25 producer milk on the Pacific Northwest Order.

1 Q I think what you said is true, it doesn't
2 help me with the question I am after, which is eligible
3 milk. And the question I really have is as you have
4 done these exhibits, showing certain milk as making
5 certain computations about whether it is eligible in
6 the pool in Western Order. My question is did you
7 consider and include as potentially eligible milk, the
8 milk from, say Beaver County, Utah, that might be
9 pooled on the Pacific Northwest Order, that would be
10 eligible for pooling in Western Order in the
11 statistical compilation that you prepared? Or would
12 that be not included as eligible?

13 A It is, that is a hard distinction. The --

14 Q I am not asking philosophy questions, I am
15 wondering which way the numbers were prepared.

16 A I guess what we considered eligible milk, not
17 pooled, on the Western Order was milk that was
18 historically associated with the Western Order.

19 Q Well, in Beaver County, Utah, typically would
20 have been traditionally associated with the Western
21 Order, would it have not?

22 A Traditionally, yes.

23 Q So, since we have an exhibit from you showing
24 that milk from Beaver County, Utah was pooled on the
25 Pacific Northwest Order, my question is simply, did you

1 consider that when you were doing the statistics on
2 the --

3 A No, I did not.

4 Q Ah, ha. So, I think the answer then
5 indicates, if I have been reading you correctly, that
6 the amount of milk eligible for diversion was actually,
7 correction. The amount of milk available for pooling
8 was even greater than the percentages shown.

9 A Even greater than what percentages?

10 Q Well, one moment, please.

11 (Pause.)

12 BY MR. MARSHALL:

13 Q We are going to talk about this a bit later,
14 I suspect, but I was just trying to understand going
15 in, that if, for example, I should not have used the
16 word percentages. The quantities of milk eligible not
17 pooled shown on your exhibit you prepared for Mr.
18 Vetne, Exhibit 9, in response to question five, those
19 quantities that are shown there would not include milk
20 pooled in the Pacific Northwest.

21 A That is true.

22 Q And so, am I correct in concluding that if
23 the rules were to be changed such that could not easily
24 occur, the amount of milk one might think about being
25 not pooled in this order is even greater than would be

1 indicated by this table? And John, where I am heading
2 with this is to the question what the ultimate impact
3 of all of the rules are that, all the rule changes that
4 are that are being considered at this hearing.

5 A I couldn't, as an economist.

6 Q You are free to talk as an economist, yes.

7 A I don't think I could come to a conclusion
8 that the amount of eligible milk not pooled would be
9 greater.

10 Q The --

11 A Theoretically it could be pooled on a
12 different order.

13 Q Yes. That is kind of where I was going
14 earlier. And so, for purposes of this discussion,
15 then, we can agree that the statistics that you have
16 provided here, cannot predict future behavior if the
17 provisions of Order 135 and 124 are changed as proposed
18 in this hearing.

19 A I would agree with that.

20 Q On that narrow issue of potential milk not
21 being pooled. Okay. Well, on that same question, then
22 just let me qualify something I was asking about
23 earlier. On the two exhibits that address the 70
24 percent and 80 percent diversion limitations and what
25 the estimated impact would be. I just want to clarify

1 that that is only the rule change with respect to
2 diversions that you have estimated.

3 A That is true.

4 Q And not, for example, the effect of any of
5 the other proposals besides Proposal number 6, I
6 believe it is or the other proposals that might be or
7 any modifications to Proposal number six.

8 A Right. It is only the diversions limits that
9 are being addressed in those tables.

10 MR. MARSHALL: Great. Very helpful. Thank
11 you.

12 JUDGE CLIFTON: Thank you, Mr. Marshall.
13 Additional questions, Mr. English?

14 BY MR. ENGLISH:

15 Q Mr. Mykrantz, in some of these discussions
16 there has been some assumptions about something, let me
17 just try to clarify if those assumptions are correct.

18 The entities that have qualified as priority
19 bulk tank handlers in the past couple of years, would
20 it be a fair characterization to say that each of them
21 operates a cheese plant?

22 A Yes.

23 Q So, to the extent milk that is associated
24 with those operations, diverted back to them and is
25 listed on Exhibit 10, as two, three, or four milk, it

1 would be Class 3 milk, correct, the milk actually
2 processed by them, at their own facilities? Would most
3 likely be Class 3 milk?

4 A If Jerome Cheese were to receive milk, in all
5 likelihood it would be cheese milk.

6 Q Which is Class 3.

7 A Class 3.

8 Q Right, okay.

9 And to be clear, because this helps in some
10 of the analysis, the producer price differential in
11 this order, if you do the math, if you take the Class 3
12 price and add the producer price differential or in
13 some cases subtract the producer price differential,
14 would it be accurate to say that is a way of deriving a
15 statistical uniform price?

16 A That is we derive it.

17 Q Okay. And to which pool distributing plants,
18 to your knowledge, have the priority bulk tank handlers
19 delivered milk on their own account for the purpose of
20 Class 1?

21 A We require that priority bulk tank handlers
22 have an agreement with a pool distributing plant in
23 writing and have those in file in our office. Who
24 these priority bulk tank handlers do business with is
25 confidential information.

1 Q I can accept that.

2 For the month in which there were three
3 priority bulk tank handlers can you tell me whether
4 there were also or can you tell me the number of pool
5 distributing plants that those three had in total? So,
6 I am not asking for the names, I am just asking for the
7 number?

8 A At least three.

9 Q Were there more than three?

10 A At least three.

11 Q So you are unable to answer the question more
12 specifically than that?

13 A Yes.

14 Q Going back to a series of questions I asked
15 with respect to Proposal 14, and I apologize, because I
16 relied very heavily on the December data and then
17 obviously saw from Exhibit 8 that there was more
18 information. To your knowledge, has there been a
19 time in the past when milk pooled by a priority bulk
20 tank handler, I don't want to know which one, if it is
21 true, was pooled partly on the basis of a delivery to a
22 non 7(a) or non 7(b) facility?

23 A No.

24 (Pause.)

25 MR. ENGLISH: That is all I have. Thank you.

1 JUDGE CLIFTON: Thank you, Mr. English.
2 Other cross examination? Mr. Beshore?

3 BY MR. BESHORE:

4 Q Mr. Mykrantz, if you look at Table 5 of
5 Exhibit 6. Which are the producer prices January 2000
6 through December 2001, in Order 135. The producer
7 price differential column for October of 2001 there is
8 a negative 25 cent number there. Can you explain
9 that?

10 A A negative producer price differential
11 generally indicates that the Class 3 price is above the
12 statistical uniform price.

13 Q And so Class 3 price being the price for milk
14 used to produce cheese.

15 A Correct.

16 Q That happens to be in the same month in which
17 we noted on Table 8 of Exhibit 8(sic). That volumes
18 that milk pooled in Twin Falls County and Jerome
19 County, Canyon County, Ada County, in fact, throughout
20 Idaho were down, is that correct?

21 A Correct.

22 Q In fact, in all of Idaho in October of 2001,
23 there was only 174 million pounds pooled on the order
24 versus 306 million in November according to Table 8 of
25 Exhibit 8(sic), is that correct?

1 A I believe that is correct.

2 Q Okay. Is it also correct that and actually in
3 November, going back to Table 5 of Exhibit 8(sic,
4 November the producer price differential was a \$1.56 in
5 the Order, rather than negative 25, correct?

6 A You said Exhibit 8?

7 Q Yes. Is that correct?

8 A What month was that?

9 Q November of 2001 versus October. I am
10 sorry, Table 5 of Exhibit 8(sic). Producer price
11 differential in November of 2001 was a \$1.56, was it
12 not?

13 A I think I am getting my exhibits mixed up.

14 Q May I am?

15 A Could you restate that?

16 Q I think I am. It is Table 5 of Exhibit 6.
17 The producer price differential in October of 2001 was
18 \$1.56, correct? November of 2001. Gosh.

19 A That is correct.

20 Q Okay. And again, as you elaborated the
21 relationship, the minus 25 in October, which would
22 basically indicate that, I think you said that the
23 Class 3 price would be higher than the statistical
24 uniform price, correct?

25 A In October.

1 Q In October, right. So, if there is a PPD of
2 \$1.56 in November, that would tend to indicate that the
3 Class 3 prices significantly lower than the statistical
4 uniform price, correct?

5 A By a \$1.56.

6 Q By a \$1.56. So, that in November the cheese
7 manufacturers in Idaho could pool another 125 million
8 pounds or so on the Order and draw out the \$1.56 per
9 hundred weight, correct?

10 A I guess they could pool their milk on the
11 order that is qualified.

12 Q Right. And not pool it in October when
13 price of milk for cheese was higher than the price of
14 milk supplied on the order or to get a blend price of
15 the fluid milk, correct?

16 A I guess I can't really get into why a handler
17 is going to pool milk on the order.

18 Q Okay. Well, economically, however, in October
19 the return on milk for cheese alone, was higher than
20 the statistical uniform return for producers supplying
21 fluid milk and the other uses pooled in the Order.

22 A I guess if a handler had pooled milk in
23 October, and that milk was used in cheese, they would
24 have paid 25 cents into the pool.

25 Q Into the pool.

1 A Per hundred weight.

2 Q As opposed to drawing out a \$1.56 in
3 November, out of the pool, correct?

4 A Correct. But, that 25 cents may change with
5 their pooling behavior.

6 Q Okay.

7 (Pause.)

8 MR. BESHORE: Thank you.

9 JUDGE CLIFTON: Thank you, Mr. Beshore. Mr.
10 English?

11 MR. ENGLISH: Yes.

12 BY MR. ENGLISH:

13 Q Exhibit 6, Table 8. And I am looking
14 specifically at Idaho, and one county of Oregon for
15 2001. I just want to point out some things and ask a
16 question.

17 If you look at the first county for Idaho, I
18 don't know if it is Ada or Ada, for the month of March
19 there were 34 pool producers with 17 and a half million
20 pounds. The month of April it jumps to 48 producers
21 for 25.6 million pounds.

22 A Is this is Exhibit 6 or 7?

23 Q I have got six. Six, the first one. I have
24 got Exhibit 6. Yes.

25 So I am looking at Table 8 of the data for

1 2001. Are you with me?

2 A I am getting there.

3 (Pause.)

4 BY MR. BESHORE:

5 Q Are you there now? Okay.

6 A I am in Idaho.

7 Q Okay. I want to go over a couple of
8 counties, several counties and then I want to ask a
9 question about it, but I want to have you follow along
10 with me.

11 The first county in Idaho, Ada or Ada County
12 in March there are 34 producers, which is the same as
13 in February, pooling 17 and a half million pounds. In
14 April there is 48 producers, pooling 25.67 million
15 pounds. It stays at 47 producers in May and June.
16 And in July drops back to 36 producers.

17 The next one, do you see that, first of all,
18 following?

19 A Yes, I do.

20 Q Okay. The next county, Canyon County, there
21 are 33 producers pooled in March, which is fairly
22 consisted with the 32 and 31 in January, February,
23 jumping to 50 producers in April and the pool milk
24 production goes from 6.3 million to 18 million from
25 March to April, correct?

1 A Correct.

2 Q It stays at 50 producers for May and June and
3 then turning to July, drops back to 32 producers,
4 correct?

5 A Correct.

6 Q Dropping down to, I am really going to
7 butcher this one, Owyhee, O-W-Y-H-E-E, near the bottom,
8 in March there are eight producers with 2.9 million
9 pounds, jumping to 15 producers with 8 million pounds
10 in April, correct?

11 A That is correct.

12 Q And it was eight producers in January and
13 February, correct?

14 A Correct.

15 Q Go to July and it drops back to seven
16 producers, correct?

17 A That is correct.

18 Q The next one, there are two counties
19 combined, I assume that is for confidentiality reasons,
20 correct, Payette and Washington?

21 A Yes.

22 Q Okay.

23 A They were combined.

24 Q And again for January, February, March, there
25 is 12 producers in March that is 821,000 pounds,

1 jumping to 19 producers with four million, two fifty
2 three thousand pounds, correct, in April?

3 A Correct.

4 Q It stays at 19 through June, drops back down
5 to 12 in July, correct?

6 A Correct.

7 Q Going to one county in Oregon, which I
8 believe is in the Southeast corner of Oregon, Malheath
9 County. There are 14 producers in March, 13 in
10 January, February. It jumps to 30 producers in April,
11 with three million, three fifty six thousand pounds,
12 correct?

13 A Correct.

14 Q And drops back down to 14 producers in July,
15 correct?

16 A Correct.

17 Q All right. Would you agree with me that all
18 those counties are in the southwest corner of Idaho or
19 in the eastern portion of Oregon, correct?

20 A Yes, they are.

21 Q And they are close to some plants located in
22 the Boise area, correct? They are physically
23 geographically --

24 A Those counties near Boise.

25 Q Yes. Would it be a fair conclusion that

1 those changes in numbers for those counties that I have
2 named, both producers and pounds, reflect a handler
3 becoming a pool handler in April that was not a pool
4 handler in March and then no longer being a pool
5 handler when you get to July?

6 A I guess in Idaho, there is a lot of dairy
7 farmers who are not qualified. I don't think I could
8 take the next step.

9 Q But, would you agree with there is no other
10 month, there is no other month with that kind of change
11 and indeed if you look at the various, all the other
12 counties, the numbers of producers stay relatively
13 stable if not completely stable and the number of
14 pounds stays stable? Only those counties change,
15 correct?

16 A Correct.

17 Q Okay. Does that not reflect, in your
18 opinion, a distinction change in the market from March
19 to April of 2001?

20 A It doesn't reflect a change in the market,
21 only what milk is pooled on the --

22 Q Okay. A change in a regulatory, a change in,
23 I am sorry, say again?

24 A It only reflects what producers were pooled
25 on the order.

1 Q Given the fact that the number of producers
2 pooled on the order went from 349 in Idaho in March, to
3 404 in April, and 349 had been more consistent in
4 January and February, and that 404 was then pretty much
5 the same for the next several months, isn't it the case
6 that these numbers reflect and I am not trying to get a
7 name of it, but it reflects the pooling of a handler
8 that changed in April from March?

9 A I don't think I can answer that question.

10 MR. ENGLISH: Thank you.

11 JUDGE CLIFTON: Any other questions of Mr.
12 Mykrantz before I ask if Mr. Stevens has any redirect
13 questions?

14 MR. STEVENS: I have none.

15 JUDGE CLIFTON: And Mr. Stevens has none.

16 All right, I see no other questions of Mr.
17 Mykrantz at this time. He is subject to being recalled
18 by anyone that would like to recall him.

19 (Whereupon, the witness was excused.)

20 JUDGE CLIFTON: This seems to be a good time
21 to break for a lunch. It is noon. I would like an
22 indication of how long you all would like to take?

23 MR. ENGLISH: Assuming that the restaurant can
24 handle us, an hour is fine. But, if we get in there
25 and the restaurant going to, you know, is crowded, that

1 is presumably we can all get back in hour.

2 MR. HOLLON: One of the other, I just happened
3 to walk by, one of the other meeting just let out.
4 There are people going that way.

5 JUDGE CLIFTON: How many of you with a show of
6 hands would try to go off campus for your lunch?

7 Everybody would like to try and stay here.
8 Okay. Why don't we set it for an hour and 15 minutes,
9 and just let your server know you are in a hurry and we
10 will see how it works out.

11 We will see you all back here at 1:15.

12 (Whereupon, at 12:02 p.m., the hearing was
13 recessed, to reconvene at 1:15 p.m., this same day,
14 Tuesday, April 16, 2002.)

1 A F T E R N O O N S E S S I O N

2 (1:18 P.M.)

3 JUDGE CLIFTON: This record resumes at
4 approximately 1:18 p.m. I would like now to take a
5 statement from Senator Hatch and I would recognize for
6 that purpose Mr. Ronald Dean. I assume Ron is for
7 Ronald?

8 MR. DEAN: It is.

9 JUDGE CLIFTON: If you would identify
10 yourself, please.

11 MR. DEAN: Thank you. Ronald Dean, that is
12 R-O-N-A-L-D, D-E-A-N, Central and Eastern Utah,
13 Director for Senator Hatch.

14 I have come to, with a statement from Senator
15 Hatch that I would like to read and also incorporate,
16 if we could, a letter that was written in 1997 to
17 Secretary Dan Glickman.

18 JUDGE CLIFTON: Yes.

19 MR. DEAN: Which he wishes to include.

20 JUDGE CLIFTON: Thank you. You have provided
21 me a copy and you have provided the Court Reporter with
22 three copies. Do you have any additional copies?

23 MR. DEAN: I do. Do you want me to give those
24 now?

25 JUDGE CLIFTON: Yes. Would you, I know you

1 don't have enough for everyone, would you start with
2 these front tables?

3 (Pause.)

4 JUDGE CLIFTON: And if you would like a copy,
5 if you would raise your hand, Mr. Dean has some he can
6 distribute.

7 (Pause.)

8 JUDGE CLIFTON: And let's go off the record
9 for just a moment.

10 (Off the record.)

11 JUDGE CLIFTON: Let's go back on the record.

12 We are back on the record at 1:21.

13 Mr. Dean, although you are not testifying, I
14 would like you to come forward and be seated in this
15 chair and read Senator Hatch's letter from that
16 location.

17 (Pause.)

18 JUDGE CLIFTON: I would like to mark these
19 documents as exhibits. Does anyone have any objection
20 to my going sequentially and using now number 12? Did
21 anyone have that one already claimed? It appears not.
22 So, Senator Hatch's statement, which is dated today's
23 date, will be Exhibit number 12.

24

25

1 (The document referred to
2 was marked for identification
3 as Exhibit 12.)

4 JUDGE CLIFTON: And the letter to Secretary
5 Glickman dated May 16, 1997 will be Exhibit 13.

6 (The document referred to
7 was marked for identification
8 as Exhibit 13.)

9 JUDGE CLIFTON: All right, Mr. Dean, again if
10 you will state your name and then you may present the
11 statement as you wish.

12 STATEMENT BY SENATOR HATCH READ BY RONALD DEAN:

13 MR. DEAN: Again, Ronald W. Dean, Office of
14 the United States Senator Orrin Hatch.

15 Your Honor, and Staff from the Department of
16 Agriculture, thank you for holding this hearing on the
17 Federal Milk Marketing Orders. I hope that as a
18 result of what is discussed here today something will
19 be done to remedy the situation in which Utah's dairy
20 industry was placed by the Federal Milk Marketing Order
21 Reform Act of 2000.

22 In 1997 I fought the proposed realignment of
23 the Federal Milk Marketing Order because I felt that
24 Utah and Utah's dairy industry would suffer unfairly as
25 a result of it. I believe then and still believe that

1 the decision to merge the Great Basin and the Southwest
2 Idaho, Eastern Oregon orders was a poor one. When the
3 proposal to do so was first made, I wrote Secretary
4 Glickman and asked that he reconsider and the entire
5 Utah Congressional Delegation joined me this letter. I
6 hope that a copy of that letter can be made part of the
7 record of this hearing.

8 Our letter asks the Secretary to consider
9 aligning the Great Basin Order with regions that were
10 better matched with ours. These other regions with
11 their Class 1 utilization and markets are mostly
12 aligned with the Great Basin Order. We were concerned
13 that should the milk marketing orders be realigned as
14 proposed, it would have a devastating effect on Utah's
15 dairy industry. I also organized two separate
16 meetings in Washington between Utah dairy farmers and
17 officials at the Agricultural Marketing Service prior
18 to the finalization of the realignment to ensure that
19 the decision makers fully understood what was at stake
20 for Utah's dairy industry.

21 To spike our efforts, the Secretary choose to
22 place Utah together with Idaho in Order 135 and the
23 result has been exactly as we feared. An imbalance was
24 created that has inflicted significant financial harm
25 to our dairies. This is evidenced by the fact that the

1 total number of dairy families in Utah has dropped more
2 than 25 percent, from 538 in 1999 to 403 in the Year
3 2002. This is an alarming trend. The atmosphere
4 created by the realignment of the milk marketing orders
5 has forced one fourth of Utah's farmers to call it
6 quits after a lifetime of hard work. Something must
7 be done to put our farmers back on a level playing
8 field.

9 I join the Utah Farm Bureau and the Utah
10 Dairymen's Association in strongly supporting Proposals
11 3, 4, 7, 8 and 9 of the Department of Agriculture's
12 proposed rule to amend the milk marketing orders.

13 I also support the request for reduction in
14 the amount of producer milk eligible for diversion to
15 non pool plants from 90 percent to 70 percent. This
16 reduction will allow Utah dairies to compete fairly in
17 the market and together with the proposals I referred
18 to above, will go a long way in removing the unfair
19 difficulties that were placed upon them as a result of
20 the milk marketing order changes.

21 It is my hope that the Department of
22 Agriculture will seriously consider my views on this
23 issue as well as the views of Utah's hard working dairy
24 farmers.

25 Again, thank you for holding the hearing.

1 JUDGE CLIFTON: Thank you very much, Mr. Dean.
2 Is there anything you wish to add to that
3 statement by Senator Hatch?

4 MR. DEAN: No.

5 JUDGE CLIFTON: All right. Thank you, you may
6 step down.

7 MR. DEAN: Thank you. I appreciate your
8 time.

9 JUDGE CLIFTON: You are welcome.
10 Is there any objection to admission into the
11 record of Exhibits 12 or 13? There being none,
12 Exhibits 12 and 13 are received into evidence.

13 (The documents referred to,
14 having been previously marked
15 as Exhibits 12 and 13
16 were received in evidence.)

17 JUDGE CLIFTON: Thank you, Mr. Dean.
18 All right, now, let's resume. Mr. Stevens,
19 do you want to present any other evidence before we
20 turn to the proponents of the proposals?

21 MR. STEVENS: I don't believe we have anything
22 further at this time, Your Honor.

23 JUDGE CLIFTON: Now, in what order should we
24 consider Proposals 1, 2, 9 and 10? Shall I just call
25 for Proposal 1 and we should go from there? Mr.

1 Marshall?

2 MR. MARSHALL: We are prepared as the opponent
3 of both number one and number ten to give prepared
4 testimony that would address both issues together.

5 JUDGE CLIFTON: All right. I believe there is
6 no objection to that, but I will just ask one more
7 time. Is there any objection to that?

8 MR. ENGLISH: None, Your Honor, I just have
9 one procedural point. One and two and nine and ten are
10 not sort of matters of first impression today. They or
11 versions of them have been heard now at two prior
12 hearings. And regarding the Parties' pleasure and of
13 course, Your Honor, what you would do, we have a couple
14 of documents to submit that are both documents that
15 were submitted in the prior hearing in the Central
16 Order. One was a group of exhibits that are
17 explanations of the California Order Program and one
18 was that portion of the transcript of the Upper
19 Midwest, which the same Parties who are here today,
20 also allowed in that hearing. That is only that
21 portion of the testimony given by the Department,
22 California Department Food and Agriculture witnesses
23 who appeared as a courtesy for that hearing. And I
24 guess my thought process was that I thought that those
25 documents as sort of underlying primarily documents not

1 unlike the Department's documents, although they are
2 California documents, would make sense to get in the
3 record so that when people are talking about the
4 issues, those are there. But, I obviously I defer to
5 the Parties and to Your Honor.

6 JUDGE CLIFTON: All right, Mr. English, that
7 makes sense to me. Is there any objection to Mr.
8 English now providing those for the record? Mr.
9 Marshall, no objection on your behalf.

10 MR. MARSHALL: We fully concur.

11 JUDGE CLIFTON: All right. Good. Mr.
12 English, if you will go ahead then and you may begin to
13 distribute those and then I will call upon you. In the
14 meantime we will go off record.

15 (Off the record.)

16 JUDGE CLIFTON: Back on the record.

17 MR. ENGLISH: Your Honor, I have handed both
18 the Court Reporter and yourself and as many copies as I
19 had. Again, these are documents that have been
20 distributed widely in the industry already, two
21 documents. One is entitled "Compilation Exhibit
22 Attachments A through H. Official Documents of
23 California Department of Food and Agriculture Submitted
24 on Behalf of Dean Foods Company." I would ask that be
25 marked as Exhibit 14.

1 (The document referred to
2 was marked for identification
3 as Exhibit 14.)

4 JUDGE CLIFTON: Thank you, Mr. English, it
5 will be so marked.

6 MR. ENGLISH: And the second document with a
7 caption added to it for this proceeding is "Excerpts of
8 Transcript of Testimony by California Department of
9 Food and Agriculture, Officials Kelly Krue and Robert
10 Horton from the Upper Midwest Hearing Submitted on
11 Behalf of Dean Foods Company." And again, it is only
12 those portions of the transcript from that proceeding.

13 As I mentioned in the Central Order
14 Proceeding, for some odd reason the transcript leaves
15 off Grievance Board, United States Department of
16 Agriculture. And we will avoid all the jokes that
17 result from that. But, nonetheless, it is the official
18 transcript of that proceeding. And I would ask for
19 that to be marked as Exhibit 15, Your Honor.

20 (The document referred to
21 was marked for identification
22 as Exhibit 15.)

23 JUDGE CLIFTON: Thank you, Mr. English, it
24 will be so marked.

25 MR. ENGLISH: And then just very briefly, Your

1 Honor, Exhibit 14 is a series of eight documents all of
2 which are official publications of the California
3 Department Food and Agriculture, none of which were
4 prepared for this hearing or any other hearing, but are
5 publications, most, if not all of which, are actually
6 available on their Internet site. And again, all of
7 these documents have been part of now two proceedings
8 in the past. And one could have taken official notice,
9 but for the convenience of the Party and the
10 completeness of the record, I would prefer to ask that
11 it be admitted as an exhibit.

12 And then Exhibit 15, again, is the testimony
13 that was taken with cross examination again by most, if
14 not all of the same lawyers in the room today, at the
15 Upper Midwest proceeding regarding pooling that was
16 held in July of last year. I am sorry, June of last
17 year. And I would again ask that under the
18 circumstances be admitted.

19 JUDGE CLIFTON: Is there any objection to the
20 admission into evidence in this case of Exhibit 14?
21 There being none, Exhibit 14 is hereby admitted into
22 evidence.

23
24
25

1 (The document referred to,
2 having been previously marked
3 as Exhibit 14 was received in
4 evidence.)

5 JUDGE CLIFTON: And with regard to Exhibit 15,
6 is there anything further you would like to say about
7 it, Mr. English?

8 MR. ENGLISH: No, Your Honor.

9 JUDGE CLIFTON: All right.

10 MR. ENGLISH: Again, it is the testimony of
11 the officials of Department Food and Agriculture,
12 California, not in support of any proposal.

13 JUDGE CLIFTON: Thank you. Is there any
14 objection to the admission into this record of Exhibit
15 15? There is none. Exhibit 15 is hereby admitted
16 into evidence.

17 (The document referred to,
18 having been previously marked
19 as Exhibit 15 was received in
20 evidence.)

21 MR. ENGLISH: Thank you, Your Honor.

22 JUDGE CLIFTON: Thank you, Mr. English.

23 Mr. Marshall, do you wish to proceed?

24 MR. MARSHALL: Yes, thank you, Your Honor. I
25 would like to introduce a member of my staff. His name

1 is Daniel S. McBride. He has a prepared statement
2 which has been distributed here in the room and he has
3 copies for both the Court Reporter and for yourself.

4 JUDGE CLIFTON: Thank you. You may be seated,
5 Mr. McBride and I will swear you in.

6 Whereupon,

7 DANIEL S. MCBRIDE

8 having been first duly sworn, was called as witness
9 herein and was examined and testified as follows:

10 JUDGE CLIFTON: Thank you.

11 MR. MARSHALL: Your Honor, we, as a primary
12 matter, would like to invite direction from yourself
13 and from and input from others as to practice here in
14 this hearing with respect to marking testimony as
15 exhibits or not. It is has proven to be an economical
16 way of putting material into the hearing record in
17 other hearings. We would certainly be prepared to do
18 that. And I would invite a discussion of that before
19 making a decision whether to offer this as an exhibit.

20 JUDGE CLIFTON: All right. My own preference
21 and my experience with these types of hearings is far
22 more limited than most of you here. My own experience
23 is that it is good to have both, the written copy and
24 the testimony. And the reason is when we make
25 corrections to the record at the end of the proceeding,

1 sometimes it is what the witness said that was correct
2 and sometimes it is what is in the document that was
3 correct. And it is easier for me to look back at the
4 two of them to see what is at variance. So, even
5 though it is somewhat redundant to have an exhibit in
6 if a person has read it into the record, my own
7 preference would be that I take both into evidence.
8 And with that said, I will be happy to hear any other
9 points of view. Mr. Beshore?

10 MR. BESHORE: I agree with Your Honor's
11 suggestion and I would support that practice for this
12 record. I think it is helpful.

13 JUDGE CLIFTON: All right. Any other views?
14 All right, so if you have come and you intend to speak
15 into the record a prepared statement, I am also very
16 happy to take that testimony in document form as an
17 exhibit. And I would be happy to do that with this
18 statement even before Mr. McBride begins to speak.

19 MR. MARSHALL: Very well, Your Honor, in that
20 case I would ask that a copy, the copies of Mr.
21 McBride's testimony be marked as Exhibit 16.

22 (The document referred to
23 was marked for identification
24 as Exhibit 16.)

25 JUDGE CLIFTON: It shall be so marked. And

1 this is how many pages? Let's see four pages of
2 speaking and then a table. Four pages of writing to be
3 more precise and a table.

4 MR. MARSHALL: Yes, Your Honor.

5 JUDGE CLIFTON: Is there any objection to
6 Exhibit 16, first of all I do have it marked it as 16.
7 Is there any objection to that being admitted?

8 MR. MARSHALL: Would you like that to be
9 received in evidence at that outset?

10 JUDGE CLIFTON: I think so. The reason I
11 would like to know whether it comes in at the beginning
12 is if a witness knows that it is in, then the witness
13 may not need to read it word for word. He may be able,
14 if he wants, to call our attention to specific
15 portions. Now this witness may want to read it word
16 for word. That is fine. But, in some other cases
17 witnesses may not need to if they know it is already in
18 the record as evidence.

19 MR. MARSHALL: Very well, I ask that this be
20 received in evidence as Exhibit 16.

21 JUDGE CLIFTON: Is there any objection?

22 Does anyone wish to voir dire the witness on
23 this exhibit before it is admitted into evidence?

24 No one does and there are no objections.
25 Exhibit 16 is hereby admitted into evidence.

1 (The document referred to,
2 having been previously marked
3 as Exhibit 16 was received in
4 evidence.)

5 MR. MARSHALL: Mr. McBride, I am going to ask
6 you to proceed.

7 JUDGE CLIFTON: I haven't gotten his full name
8 yet. So, would you do that for me, please?

9 MR. MARSHALL: Yes, Your Honor, that would be,
10 my suggestion is Mr. McBride proceed with his
11 testimony, which includes his name and to spell it as
12 requested by the, requested earlier by Her Honor and
13 then proceed to read slowly your testimony so people
14 can follow along with you.

15 DIRECT EXAMINATION OF DANIEL S. MCBRIDE:

16 MR. MCBRIDE: My name is Daniel S. McBride.
17 D-A-N-I-E-L, middle initial S, M-C-B-R-I-D-E.

18 I have prepared testimony on Proposals number
19 1 and number 10.

20 My name is Daniel S. McBride. I am
21 testifying today on behalf of Northwest Dairy
22 Association, which is usually referred to as NDA. My
23 title is Director, Milk Pricing Programs for NDA.
24 I am responsible for coordinating all matters
25 pertaining to Federal Orders and have done so since

1 leaving the Market Administrator's Office to join the
2 NDA staff in 1986.

3 Background information about NDA. NDA is a
4 cooperative association which acts as a handler in both
5 the Pacific Northwest Federal Order, Market Order 124
6 and in the Western Order, Order 135. NDA markets milk
7 on behalf of approximately 600 producers, whose milk is
8 associated with the Pacific Northwest Order and over
9 100 producers associated with the Western Order.
10 Therefore, the provisions being considered at this
11 hearing are of vital interest to NDA.

12 NDA is the parent company of West Farms
13 Foods, which operates many plants in both orders. This
14 includes three bottling plants regulated under Order
15 124, as well as manufacturing plants at Chehalis,
16 Issaquah, Linden and Sunnyside, all in Washington
17 State. And in Order 135, West Foods operates a
18 bottling plant at Boise, an non pool drying plant at
19 Caldwell, Idaho and a non pool condensing at Jerome,
20 Idaho. The Jerome plant is now being expanded into a
21 drying plant.

22 Purpose of Proposals number one and number
23 ten. NDA is the proponent of this hearing's Proposal
24 number one and number ten. They are essentially
25 identical in their intent and their language. Both

1 propose identical new language to the selection of each
2 order, which state qualification of a dairy farmer to
3 be a producer under each order. Both proposals relate
4 to the practice we call double dipping. That is
5 pooling milk under a Federal Order that is also pooled
6 under a state order. California is the only state
7 order known to be used for this purpose. Pooling
8 monies are drawn from both orders. A practice that
9 would not be permitted if a producer were to be
10 otherwise eligible for pooling on two Federal Orders.
11 The result is to obtain greater financial advantage for
12 the organization able to double dip. And hereby, to
13 obtain a competitive advantage for that organization.

14 Almost by definition this practice presents a
15 situation in which disorderly marketing can occur. As
16 producers could theoretically scramble all over each
17 other for the ability to take advantage of this
18 potential windfall. The interesting twist is that at
19 first glance the disorderly conditions would appear to
20 be occurring outside the market area in California.
21 But, upon second glance, it can be seen that the
22 windfall can be used to create competitive advantage
23 within the market area as well. What makes this
24 practice even more permissive is that the milk involves
25 seems never to be actually delivered to the Federal

1 Order marketing area from which additional revenues are
2 drawn, other than to meet the pool qualification
3 requirements. This is done for the sole purpose of
4 shifting revenues for the benefit of a cooperative or
5 for the benefit of producers who take advantage of the
6 scheme.

7 Such milk typically continues to be delivered
8 to plants located near where it is produced rather than
9 being delivered to the market, whose pool is being
10 rated. As we see it, such pooling is artificial
11 because it is pooled only on paper, opportunistically
12 and for reasons related and for no reasons related to
13 service to the affected market.

14 NDA's intent is to implement the concept
15 recently incorporated into the Upper Midwest Federal
16 Order, Order number 130. In the decision the Secretary
17 of Agriculture emphatically and unambiguously concluded
18 that it was inconsistent with Federal Order philosophy
19 for milk to be pooled both on statewide marketing pool,
20 that is outside the Federal Order system and
21 simultaneously on a Federal Order. Similar changes
22 should be made in all Federal Orders as soon as
23 possible. It threatens to undercut political support for
24 the marketing order program, due to the very unfair
25 advantage the practice imposes on producers --

1 MR. MARSHALL: Excuse me, Mr. McBride, excuse
2 me, did you mean disadvantage?

3 MR. MCBRIDE: Yes. It threatens to undercut
4 the political support of marketing, for the marketing
5 order due to the very unfair disadvantage the practice
6 imposes on producers pooled in the target order on
7 which the California milk is loaded.

8 If the Department wishes to have greater
9 consistency in the various order provisions dealing
10 with the issue, NDA would support such modifications of
11 Proposals number 1 and number 10 as the Department
12 feels maybe appropriate to be consistent with the order
13 language of Order 30 and perhaps other orders.

14 We note that the Order 30, Order 30 change,
15 which came out after our proposals were submitted,
16 amend Section 13, which defines producer milk, whereas,
17 we have proposed a change in Section 12, which
18 establishes qualifications to be a producer. Either
19 approach is fine with us.

20 At this time NDA would like to request that
21 official notice be taken of Order 30, of that Order 30
22 recommended decision that was issued on February 14 of
23 this year. That decision appears in Volume 67 of the
24 Federal Register beginning on page 7040. I quote the
25 following which appears on page 7045 at which applies

1 equally well to any other Federal Order.

2 "Since 1960s, the Federal Milk Order Program
3 recognized the harm and disorder that resulted in both
4 producers and handlers when the same milk of a producer
5 was simultaneously pooled on more than one Federal
6 Order. As noted above, producers do not receive uniform
7 minimum prices and handlers receive unfair competitive
8 advantages. The need to prevent double pooling became
9 critically important as distribution areas expanded and
10 orders merged. The issue of California milk already
11 pooled under the state operated program enable to
12 simultaneously pool under a Federal Order, has for all
13 intent and purposes the same undesirable outcomes that
14 Federal Orders once experienced and subsequently
15 corrected. It is clear that the Upper Midwest Order
16 should be amended to prevent the ability of, to pool on
17 more than one order when both orders employ market wide
18 pooling."

19 We request that official notice be taken of
20 the entire decision of its relevance to the present
21 proceedings.

22 MR. MARSHALL: Your Honor, would you like to
23 deal with that official notice matter at this point?

24 JUDGE CLIFTON: Mr. Beshore?

25 MR. BESHORE: I would to make some comments

1 about that request at whatever time is best. I mean,
2 we can do it later on rather than interrupting Mr.
3 McBride's testimony. But, before official notice is
4 taken of that decision, which involves a number of
5 different issues and proposals, etc., I would like to
6 be heard.

7 JUDGE CLIFTON: Before official notice is
8 taken of it?

9 MR. BESHORE: Yes.

10 JUDGE CLIFTON: Okay. I don't understand what
11 needs to be heard before official notice is taken.

12 MR. BESHORE: Well, the decision is published
13 in the Federal Register. It is a tentative decision,
14 okay. DFA has filed exceptions and comments on the
15 tentative decision. We agree with some aspects of it
16 and we do not agree with other aspects of it. Now,
17 typically official notice is taken of final decisions
18 or final rules. Tentative decisions which are subject
19 to change. I mean, certainly it has been published in
20 the Federal Register. It can be referred to, cited,
21 etc. But, I am not sure that what the, I guess, what
22 the significance of taking official notice might be and
23 I don't want there to be any misapprehension that it is
24 a final decision of the Secretary, because it is not.

25 JUDGE CLIFTON: Have your exceptions been

1 published?

2 MR. BESHORE: No, they have been --

3 JUDGE CLIFTON: Or will they be?

4 MR. BESHORE: Well, they will be filed. They
5 have been filed, served with the, you know, upon the
6 Department in the Hearing Clerk's Office as is the
7 procedure for exceptions. They will ultimately be
8 referred and considered and, you know, acted on and a
9 final rule will be issued.

10 JUDGE CLIFTON: But, the only, the only notice
11 in the Federal Register of those might be as they are
12 referred to in the final rule.

13 MR. BESHORE: That is correct.

14 JUDGE CLIFTON: So that might just be a casual
15 comment.

16 MR. BESHORE: I hope it is more than that. I
17 trust it will be more than that. My concern with
18 official noticing, I mean, the decision, the tentative
19 decision, recommended decision is being, you know,
20 cited for, you know, its reasoning and logic. And a
21 tentative decision is the reasoning and logic, etc.,
22 and the tentative decision is not, does not have the
23 same weight as a final decision does, in fact, it may
24 well be materially altered by the time of the final
25 decision. And I don't know that it is appropriate to

1 take official notice of simply tentative actions.

2 JUDGE CLIFTON: Let me ask you, Mr. Beshore,
3 would you be more comfortable if this record were also
4 able to include any exceptions or requests that are
5 part of the official file? And I do not know whether
6 that is possible, but, certainly you could provide
7 yours, but --

8 MR. BESHORE: Yeah, we certainly could. I
9 don't, I don't think that would be the best way to do
10 it because there may be lots of exceptions or comments
11 that really aren't germane in any way. But, there is a
12 second proposal, set of proposals that was addressed in
13 Order 30 proceeding, which is similar to Proposals 2
14 and 9 in this proceeding. And that is, you know, the
15 substance of what our exceptions relate to, and I don't
16 want the decision, being the Order 30 tentative
17 decision, recommended decision being brought into this
18 hearing as in essence, you know, the word on those
19 proposals, which are here again and should be heard on
20 their, fully on their merits here.

21 JUDGE CLIFTON: I understand. Thank you.

22 Mr. Marshall, do you wish to respond to Mr.
23 Beshore's concerns?

24 MR. MARSHALL: Thank you, Your Honor, I would.
25 It is indeed regrettable that our friend,

1 John Vetne, is not here, because he is my -- Do you
2 have an opinion on official notice as a practice that
3 would be helpful at this point? Because I think the
4 issue here is what are we doing when we take official
5 notice of a document. And in my experience, I believe,
6 at various Federal Order hearings in the past, taking
7 official notice of documents for the purpose of
8 alerting, for the sole purpose, I thought, of alerting
9 participants of matters that might be cited in brief or
10 in final, or in comments on a proposed rule. And
11 beyond that, I am not sure there is much here to have
12 controversy about. I would go so far and perhaps this
13 would help Mr. Beshore, as to suggest that any
14 proceeding, excuse me, any further published notice in
15 the Order 30 proceeding, that might be useful to cite
16 in briefs or in comments later on, that might come out
17 between now and such time, should be citable.

18 JUDGE CLIFTON: All right, thank you, Mr.
19 Marshall.

20 Mr. Vetne, would you come forward, please.
21 Your reputation proceeds you. Welcome. How long have
22 you been back there?

23 MR. VETNE: About 20 minutes.

24 JUDGE CLIFTON: Okay. Very good.

25 MR. VETNE: Your Honor, my name is John Vetne,

1 V-E-T-N-E. I am an attorney with a law office in
2 Amesbury, Massachusetts. I will enter my appearance at
3 this point for the Nabisco Foods, Inc. and Glambia
4 Foods, Inc. Both operating manufacturing facilities
5 in Southern Idaho. And I do have an opinion on this
6 question of official notice.

7 Official notice as described in the Rules of
8 Practice pertains to facts such as the weather this
9 morning, such as stock price, things that are not
10 genuinely disputable and come from an authoritative
11 source.

12 The recommended decision is a regulatory
13 administrative fact. My view of the policy statements
14 in the recommended decision or any final decision is
15 that they operate much like a published decision of a
16 court. That is they may be referred to with or
17 without official notice. Facts found in the decision of
18 the Secretary are the kind of facts that are, that are
19 more responsive to the Rules of Practice involving
20 official notice of facts. But, the decision is, is
21 until it is reversed, or changed, a statement of policy
22 by the Department of Agriculture, just as a district
23 court decision is a statement of law or a statement of
24 juridical policy until and unless it is reversed by a
25 court of appeals. And I think it is very important for

1 us to operate in this proceeding with a view at least
2 of what policy we are looking at and the frame of
3 reference expressed in this case, in the recommended
4 decision, particularly those portions of that decision,
5 which Mr. Beshore took strong exception in his, in the
6 post recommended decision briefs. And that is the part
7 that I would really be interested in trying to follow
8 in this proceeding. It is nice to know the rules of a
9 game, before the game is played.

10 So, yes, I agree with official notice.

11 MR. BESHORE: Well, I think the logic of
12 everything John said, which a learned dissertation it
13 was, says that you don't need, you don't need to take
14 official notice of court decisions or anything like
15 that to refer to them. And my concern is that taking
16 official notice and I think this is what he tried to
17 slide in at the end there, taking official notice
18 suggests that facts found in that decision are going to
19 be facts found in this proceeding and that is not
20 appropriate.

21 JUDGE CLIFTON: Any further comments on the
22 issue of whether I should take official notice of the
23 proposed rule change?

24 Mr. Stevens?

25 MR. STEVENS: Your Honor, I would say that it

1 is a document which exists now. It is a document which
2 is subject to change. Official notice can be taken of
3 the document for what it is worth. If it changes in
4 the future, it changes. The practitioners here
5 certainly know that any rule making, any decision of
6 the Secretary is based on the specific rule making
7 proceeding that is involved. And so, decisions are
8 made based on those rule makings and certainly it is
9 appropriate and is done all the time to take official
10 notice of other proceedings at various stages,
11 typically, it is a final decision, but, it wouldn't
12 necessarily have to be so. And, and so I would agree
13 that official notice could be taken of it for what it
14 is worth.

15 JUDGE CLIFTON: All right, thank you. Mr.
16 Marshall, any more comments?

17 MR. MARSHALL: No, Your Honor, it is your
18 decision.

19 JUDGE CLIFTON: All right. Well, generally
20 anything that is published in the Federal Register is
21 something I take notice of. It is helpful and it is
22 useful to refer to that in this shorthand fashion at
23 this stage.

24 A proposed rule change that invites further
25 comment, criticism, clarification is certainly not a

1 final product. But, I do think that anyone who objects
2 to that proposed rule language being adopted here, will
3 need to give us the evidence why not. So, this
4 proponent suggests we take notice of this. So, anyone
5 who is concerned about it, will need to give any
6 evidence to the contrary.

7 So, that, that being the case, I do take
8 notice of what is in the Federal Register. I do take
9 notice of this proposed rule. I am grateful that it
10 has been brought to our attention. It does give us a
11 shorthand way to refer to it. And you have asked me to
12 take official notice, I am a little worried about that
13 label, because we have different ideas of what it
14 means. So, I will just say I take notice of it. And
15 if you would like an adjective, I take administrative
16 notice of it.

17 And it will be easily referred to as part of
18 the evidence presented by this document.

19 MR. MARSHALL: Thank you, Your Honor.

20 JUDGE CLIFTON: You are welcome, Mr. Marshall.

21 MR. MARSHALL: Mr. McBride, do you remember
22 where you were in reading your prepared statement?

23 MR. MCBRIDE: Yes, I do.

24 MR. MARSHALL: Would you please continue?

25 MR. MCBRIDE: Just to clarify our position.

1 NDA is not concerned about milk produced outside the
2 market area that regularly serves the market. For
3 example, we have five members of our cooperative who
4 produce milk in California, whose milk usually goes to
5 the West Farms Bottling Plant in Medford, Oregon.
6 Similarly, we have milk from a group of NDA producers
7 near Cottonwood, Idaho, just south of the Order 124
8 marketing area, that goes to a Class 1 handler in
9 Spokane, Washington.

10 The impact on the Western Order pool. We
11 are not aware of any double dipping presently occurring
12 in the Pacific Northwest Order, but it has become a
13 huge problem in the Western Order. We believe the
14 practice began in November of 2000. Table 1 attached
15 to this testimony shows that NDA's estimate of the
16 dollar impact during calendar year 2001. From the
17 assumptions in our estimates, we compute that over 4.5
18 million dollars was diverted from the Western Order
19 pool, which resulted in a reduction in the producer
20 blend price that averaged 10 cents per hundred weight
21 throughout the entire year. There is no justification
22 for such monies to be removed from the Western Order
23 area. It has been a one sided agreement. We, at NDA,
24 are aware of no compensatory services or delivery of
25 milk from California that would benefit the Western

1 Order in return.

2 Requests for emergency adoption. NDA,
3 hereby, requests that Proposal number 1 and number 10
4 both be adopted on an emergency basis. The evidence in
5 this hearing record demonstrates that the California
6 milk is being double dipped on the Western Order in
7 great quantities.

8 This is the present emergency. I would like
9 to point out that the trend shown in Table 1 is clearly
10 upward with substantially more California milk being
11 pooled on the Western Order after April of last year.

12 Well, we are aware of no such double dipping
13 that is presently occurring in the Pacific Northwest
14 Order, we feel that potential emergency situation
15 exists there as well. For the simple reason that as
16 soon as the loophole is plugged in other orders, the
17 California milk currently being pooled on those orders,
18 will be available for pooling on orders that have not
19 yet had this opportunity corrected.

20 The Pacific Northwest Order adjoins
21 California and is likely and is a likely target for
22 such activity. The potential situation must be
23 corrected as soon as possible.

24 We are aware of no opposition to this
25 proposal. We respectfully request an emergency

1 decision be issued on these two proposals. We do not
2 see a need for an emergency adoption of any other, of
3 any of the other proposals.

4 We appreciate the opportunity to present
5 these proposals. I would be happy to answer any
6 questions.

7 MR. MARSHALL: Your Honor, Mr. McBride is
8 available for cross examination.

9 JUDGE CLIFTON: All right. Does anyone need a
10 little more time to examine Table 1 before we proceed?
11 Is this the first time most of you have seen it? Could
12 your witness just comment on this table for just a
13 moment there, Mr. Marshall.

14 MR. MARSHALL: Please do so, Mr. McBride.

15 MR. MCBRIDE: Well, what I had done is taken
16 the, for the calendar year 2001, the California milk
17 pool, pounds of milk pooled from the Market
18 Administrator's exhibit, I believe it is number six,
19 and then took the Western Order PPD, which is producer
20 price differential and then I computed a value and you
21 know, basically estimate the value based on the pounds,
22 the producer, the PPD value and then I took 10 cents
23 away from that value because of, if you look at the MA
24 exhibit or one of the exhibits, the majority of the
25 milk from California comes from one county that had a

1 \$1.80 differential, I believe, so I had to make an
2 assumption when computing the value. And then, then
3 just calculated the impact on the producer blend price,
4 or the estimated weighted average price for the
5 producers by month.

6 MR. MARSHALL: Your Honor, if there are no
7 other questions about this table at this time, I will
8 be happy to turn Mr. McBride over for cross examination
9 on this table or anything else with respect to which
10 people may have questions.

11 JUDGE CLIFTON: All right, thank you, Mr.
12 Marshall.

13 Who has questions for Mr. McBride? Mr.
14 Beshore?

15 MR. BESHORE: Thank you.

16 CROSS EXAMINATION

17 BY MR. BESHORE:

18 Q Dan, with respect to your comments on page
19 four of your statement, with respect to conditions in
20 the Western Order and in the Northwest Order, that is
21 the paragraph, the second full paragraph that begins
22 "While we are aware of no such double dipping in the
23 Pacific Northwest." Would it be fair to, a fair
24 comment to note that your concern is that it is
25 important to coordinate changes in the pooling

1 provisions of these orders so that you don't just bump
2 the problem from one order to the other, potentially?

3 A Well, not necessarily. I mean, you know,
4 there has been a decision issued on the Upper Midwest.

5 Q I am talking about the Pacific Northwest and
6 Western Order. If I understood your testimony, you are
7 asking for emergency action to be taken on both orders,
8 the Western Order and the Pacific Northwest, correct?

9 A Yes.

10 Q And one reason that you cite for that is
11 that, if I understand it correctly, if the milk, well,
12 there is not currently a problem on the Pacific
13 Northwest Order, if it was not amended at the same time
14 the Western Order was, the problem could move over
15 there.

16 A That is correct.

17 Q Okay. So, that, would it be fair to conclude
18 then that it is important to coordinate the amendment
19 to these orders so that you don't just move the problem
20 from one to the other?

21 A To these, for these two orders.

22 Q For these two orders. And that could apply,
23 of course, in other orders that aren't involved here,
24 the same principal could happen.

25 A That is right.

1 Q Okay. You, on the third page of your
2 Statement 16, you make a clarification of your position
3 and discuss the milk of NDA numbers in California
4 supplying the distributing plant in Medford, Oregon and
5 the Cottonwood, Idaho producers supplying the
6 distributing plant in Spokane, Wisconsin(sic). I
7 wonder -- I am sorry, Spokane, Washington. I wondered
8 why you felt it necessary to clarify your position with
9 respect to those milk movements?

10 A Those producers are pooled, historically,
11 have been associated with the Pacific Northwest Order
12 and are pooled on the Pacific Northwest Order but and
13 are not pooled anywhere else.

14 Q Okay. So, there is not, the California
15 producers, there is no so called double dipping going
16 on with them, correct? And as far as the Idaho
17 producers are concerned, they are delivering to a
18 distributing plant so that there is not any paper
19 pooling going on with respect to those producers,
20 correct?

21 A Correct.

22 Q Okay. So, was this, was this addressed to
23 other proposals in the hearing, hearing notice?

24 A This was addressed pertaining to Proposals 1
25 and 10 and that we have producers at our, you know,

1 located, you know, specifically in California, that are
2 historically associated with the Pacific Northwest
3 market.

4 Q Okay. But, what about the comment about
5 producers in Idaho? I mean, they are not, there is no
6 state order there to double dip or anything. I am just
7 wondering why you made that comment.

8 A Well, it is basically because we had, those
9 are producers in areas that are outside, outside of the
10 marketing area.

11 Q Are you going to make a separate, do you have
12 a position on Proposals 2 and 9?

13 A I have a separate, you know, testimony on
14 Proposals 2 and 9.

15 Q Okay. That you want to give later on, is that
16 what --

17 A Correct.

18 Q Okay. Well, since you commented on these
19 here, do you understand that two and nine would have
20 any impact on these particular movements of milk?

21 A As far as?

22 Q Them being pooled on the orders, in the same
23 way they are today.

24 A It is the intent that they would continue to
25 be pooled and it would not impact anything that is

1 going on right now.

2 MR. MARSHALL: Okay. Thank you.

3 JUDGE CLIFTON: Any additional cross
4 examination for Mr. McBride?

5 Mr. Tosi?

6 CROSS EXAMINATION

7 BY MR. TOSI:

8 Q Mr. McBride, I just want to refer to your
9 Table 1. I would like to refer to Table 1. I just
10 want to make sure with respect to your testimony on the
11 impact to the Western Order because of double dipping.

12 In terms of coming up with value, would you
13 please explain how you determine the dollar value?

14 A What I had done is I took the pounds that
15 were pooled from California, times the Western Order
16 producer price differential, and from that I subtracted
17 10 cents from the producer price differential because
18 of the, I made the assumption that milk was coming from
19 an area that had \$1.80 differential.

20 Q Okay.

21 A Just to come up with an estimated value.

22 Q So, that is not really the impact of double
23 dipping, that is just the value of the milk that was
24 pooled in the Western Order. I think that was from
25 California.

1 A That is the value of, that is the value of
2 the milk that I believe was taken from the, or taken
3 out of the Western Order.

4 Q Would it be in your testimony that the
5 Western Order pool value was reduced by, refer to your
6 figure there in Table 1, that it was reduced by 4.5
7 million dollars over the course of the Year 2001?

8 A I believe that is my testimony.

9 MR. TOSI: Thank you.

10 JUDGE CLIFTON: Does anyone else have
11 questions for Mr. McBride? Mr. Vetne?

12 CROSS EXAMINATION

13 BY MR. VETNE:

14 Q Good afternoon, Mr. McBride.

15 JUDGE CLIFTON: Mr. Vetne, you are too tall
16 for that mike. I don't know whether you can help us,
17 but it will be hard for the people in the back to hear
18 you.

19 UNIDENTIFIED SPEAKER: (Inaudible)

20 JUDGE CLIFTON: Could I have that speaker
21 identified, please?

22 BY MR. VETNE:

23 Q Mr. McBride, the value to the pool that you
24 have here, that is the pool draw to those California
25 producers?

1 A That is the estimated value of the milk that
2 that California milk is associated with.

3 Q Value of PPD, producer price differential.

4 A Yes.

5 Q Okay. And your proposal, as I understand it,
6 is to preclude a pooling double dip, correct?

7 A Correct.

8 Q And is this column under value in Table 1,
9 your estimate of the second dip?

10 A It is the estimate of the value coming out of
11 the Western Order. I am not sure what the producers
12 got paid, whether it is first dip or second dip.

13 Q Okay. It is either the first or the second
14 dip. It is one dip or the other.

15 A You can assume that.

16 Q We are, you are assuming, are you not, in
17 this estimate a value of the Western Order dip, that
18 the pounds that you have tallied as California pounds
19 pooled, were, in fact, pooled and enjoyed a pool
20 payment in California.

21 A That is the assumption.

22 MR. VETNE: Okay. Your Honor, I don't know if
23 official notice was taken of this document. Every
24 month the California Department of Food and Agriculture
25 publishes a document which is posted on the Internet

1 called the "California Dairy Information Bulletin."
2 And I think historical dairy information bulletins are
3 contained in the really thick exhibit, but, current
4 ones have not been. So, I would ask official notice be
5 taken of the California Department of Food and
6 Agriculture Dairy Information Bulletin for 2001 and
7 2002, through the date of briefing.

8 JUDGE CLIFTON: Mr. Vetne, we don't have the
9 data in front of us for the purpose of this hearing.
10 Are you asking that it be available for comment, that
11 it be considered fair game for comment in the briefs?

12 MR. VETNE: Pardon?

13 JUDGE CLIFTON: Are you asking that that data
14 be considered as fair game for comment during the
15 briefs?

16 MR. VETNE: Yes. The data that is published,
17 it is like the Federal Milk Market Statistics. It is
18 numbers and pounds and among other things that come to
19 my mind, that it shows, is that there is a little, if
20 any, milk produced in California that does not
21 participate in the California pool.

22 JUDGE CLIFTON: I see. So, what you would
23 like to do is expand what we have provided to us bound
24 in the Exhibit 14, through the date of the briefing.

25 MR. VETNE: Part of the data in Exhibit 14, I

1 think is the Dairy Information Bulletin. I don't want
2 to expand everything that is in there, but the Dairy
3 Information Bulletin as available, as distributed, and
4 as posted on the California Department of Food and
5 Agriculture Website, yes.

6 JUDGE CLIFTON: All right. Mr. English?

7 MR. ENGLISH: Just to perhaps clarify, Your
8 Honor. Exhibit 14, Tab D is the California
9 Information Bulletin for August 2001. I apologize, I
10 could have updated if I used the same document from the
11 Central Order hearing. At Tab H is the bulletin
12 issued in December of '99. The reason I referenced
13 those, is there is a table on page 10, which is the
14 relevant table, I think, that Mr. Vetne is referring
15 to, and so, the exhibit presently has data from '98,
16 '99, 2000 and 2001 through August. So, I guess what
17 Mr. Vetne basically is asking is to update it from
18 August forward, but, I think that is the data he is
19 really looking for, for production in California, which
20 number is the only pounds of milk that actually leave
21 California and is much less than the total pounds of
22 milk actually pooled on the Western Order.

23 MR. VETNE: Your Honor, almost correct, but
24 that is not the only table.

25 MR. ENGLISH: Okay.

1 MR. VETNE: There is a table immediately above
2 that, that identifies non pooled milk in California.

3 MR. ENGLISH: But, that page 10, it is page 10
4 every month.

5 MR. VETNE: Yes.

6 MR. ENGLISH: So, maybe what you are asking
7 for is page 10, tables 4(a) and 4(b).

8 MR. VETNE: Yeah, maybe, maybe not. I don't
9 want to live into page 10.

10 JUDGE CLIFTON: All right. Let's see if there
11 is any objection to your request, Mr. Vetne. Does
12 anyone object to the use of that data as published by
13 the California Dairy Information Board, is that what it
14 is called?

15 MR. VETNE: Department of Food and
16 Agriculture, it is called the California Dairy
17 Information Bulletin.

18 JUDGE CLIFTON: All right. Is there any
19 objection to the use of that data as it exists through
20 the date of the briefs are prepared? There is none.
21 Your request is granted, Mr. Vetne.

22 MR. VETNE: Thank you, Your Honor.

23 JUDGE CLIFTON: Mr. Vetne, I think they saved
24 two table for you up here in the front.

25 MR. VETNE: I will move up when I get more

1 active. Thank you.

2 JUDGE CLIFTON: Any other questions for Mr.
3 McBride?

4 Any redirect examination of Mr. McBride?

5 All right, thank you. Mr. McBride, will you
6 also remain available?

7 MR. MCBRIDE: Yes.

8 JUDGE CLIFTON: All right. We will expect to
9 see you again. For now you may step down.

10 (Whereupon, the witness was excused.)

11 JUDGE CLIFTON: Mr. Marshall, do you have any
12 other evidence to present in favor of Proposals 1 and
13 10?

14 MR. MARSHALL: No, Your Honor, that is it.

15 JUDGE CLIFTON: All right. Thank you.

16 Now, I would hear other evidence for or
17 against Proposals 1 and 10. Let me ask first, if there
18 is any other evidence in favor of Proposals 1 and 10?
19 Mr. English?

20 MR. ENGLISH: Your Honor, we have Mr. Conover
21 here who has testified in the past on these proposals,
22 but his testimony in this instance is rather limited on
23 Proposal 10, and is actually wrapped up in testimony on
24 other proposals, which have not yet, you know, come to
25 the floor. And we prefer, if it is all right with

1 everyone just to wait, just simply, it is a very short
2 statement about it in support. We are really not
3 ready to put it on, if only because we don't want to
4 cut our testimony up.

5 JUDGE CLIFTON: All right. Thank you, but I
6 am glad to have that notice of it now.

7 Any other evidence that either will be
8 presented now or at some later point in the hearing in
9 favor of Proposal 1 or Proposal 10?

10 Yes, sir.

11 MR. ROWLEY: My name is Greg Rowley. G-R-E-G,
12 R-O-W-L-E-Y. Representing Gossner Foods.

13 Gossner Foods is a small business as defined
14 under the Regulatory Flexibility Act.

15 JUDGE CLIFTON: All right, just a moment.
16 Spell Gossner for me, please?

17 MR. ROWLEY: G-O-S-S-N-E-R.

18 JUDGE CLIFTON: All right. And Mr. Rowley,
19 are you prepared now to make a statement in favor of
20 either of these proposals?

21 MR. ROWLEY: Yes.

22 JUDGE CLIFTON: Would you care to come forward
23 and be sworn in?

24 MR. ROWLEY: Sure.

25 (Pause.)

1 JUDGE CLIFTON: And is your testimony written
2 out?

3 MR. ROWLEY: It is, I don't, it is very brief.

4 JUDGE CLIFTON: All right. And so you would
5 prefer just to have the transcript be the evidence of
6 it?

7 MR. ROWLEY: Yes.

8 JUDGE CLIFTON: All right. Would you raise
9 your right hand, please?
10 Whereupon,

11 GREGORY ROWLEY
12 having been first duly sworn, was called as witness
13 herein and was examined and testified as follows:

14 JUDGE CLIFTON: Thank you. Would you again
15 state your full name?

16 MR. ROWLEY: My full name is Gregory,
17 G-R-E-G-O-R-Y, Rowley, R-O-W-L-E-Y.

18 JUDGE CLIFTON: All right. And what is your
19 capacity with Gossner Foods?

20 MR. ROWLEY: I am vice president.

21 JUDGE CLIFTON: And what is your business
22 address, please?

23 MR. ROWLEY: 1051 North 1000 West, in Logan,
24 L-O-G-A-N.

25 JUDGE CLIFTON: All right, that is Utah.

1 MR. ROWLEY: That is Utah.

2 JUDGE CLIFTON: All right. Anything further
3 to identify yourself before you present your statement?

4 MR. ROWLEY: No.

5 JUDGE CLIFTON: All right, you may proceed.

6 Thank you, Mr. Rowley.

7 MR. ROWLEY: Thank you.

8 DIRECT EXAMINATION OF GREG ROWLEY:

9 MR. ROWLEY: Gossner Foods is a small business
10 as defined under the Regulatory Flexibility Act and as
11 such stands to be seriously impacted by several of the
12 proposed regulatory changes to the Western Federal Milk
13 Order. It is the purpose of my comments to define the
14 impact of each of proposed changes will have upon the
15 operation of our business and state our position
16 regarding their implementation.

17 Specifically, regarding Proposal 10. This
18 proposal seeks to eliminate double dipping. We are in
19 favor of this proposal. We have been unable to obtain
20 calculations from the Market Administrator's Office
21 regarding the financial impact of implementing this
22 proposal, but feel that it will be to the benefit of
23 the producers in the order. We would be interested in
24 that information about to what that financial impact
25 would be of eliminating double dipping.

1 JUDGE CLIFTON: All right, thank you.
2 Does anyone have any questions of Mr. Rowley?
3 Mr. Tosi?

4 CROSS EXAMINATION

5 BY MR. TOSI:

6 Q Thank you, Mr. Rowley. Would it be your
7 testimony that the Department treat the double dipping
8 issue on an emergency basis and make a recommended
9 decision?

10 A I don't think we have an opinion on emergency
11 versus non emergency.

12 MR. TOSI: Thank you.

13 JUDGE CLIFTON: Any other questions of Mr.
14 Rowley?

15 All right, and you will also have testimony
16 on some of the other proposals?

17 MR. ROWLEY: Yes.

18 JUDGE CLIFTON: Very fine. Thank you. You
19 may step down.

20 (Whereupon, the witness was excused.)

21 JUDGE CLIFTON: I would ask all of you,
22 whether you are a witness or have merely made an
23 appearance at the microphone, if you had not yet given
24 the Court Reporter your business card and you have one,
25 if you would please do that at some time that you find

1 convenient.

2 All right, any other testimony on behalf of
3 Proposals 1 or 10?

4 Yes, sir?

5 MR. RADMALL: My name is Greg Radmall,
6 G-R-E-G, R-A-D-M-A-L-L. I am the manager for the Utah
7 Dairymen's Association. I believe tomorrow morning
8 Commissioner Petersen and his statement will have a
9 statement on Proposition 10. So, I just wanted to
10 alert you to that.

11 JUDGE CLIFTON: All right, and is that the
12 gentleman that we will have at nine in the morning?

13 MR. RADMALL: Yes, it is.

14 JUDGE CLIFTON: All right. Very good. Thank
15 you.

16 Mr. Beshore?

17 MR. BESHORE: Yes. Mr. Hollon has some brief
18 testimony on Proposals 1 and 10. It is bundled with
19 his testimony in support of Proposals 2 and 9. So, he
20 is, you know, we are ready to go forward with that at
21 any time. However, if this might be the appropriate
22 time, there are two dairy farmers from Utah, who are
23 here today, who would like to be able to testify today
24 and who I think it would be appropriate to hear from,
25 you know, at a convenient time. And I am suggesting if

1 there are no other, if there is no other testimony
2 right now, just on one and ten, this would probably be
3 an appropriate time to hear from Mr. Bateman and then
4 Mr. Reman.

5 JUDGE CLIFTON: All right, Mr. Beshore, thank
6 you. Let me find out first if there is any testimony
7 in opposition to the Proposals 1 or 10?

8 I see no one indicating any opposition.

9 Let's take a 10, well, yeah, let's take about
10 a 10 minute break and then I would like to hear from
11 the two dairy farmers. So, please be back and ready to
12 go at 2:35.

13 (Whereupon, a short recess was taken.)

14 JUDGE CLIFTON: Back on the record.

15 We are back on the record at 2:37. Mr.
16 Bateman, would you come forward, please.

17 (Pause.)

18 JUDGE CLIFTON: Welcome, please be seated.

19 Mr. Bateman, would you state your full name
20 and spell your names for us, please?

21 MR. BATEMAN: My name is Brad Bateman.
22 B-R-A-D, B-A-T-E-M-A-N.

23 JUDGE CLIFTON: All right, sir, would you
24 raise your right hand, please, so that you might be
25 sworn in.

1 Whereupon,

2 BRAD BATEMAN

3 having been first duly sworn, was called as witness
4 herein and was examined and testified as follows:

5 JUDGE CLIFTON: Thank you.

6 Mr. Bateman, I have a copy of your written
7 statement. I would like to mark that as an exhibit. I
8 believe that would be Exhibit 17.

9 (The document referred to
10 was marked for identification
11 as Exhibit 17.)

12 JUDGE CLIFTON: And Mr. Bateman, do you intend
13 to read this into the record today?

14 MR. BATEMAN: Yes.

15 JUDGE CLIFTON: All right. Mr. Beshore?

16 MR. BESHORE: Yes, we have provided the
17 Reporter with copies of the proposed Exhibit 17 and I
18 have a few, a few more copies. I have distributed a
19 few of them around the room. I have a few more for
20 folks who may wish a copy and Mr. Bateman can proceed
21 at that time.

22 JUDGE CLIFTON: All right, good. If you would
23 like a copy of Mr. Bateman's statement, would you raise
24 your hand, please, so Mr. Beshore may distribute it to
25 you.

1 (Pause.)

2 JUDGE CLIFTON: All right, and what I would
3 like to do, is I would like to have this admitted into
4 evidence before the witness reads it. So, I would like
5 you to take a moment to look at it and if anyone would
6 like to voir dire the witness about it, you may.

7 (Pause.)

8 JUDGE CLIFTON: Does anyone wish to voir dire
9 the witness about his statement?

10 Is there any objection to the admission into
11 evidence of Exhibit 17?

12 There being none, Exhibit 17 is hereby
13 admitted into evidence.

14 (The document referred to,
15 having been previously marked
16 as Exhibit 17 was received in
17 evidence.)

18 JUDGE CLIFTON: Mr. Bateman, you may proceed.

19 MR. BATEMAN: Thank you.

20 DIRECT TESTIMONY OF BRAD BATEMAN:

21 MR. BATEMAN: I appreciate the opportunity to
22 present testimony on behalf of Utah Dairy Farmers and
23 my third generation family farm. My name is Brad
24 Bateman. And along with my Dad and three brothers, I
25 farm in Utah County, a little over an hour south of

1 Salt Lake City.

2 As a result of the Farm Bill of 1996, and
3 with the stroke of the bureaucratic pen, Utah dairy
4 farmers have fallen victim to the Federal Government
5 once again. The Utah Dairymen's Association and other
6 farm related groups lobbied heavily to the fact that
7 Utah dairy farmers and Idaho dairy farmers are
8 producing milk for two different markets.

9 The Idaho Dairymen for cheese or
10 manufacturing market and the Utah Dairymen with over 50
11 percent Class 1 utilization in 1999 and an increasingly
12 population along the Wasnet front are and will produce
13 milk for a fluid market. Utah and Idaho should never
14 have been merged together in the new Western Order.

15 Having even a more devastating consequences
16 are the practically non existed performance standards
17 of pooling that we argued against. Of course, as we
18 know, the facts fell on death ears or could it have
19 been because the past president finished third in the
20 State of Utah, and along with the Escalante Grant
21 Staircase National Monument was democratic payback.

22 The economic losses to dairy producers in
23 rural Utah have been enormous. I only know the effect
24 it has had on my own family farm, but can only imagine
25 the struggles that have dairymen in the state have had.

1 The number of dairy farms that have gone out of
2 business in the last few years should send a signal
3 that something is amiss.

4 I know that there will always be dairy
5 farmers who will go out of business for one reason or
6 another, but the bottom line is the bottom line and if
7 we are financially strong and making money, how many
8 dairymen would willingly choose to exit the business?

9 Because of Order Reform, our price in Utah
10 has been altered significantly. First, consider that
11 in 1999 the Great Basin Order, number 139, averaged
12 50.96 percent Class 1 utilization. After Order Reform,
13 in February of 2002, we were down to 17.35 percent
14 Class 1 utilization. That is a 64 cents per cut weight
15 change on just that one issue alone.

16 We, therefore --

17 JUDGE CLIFTON: But, just let me ask you.
18 That is a 64 cents per hundred weight change? Is that
19 is what is meant there?

20 MR. BATEMAN: Yes.

21 JUDGE CLIFTON: Okay. Thank you. Go ahead.

22 MR. BATEMAN: We, therefore, support the
23 proposed changes in Order 135 proposed by DFA, numbers
24 three through nine. We would ask the Department to
25 please do the right thing and change the amount of milk

1 eligible for diversion to 70 percent and to tighten the
2 pooling provisions in Order 135. We all know that a
3 large part of the milk in Idaho never was intended to
4 be associated with the Class 1 market or to be
5 reserved.

6 If the Federal Milk Marketing Order system
7 cannot be sensitive to certain geographic situations,
8 and concerns, but punish or reward producers because
9 they happen to be in that area, encompassed by the map,
10 then perhaps the Federal Order system has run its
11 course and it is time for a change.

12 Thank you.

13 JUDGE CLIFTON: Thank you, Mr. Bateman.
14 Please remain seated and we will see if anyone has any
15 questions for you.

16 Mr. Beshore, do you have any questions for
17 Mr. Bateman?

18 MR. BESHORE: No, not at this time, Your
19 Honor.

20 JUDGE CLIFTON: All right. Are there any
21 cross examination questions for Mr. Bateman?

22 It appears there are none.

23 Mr. Bateman, thank you.

24 (Whereupon, the witness was excused.)

25 JUDGE CLIFTON: It has been called to my

1 attention that there are others who may wish to testify
2 for or against Proposals 1 or 10, who may not have
3 arrived yet for the hearing. Maybe present at later
4 times. And they certainly will be granted an
5 opportunity to speak, when they are available. By
6 asking whether there is any more evidence for or
7 against these proposals, I do not mean to foreclose
8 additional evidence at later points in the hearing.

9 Mr. Beshore, with regard to the other dairy
10 farmers, could you tell me when they might want to
11 testify?

12 MR. BESHORE: There are at least four other
13 witnesses, I think, who would be prepared to testify
14 tomorrow morning, after the Commissioner of Agriculture
15 testifies. And I think their testimony would go well at
16 the same time and they are able to stay and be here
17 tomorrow or come back.

18 JUDGE CLIFTON: All right, thank you.

19 Mr. Beshore?

20 MR. BESHORE: Yes, are we ready then for Mr.
21 Hollon or are there other?

22 JUDGE CLIFTON: I think this would be a good
23 time for Mr. Hollon. Now, he will testify not only
24 about one and ten but also about two and nine?

25 MR. BESHORE: Yes.

1 JUDGE CLIFTON: All right, good. You may
2 proceed.

3 MR. BESHORE: Your Honor, there are two
4 exhibits, which I would like to have marked for
5 identification and received as appropriate in
6 connection with Mr. Hollon's testimony.

7 The one, the first document is his statement,
8 which is 17 pages in length, with a cover page. And I
9 would ask that that be marked as Exhibit 18 or proposed
10 Exhibit 18.

11 The second exhibit is a cover page with four
12 additional pages, numbered as Tables 1 through 4. The
13 title of the document is Exhibits Concerning Proposals
14 1, 2, 9 and 10. And I would ask that that be marked
15 as proposed Exhibit 19.

16 JUDGE CLIFTON: Thank you, Mr. Beshore. They
17 will be so marked.

18 (The documents referred to
19 were marked for identification
20 as Exhibit 18 and 19.)

21 MR. BESHORE: They have been provided to the
22 Court Reporter also.

23 (Pause.)

24 JUDGE CLIFTON: And have you been able to
25 distribute these to interested parties.

1 MR. BESHORE: They are available and are being
2 distributed to those who do not already have them.

3 JUDGE CLIFTON: All right. Good. Let's go
4 off the record for just a moment while that proceeds.

5 (Off the record.)

6 JUDGE CLIFTON: We are back on record at 2:49.

7 Mr. Hollon, would you state your full name
8 and spell your names for the record?

9 MR. HOLLON: Elvin, E-L-V-I-N. Hollon,
10 H-O-L-L-O-N.

11 JUDGE CLIFTON: All right, will you raise your
12 right hand, please.

13 Whereupon,

14 ELVIN HOLLON

15 having been first duly sworn, was called as witness
16 herein and was examined and testified as follows:

17 JUDGE CLIFTON: Thank you.

18 Mr. Beshore, you may proceed.

19 MR. BESHORE: Thank you, Your Honor.

20 DIRECT EXAMINATION

21 BY MR. BESHORE:

22 Q Before you begin with your prepared
23 statement, could you give us a brief description of
24 your professional education and background.

25 A I have a Bachelor of Science Degree in how to

1 make cheese and ice cream from Louisiana State
2 University and a Master's in Agricultural Economics. I
3 have worked for Dairy Farmers of America or its
4 predecessor since 1979. Over that time period my day
5 to day job duties have included economic analysis,
6 collection of marketing and supply demand data, making
7 forecast with regards to the dairy industry. I have
8 been involved in buying milk, selling milk, doing
9 projections for demand, supply, worked with Federal
10 Milk Marketing orders, worked with each of the Market
11 Administrator offices. I have appeared in hearings,
12 prepared testimony and data. Been cross examined. And
13 I have spent my time in the day to day marketplace for
14 10 or 12 years in the Upper Midwest Market. And in
15 the, my career has taken me to corporate offices in
16 Kansas City and San Antonio, and day to day business
17 offices in Arlington, Texas and Schaumburg, Illinois.

18 Q And what position to you presently hold with
19 Dairy Farmers of America and what you are your
20 responsibilities in that position?

21 A My current position is the Director for Fluid
22 Marketing and Economic Analysis. And in that, my day
23 to day duties involve tracking data pertinent to the
24 dairy industry, working with Dairy Farmers of America's
25 day to day milk marketing activities between its Fluid

1 Operating Councils. I work with Federal Order hearing.
2 And our structure decisions about hearings flow from
3 the Council level up to the corporate offices and into
4 the hearing process and I coordinate that. I prepare
5 testimony, I prepare data, I prepare evidence. I work
6 with other industry persons to try to achieve some type
7 of consensus where possible. I present that data,
8 work on the briefs, etc.

9 Q Okay. And that involves DFA's operations on a
10 nationwide basis.

11 A That is correct.

12 Q Okay. Have you testified previously in
13 Federal Order hearings and have been accepted as an
14 expert for those purposes?

15 A I have.

16 MR. BESHORE: Okay. I would offer Mr. Hollon's
17 testimony as an expert in agriculture economics in milk
18 marketing.

19 JUDGE CLIFTON: Would anyone like to voir dire
20 the witness about his qualifications before I rule on
21 whether to accept him as an expert?

22 Is there any objection to his being accepted
23 as an expert in the field of agricultural economics in
24 milk marketing?

25 There being none, I hereby accept Mr. Hollon

1 as an expert in agricultural economics in the field
2 milk marketing.

3 MR. HOLLON: Thanks.

4 JUDGE CLIFTON: You are welcome. It is not
5 the first time, is it?

6 MR. HOLLON: That is true.

7 JUDGE CLIFTON: I would like to have the
8 exhibits received into evidence before the witness
9 begins to testify from them.

10 Is there any objection to the admission into
11 evidence of Mr. Hollon's statement, which has been
12 marked as Exhibit 18?

13 There being none, Exhibit 18 is hereby
14 admitted into evidence.

15 (The document referred to,
16 having been previously marked
17 as Exhibit 18 was received in
18 evidence.)

19 JUDGE CLIFTON: Is there any objection to the
20 admission into evidence of the exhibits, which have
21 been marked as Exhibit 19?

22 There being none, Exhibit 19 is hereby
23 admitted into evidence.

24

25

1 (The document referred to,
2 having been previously marked
3 as Exhibit 19 was received in
4 evidence.)

5 JUDGE CLIFTON: Mr. Beshore.

6 BY MR. BESHORE:

7 Q Yes, with that, Mr. Hollon, would you proceed
8 with your statement regarding Proposals 1, 2, 9 and 10.

9 A Do you want me to go through the statement
10 first or go to the exhibits first?

11 Q Well, I think, I think we will pick up the
12 exhibits with some additional clarification after your
13 statement. They are relatively self explanatory, I
14 think.

15 A Dairy Farmers of America, DFA, is a member
16 owned cooperative of 14,964 farms that produced milk in
17 45 states. DFA pools milk on 10 of the 11 Federal Milk
18 Marketing Orders including the Western Order. DFA
19 members represent approximately 40 percent of the milk
20 pooled on the Western Order.

21 DFA is a supporter of Federal Milk Marketing
22 Orders and we believe that they are a benefit to dairy
23 farmers' economic livelihood. Federal Orders are an
24 economically proven marketing tool for dairy farmers.
25 The central issue of this hearing, providing for

1 orderly marketing and economically justifying the
2 appropriate performance qualifications for sharing the
3 market wide pool proceeds is the heart of the Federal
4 Order system. If this issue is not addressed properly
5 system wide, orders will be jeopardized. That would be
6 detrimental to all DFA members, both in their day to
7 day dairy farm enterprises and for the milk processing
8 investments that they have made.

9 Summary of proposals for this hearing. We
10 have an interest in the proposals being heard at this
11 hearing and are proponents of Proposals three through
12 nine. Proposals three, four, six and seven deal with
13 our concern that performance standards in the Western
14 Order are too permissive. These standards are causing
15 such a reduction in the blend price, that milk
16 production in the geographic area of the order for
17 Class 1 sales are the greatest, is declining at an
18 alarming rate. As this occurs, the cost to serve the
19 market increase and will ultimately drive up consumer
20 costs.

21 Proposal 6 deals with this directly by
22 reducing the amount of milk that can be pooled by
23 handler on the order.

24 Proposals 3, 4 and 7 support the desired
25 action called by Proposal 6.

1 Proposal 8 addresses a situation where the
2 cost of serving the Class 1 market is being borne
3 disproportionately in the market. Specifically, we seek
4 to have all producers bear a greater share of the cost
5 of assembling and balancing the Class 1 supply and also
6 bear a greater proportion of the costs of transporting
7 milk to Class 1 handlers.

8 Proposals 9 and 10 deal with the open pooling
9 of large volumes of milk from locations distant to the
10 market. Milk distant to the market needs to have
11 additional performance requirements that are workable
12 and consistent system wide with federal order policy.
13 We advance Proposal 9 and have no opposition to
14 Proposal 10 and would not oppose the Secretary adopting
15 it in addition to our own proposal.

16 Proposals 1 and 2 address similar concerns in
17 Federal Order 124. We have the same position there as
18 we take in Order 135.

19 Proposal 6, 11, 12, 13 and 14 deal with the
20 priority bulk tank handler provisions. It should be 5,
21 11, 12. Which cause severe --

22 JUDGE CLIFTON: Let's just take a moment. I
23 want to make sure that that change is clear in the
24 record. You are at the top of page two.

25 MR. HOLLON: Yes, Ma'am.

1 JUDGE CLIFTON: Of Exhibit 18, and you are
2 telling me that the beginning of that page should read
3 how?

4 MR. HOLLON: Proposals 5, 11, 12, 13 and 14.

5 JUDGE CLIFTON: Thank you.

6 MR. HOLLON: Deal with the priority bulk tank
7 handler provisions, which cause severe concerns in the
8 market. A simple measure of the level of concern is
9 to note that this issue generated five different
10 proposals. The most of any issue to be heard.

11 The concern here is the ability of the
12 industry to be certain that all handlers are paying
13 minimum prices. Our position is to eliminate the
14 provision altogether. We feel any and all milk
15 supplies that perform in pool on the order, can easily
16 be accommodated within the remaining provisions and not
17 cause any concerns as to minimum payments.

18 Proposal 15 is an attempt to clarify the
19 dairy farmers for other market provisions and we
20 support the intent of this proposal.

21 Proposal 16 is an attempt to clarify the
22 ability of handlers to divert milk from the market. We
23 support the intent of this proposal.

24 With regard to all proposals, the testimony
25 and evidence that will be entered to support them.

1 There will be attention between the desire of each
2 party to ask questions about the data presented and the
3 confidentiality of such information to each individual
4 business entity. We respect each party, included
5 ourselves, to decide what those limits ought to be and
6 how to proceed accordingly.

7 Proposals 1, 2, 9 and 10. With regard to
8 Proposals 1 and 2 and 9 and 10, we note that the
9 underlying issue is not just a local 135 issue. We
10 have concerns identical to those expressed by other
11 proponents here in the Central, Mideast, Upper Midwest
12 and Pacific Northwest Federal Orders. There are
13 volumes of milk being pooled but not performing in the
14 market in a reasonable manner. We find this practice
15 detrimental to our members, our customers and the
16 entire Federal Order system.

17 Organizations including DFA have moved
18 quickly to take advantage of those changes in the Order
19 Rules effective January 1, 2000. Indeed, in the
20 competitive dairy economy, if a competitive makes a
21 pooling decision that results in increase funds, one
22 must attempt to do the same or face a more difficult
23 competitive position. Individual organizations can
24 only unilaterally disarm at their own peril. It is our
25 responsibility to maximize all of the opportunities

1 afforded by the Order System to secure funds for DFA
2 members.

3 This said, we think this process of extensive
4 distant market open pooling is inconsistent with
5 Federal Order policy and clearly dispares in the Reform
6 record. We have presented proposals and testimony
7 supporting our proposals in hearings held in the Upper
8 Midwest, Mideast and Central Orders. We are seeking
9 solutions that are consistent and in line with Federal
10 Order principal system wide.

11 The key issues, however, in our view, is not
12 the simplistically posed banning of double dipping.
13 What needs to be determine is what level of performance
14 should be required to share in the blend price.
15 Opponents of our proposal characterize it as pooling by
16 zip code. This characterization is an attempt to
17 divert attention from the real issue of requiring
18 performance to define pooling. It is not important
19 where non performing milk originates, but that all milk
20 meets reasonable and fair performance standards if it
21 is to share in the blend price.

22 DFA members and their non DFA member
23 neighbors, or DFA member neighbors, as they investigate
24 why their blend prices is lower than they expect,
25 ultimately discover that the utilization on their order

1 is lower than it used to be. They soon figure out
2 that large volumes of milk are being pooled on the
3 order but rarely, if ever, perform for the order as
4 their milk does. They question the fairness and equity
5 of this practice. We note that they question not only
6 DFA staff, but also Dairy Program Staff persons. The
7 Market Administrator's Orders 1, 5, 7, 30, 32, 33, 124
8 and 135 have all related similar discussions with
9 producers about this topic to me.

10 Producers questions become even more
11 difficult to answer when they come to understand that
12 if the order would not in place, these non performing
13 milk supplies would likely not supply the market,
14 because they could so only at a negative or low return.
15 They have asked enough questions to understand double
16 dipping, knowing that it means drawing funds from both
17 Federal Order pool and the California State Order pool
18 at the same time on the same volume of milk. They
19 have noted to us that this sounds like getting paid
20 twice, but coming to work once. They agree with our
21 view that it is basically unfair and should be
22 corrected.

23 Producers have also come to realize that milk
24 which pools without performing is like getting paid,
25 but never coming to work at all. And that they tell us

1 even bigger and more widespread problem than double
2 dipping and deserves to be corrected. They ask us why
3 the Secretary seems to ignore this in the Order 30
4 decision and we cannot provide a reasonable answer.
5 Frequently, they see the solution to the issue as
6 having no order at all.

7 Our customers ask about local milk supplies
8 going out of business or seeking other markets where
9 the blend price is higher. They have come to
10 understand that blend prices at home are lower because
11 there is a lot of milk being pooled on the order that
12 doesn't perform and did not used to be there.

13 Our customers are beginning to understand
14 that the supply to replace the local milk that goes out
15 of business or to the customer in the adjoining order,
16 will come from further away and cost more to deliver.
17 This means either consumer costs go up or their margins
18 go down. As they investigate the details, they, too,
19 realize that much of this non performing milk would
20 never move in the manner that it does, absent an order,
21 due to negative or poor returns and that the problems
22 it causes would not occur. So, they, too, ask why do
23 we need the order.

24 From a regulatory perspective, the central
25 issue in each case is the interface between the pricing

1 surface, altered by Federal Order Reform and the
2 pooling provisions found in each order. To deny this
3 is to ignore the facts. Those relationships were
4 changed by reform. The length between performance and
5 pooling was altered and needs review. The reform
6 decision noted that all, noted that although not
7 required by the 1996 Farm Bill, the legislation
8 provided authorization for the Secretary to review the
9 Class 1 price structure as part of the consolidation of
10 the orders, including the consideration of utilization
11 rates and multiple base points in developing a pricing
12 system. In any event, the consolidation of orders
13 requires the review of the pricing system because
14 historically, Class 1 pricing provisions as well as
15 other Federal Order provisions had been reviewed
16 primarily on an individual market basis.

17 The reform effort provides the opportunity to
18 consider and establish a nationally coordinated Class 1
19 price surface, that uses location adjustments to the
20 differential levels to price milk for fluid use in
21 every county in the United States.

22 That citation is 63 Federal Register 16108,
23 April 2, 1999.

24 This discussion accompanies the discussion on
25 the Class 1 pricing structure and notes the

1 authorization and instruction provided by Congress to
2 the Secretary. We agree that with regard to the Class
3 1 pricing surface established by Reform, the
4 relationships between milk buyers is well structured
5 and meets the criteria intended. However, this pricing
6 surface also has a relationship to producer blend
7 prices, and herein, is the disconnect. Many of the
8 formal orders recognize the relationship of distance to
9 market and the value of milk and we find nowhere in the
10 record any directions from Congress to change those
11 relationships and no explanation by the Secretary for
12 the results that have accrued from the interface of
13 this price surface with the more permissive pooling
14 provisions. Indeed, had these types of results been
15 detailed in the pre final reform decisions submitted to
16 the industry, for comment by the Secretary, the
17 industry would have argued against them just as loudly
18 as it is now.

19 Provisions generally termed zone out pricing
20 were part of many orders prior to Reform. In the
21 former Great Basin Order, Sections 1139.52 describe the
22 construction of the zone outs. And how milk values
23 were reduced based on the distance away from the zones
24 specified in Paragraph A of this section. Section
25 139.75 describes the interface between these distance

1 related pricing reductions and the payments for milk
2 clearly linking the relationship between distance and
3 milk value. In all cases, the price relationship
4 between milk produced within the order boundary and
5 that from outside the order boundary, was affected by a
6 formula that reduced the producer price in a direct
7 relationship to the distance from the market.

8 This pattern is no different within the order
9 boundaries as milk more distance from consumption
10 centers has a lower value. In the Western Order milk
11 supplies in Idaho carry a differential of \$1.60 versus
12 a \$1.90 in the consumption center of Salt Lake City.
13 No one complains about this because it is well rooted
14 in economic theory and has been accepted Federal Order
15 practice to recognize the location value of milk.

16 The following statements taken from the final
17 rule seem to reflect this thought also. Because milk
18 value varies by location, it is appropriate in using a
19 classified pricing plan to establish Class 1 prices
20 that reflect these location value differences.

21 Sixty three Federal Register, 1617, April 2, 1999.

22 The final rule went onto develop specific
23 criteria to determine whether or not the Class 1
24 pricing surface met the objective. However, without
25 any substantial discussion, the resulting price surface

1 was applied to producer blend prices. When the Class 1
2 criteria are reviewed as criteria for producer location
3 prices, the problems are clear. The Class 1 criteria
4 used were. Finally, a Class 1 price surface must meet
5 the requirements of the AAMA. The broad tenant of the
6 AAMA is to establish and maintain orderly marketing
7 conditions. For the Federal Milk Order Program this is
8 achieved primarily through classified pricing and
9 pooling. With regard to pricing, it is recognized that
10 the objective of the AAMA is to stabilize the market
11 place with minimum prices not to set market prices.

12 JUDGE CLIFTON: Let me just ask you. The
13 acronym AAMA is what you are referring to at least
14 three times so far in this paragraph. And that is
15 stands for?

16 MR. HOLLON: Agricultural Marketing Agreement
17 Act.

18 JUDGE CLIFTON: All right. And the first
19 phrase there, where it says finally a Class 1 price
20 structure. I think you said surface.

21 MR. HOLLON: Oh.

22 JUDGE CLIFTON: But, structure is the intended
23 word.

24 MR. HOLLON: Is the quoted word, that is
25 correct.

1 JUDGE CLIFTON: All right, thank you.

2 MR. HOLLON: Where did I stop?

3 JUDGE CLIFTON: Begin with the bold.

4 MR. HOLLON: The pricing criteria of the AAMA,
5 sections --

6 JUDGE CLIFTON: Of the -- Of the --

7 MR. HOLLON: Agricultural Marketing Agreement
8 Act.

9 JUDGE CLIFTON: Okay. And the initials are?

10 MR. HOLLON: A, oh, AMAA.

11 JUDGE CLIFTON: Okay.

12 MR. HOLLON: Okay. Thank you.

13 Section 608(c)(18) requires prices that are
14 reflective of economic conditions affecting supply and
15 demand for milk and its products. In this regard,
16 consideration was given to whether the proposed prices
17 would generate sufficient revenue for producers
18 necessary to maintain an adequate supply of milk.
19 Equally, important the prices need to provide equity to
20 handlers with regard to raw product costs as required
21 by Section 608(C)(5) of the AMAA. Emphasis is added.

22 Evaluation criteria. In evaluating the final
23 Class 1 price options, nine performance criteria based
24 upon regulatory objectives and requirements of the AMAA
25 were again used as they were in the -- I am not sure

1 what that is suppose to be.

2 MR. STEVENS: Proposed rule.

3 MR. HOLLON: Proposed rule.

4 The evaluation criteria are divided into two
5 categories objective and administrative. The objective
6 criteria are as follows:

7 (1) Ensure an adequate supply of milk for
8 fluid use. Class 1 price levels need to maintain a
9 sufficient price signal to maintain an adequate supply
10 of milk for fluid use. This supply level can be
11 achieved through either the movement of milk to where
12 it is needed, increased production or some combination
13 of both.

14 (2) Recognize quality Grade A value of milk.
15 Grade A milk is required for fluid use. Additional
16 cost of obtaining and maintaining Grade A status need
17 to be reflected in Class 1 prices.

18 (3) Provide appropriate market signals. A
19 Class 1 price should send timely statements to the
20 market regarding supply, demand conditions.

21 (4) Recognize value of milk at location.
22 Basic economic theory validated by actual market
23 observations and university based research affirms that
24 milk for Class 1 use has a different value at different
25 locations. This value needs to be reflected in the

1 Class 1 price surface in order for the system to
2 recognize and reassemble the market rather than
3 interfere with the market.

4 Facilitate orderly marketing with coordinated
5 system of prices. A system of Class 1 prices needs to
6 be coordinate on a national level. Appropriate level
7 of prices will provide alignment both within and among
8 marketing conditions. This coordination is necessary
9 for the efficient and orderly marketing of milk.

10 (6) Recognize handler equity with regard to
11 raw product costs. Appropriate levels of Class 1
12 price provide known and visual prices at all locations,
13 thereby, ensuring that handlers are able to compete for
14 available milk supplies on an equitable basis. 63
15 Federal Register 16109 through 16110, April 2, 1999.

16 We would hold that Criteria three, four and
17 six, do not meet the test for producer location prices.
18 With regard to Criteria 3, an appropriate market
19 pricing signal, we would contend that producers are
20 responding to low prices by going out of business.
21 The ultimate production cutback. However, the low
22 price they are responding to, the price derived from
23 their order return, is one that is artificially
24 depressed by an over supply of milk pools on the order,
25 that would not be there, except for the change in the

1 price surface instituted by Reform and the overly
2 permissive pooling requirements that accompanied it.
3 No objective review of market conditions can term this
4 an appropriate price signal.

5 This is exactly the situation describes in
6 the tentative final decision for Order 30. However,
7 it is just as necessary to safeguard against excessive
8 supplies becoming associated with the market through
9 the diversion process. Associating more milk than is
10 actually part of the diverting plant's milk supply,
11 only serves to reduce the potential blend price paid to
12 dairy farms. 67 Federal Register 7051.

13 No one can deny that blend prices in the
14 Upper Midwest, Mideast, Central, Pacific Northwest and
15 Western Orders have been lowered since the inception of
16 Federal Order Reform by milk pooled on the order that
17 is not an actual part of the diverting plant's milk
18 supply. To this extent, Criteria 3 is not being met
19 by the current operation of the Reform Orders.

20 Criteria 4 states that the pricing surface
21 should recognize the value of milk at location. Again,
22 from the perspective of handler prices, covered by
23 Criteria 5, we think the criteria are satisfied. But,
24 from the standpoint of producer prices, it fails
25 mightily. Milk that is nearby to the market has a

1 greater value than milk far away. It can deliver
2 sooner and at less cost. It is likely, it is likely
3 to meet freshness and quality considerations better and
4 carries a lower balancing cost. It also has the
5 intangible value of being from local farms and that has
6 consumer appeal.

7 There can be no denying that the current
8 producer prices do not recognize this factor. The
9 order assigns an absolute value to a milk supply, the
10 relationship between the two county differentials.
11 But, the real world truth is that a milk supply has a
12 relative value, and one of those relative values is the
13 distance between the production point and the
14 processing point. Every order recognizes this as there
15 are differentials within the order based on mileage
16 between production and processing locations. The
17 detailed explanations of the models used in the Reform
18 process that underlie the price surface are
19 mathematical derivations of these distant equations.
20 The value to a Salt Lake City processor of milk
21 produced from farms in Utah is greater than that of
22 milk produced in California.

23 The same is true for milk buyers in
24 Minneapolis and milk supplies in California or milk
25 buyers in Columbus, Ohio and milk supplies in

1 Wisconsin. The difference in these values in most
2 cases is far more than the difference in the Class 1
3 differentials in the pricing surface.

4 The zone out provisions used by many pre
5 reform orders exemplify this principal. They were
6 instituted in orders for exactly the reason that
7 Criteria 4 spells out. Every handler testifying here
8 would agree that they would always choose the closest
9 milk supply to their plant, assuming equal quality
10 parameters because it would be the most cost effective
11 one. Equally so, no supplier would seek out a distant
12 market if the return was lower than the local one.
13 Both of these factors recognize the location value of
14 milk and current order provisions should also
15 recognize them. Indeed Criteria 4 indicates they were
16 designed to do so.

17 Criteria 6, recognize the handler equity with
18 regard to raw milk product costs. Also fails the post
19 reform review. Open pooling causes different handlers
20 to have different costs. Some handlers gain additional
21 revenue strings not available to all due to their
22 ability to exploit the provisions better than others.
23 This is why handlers evaluate the open pooling
24 opportunities and enter into them if they can. This
25 fact has been amplified in each hearing this year and

1 will likely be done here also.

2 Some processors face additional costs in
3 maintaining the milk supply because of the need to pay
4 additional premiums to make up for loss blend dollars
5 in order to keep producers in business. Others have to
6 pay higher minimum prices and higher minimum, sorry.
7 Others have to pay higher premiums to make up for wider
8 than normal blend price spreads between orders. We do
9 not believe that the open pooling derby, the result of
10 this price surface for producer milk was anticipated by
11 the authors of Order Reform.

12 Additionally, each order has precise terms
13 that a supplier must follow in order to share in the
14 blend price proceeds. These provisions are known by
15 the industry as performance standards. They require
16 that milk supplies delivered to and be available for
17 the market in order to be able to share in returns from
18 the market.

19 This concept is explained, defended and
20 endorsed in that final rule as follows:

21 There were a number of proposals and public
22 comments considered in determining how Federal Milk
23 Orders should pool milk and which producers should be
24 eligible to have their milk pooled on the consolidated
25 orders. Many of these comments advocated a policy of

1 liberal pooling, thereby, allowing the greatest number
2 of dairy farmers to share in the economic benefits that
3 arise for classified pricing.

4 A number of comments supported identical
5 pooling provision in all orders, but others stated that
6 the pooling provisions should reflect the unique and
7 prevailing supply and demand conditions in each
8 marketing area.

9 Fundamental to most pooling proposals and
10 comments was the notion that the pooling of producer
11 milk should be performance oriented in meeting the
12 needs of the fluid market. This, of course, is logical
13 since the purpose of the Federal Milk Order Program is
14 to ensure an adequate supply of milk for fluid use.
15 Emphasis here is added. 64 Federal Register 16130,
16 April 2, 1999.

17 Open pooling also discussed in the Reform
18 Decision Final Rule was rejected with the following
19 analysis. A suggestion for open pooling where milk
20 can be pooled anywhere has not been adopted principally
21 because open pooling provides no reasonable assurance
22 that milk will be made available in satisfying the
23 fluid needs of the market. 64 Federal Register 16130.

24 It is precisely the results foreseen but
25 rejected by these two paragraphs that are causing us to

1 discuss this issue today. Volumes of milk are being
2 pooled on the order that do not and will not, and will
3 never perform for the order in a manner similar to that
4 of local milk. Distance and economics combined to
5 prevent it, yet due to current provisions, they
6 continue to draw down blend values and cause the exact
7 type of disorderly marketing conditions described by
8 Criteria 3, 4, and 6, that were to be avoided. This is
9 clearly seen by reviewing the data published in the
10 final rule on forecasted post reform order Class 1
11 utilization and the actual experience.

12 Exhibit 19, Table 1, details those
13 expectations. These are the expected Class 1
14 utilizations as published in the final rule with the
15 actual annual average results for each order published
16 by each Market Administrators for calendar years 2000
17 and 2001.

18 In calendar year 2000, the first year of
19 Reform, because of the narrowest time lag, one would
20 expect the forecast to have the best chance of
21 accuracy. No order even equaled its anticipated
22 utilization. All order Class 1 utilizations were below
23 forecast, including or excluding the Federal Order, I
24 am sorry, excluding the Florida Order, the closest
25 estimate was a 4.6 percent miss in the Pacific

1 Northwest Order. And the shortfall orders that have
2 had hearings on this issue, range from a minus 19.7 in
3 the Central Order, to --

4 JUDGE CLIFTON: Let's make sure that is 19.7
5 percent?

6 MR. HOLLON: Percent. In the Central Order to
7 minus 11.5 percent in the Mideast Order, to minus 6.6
8 percent in the Upper Midwest Order, to minus 4.6
9 percent in the Pacific Northwest Order and minus 7.5
10 percent in the Western Order.

11 The scenario for calendar year 2001 worsened
12 for many orders and in no case did it equal or exceed
13 the projections.

14 The point here is not to disparage the
15 forecasting ability of U.S.D.A. I, too, do forecast
16 and understand that changes in assumptions always
17 affect the outcome of projections. But, clearly the
18 end results are not matching the anticipated
19 projections and equally clear the criteria are not
20 being met and remedies need to be instituted.

21 The remedies proposed here have been proposed
22 and discussed in prior proceedings. Again, we have no
23 opposition to Proposals 1 and 10 and would support
24 their institution in both orders. However, they do not
25 go far enough to provide for other possibilities that

1 have been demonstrated to exist. We can clearly see
2 that the results sought by Proposals 1 and 10 do not
3 completely solve the concerns of our members and
4 customers in other areas. For that reason we offer
5 Proposals 2 and 9 for Federal Order 135.

6 JUDGE CLIFTON: For?

7 MR. HOLLON: I am sorry, for 124 and 135.

8 Proposal 2 for Federal Order 124. Proposal 2
9 established performance standards for milk pooled on
10 the order from locations originating outside of the
11 order boundaries. It is justified on the following
12 grounds:

13 Proposal 2 would achieve similar results to
14 the outcome from zone out provisions found in the
15 Former order 124. That would be Sections 1124.52 and
16 1124.74.

17 The concept is already in place in Federal
18 Order 1, the Northeast Order and was in place in
19 Federal Order 2 prior to Reform, so it has already
20 stood the test of time. Enactment of Proposal 1 alone
21 couldn't mitigate the problem from pooling California
22 milk to other orders. A more uniformed application to
23 all orders, such as expanding the Order 1 provisions
24 would solve or alleviate greatly this concern and is a
25 superior choice.

1 We understand that milk from California was
2 reported in Order 33 in the March pool. This would be
3 the first time that that has taken place. It is the
4 better solution to identify the issue and institute the
5 remedy than to have to resort to future hearings to do
6 so. Hearings are costly and it takes a long time to
7 get a notice, a hearing, a recommended and a final
8 decision approved and implemented.

9 It recognizes the principals of both a
10 marketing area and a performance aspect of market wide
11 pooling. It has a measurable economic consequence that
12 is in line with existing order principals and that if
13 the economics are positive, regulations does not
14 prohibit pooling, yet it provides a reasonable
15 defensive hurdle for milk to overcome.

16 As shown in Exhibit 19, Table 2 the provision
17 at each state must be treated individually and perform
18 as a stand alone entity under the same 20 percent
19 performance standards as any other area, I am sorry, as
20 any other in area milk supply provides a reasonable
21 economic test of whether or not the market needs the
22 milk supply for local Class 1 use. The economic return
23 must be earned in the market place and not on the
24 pooling report. At the 20 percent shipping level in
25 the same PPD, and delivery costs there are months of

1 negative return and some months of positive ones thus
2 raising the hurdle of economic risk. By requiring
3 performance like other local milk supplies, the
4 intangibles of rejected loads, bad weather and a
5 variable demand from bottlers makes the return less
6 dependable and the risk greater, but, more like the
7 decision making that local milk supplies must pass
8 under every day.

9 For the 26 month period, January 2000 through
10 February 2002 the PPD or producer price differential,
11 Order 124, has averaged \$1.48 per hundred weight. If
12 milk were to deliver regularly from California sources
13 to Portland, Oregon's Class 1 markets, it would earn a
14 negative return of 23 cents, from Fortuna, California
15 or a negative return of \$1.30 per hundred weight from
16 Turlock, California. I would point out that 23 cents
17 was a per hundred weight rate also. Certainly, no one
18 would want that opportunity. However, be attaching to a
19 local milk supply and then diverting a much higher
20 return could be earned without achieving a reasonable
21 performance standard.

22 No accurate measure of this return is
23 possible because of the many possible combinations.
24 However, application of our proposal would reduce the
25 return somewhat and in some months cause it to be

1 negative. This would force a more economic measure of
2 whether or not the milk could associate and perform for
3 the market. The performance would be based on the
4 delivery of 20 percent of the volume, the same amount
5 that a local milk supply would deliver. In the
6 specific cases of milk supplies originating in
7 California, Proposal 1 would intervene and dictate the
8 final conclusion.

9 For the same 26 month period a milk supply
10 from Idaho would lose a \$1.77 per hundred weight if it
11 performed daily for the Class 1 market. Again, no one
12 would seek that market. However, the institution of
13 our proposal would require a 20 percent performance
14 level and a shipment for at least six months out of 12
15 per the free ride provisions. This would establish a
16 more reasonable measure for performance. Ironically,
17 the provisions proposed in Seattle for Order 124 would
18 place no limits on the ability of a supply plant to
19 pool out whole milk. No further qualifications were
20 established and no changes were proposed to deal with
21 the free ride period. At least the DFA proposal would
22 establish some additional measure of performance for
23 these milk supplies.

24 The individual state unit concept is an
25 adequate and reasonable safeguard for a lower

1 utilization order in which tighter shipping, I am
2 sorry, tighter diversion limitations or supply plant
3 restrictions might otherwise cause hardship.
4 Furthermore, the no unit provisions prevents an in area
5 milk, prevents in area milk from qualifying distance
6 milk. It also discourages distance milk from seeking a
7 large volume supply from a nearby state and forming a
8 unit to ease the performance requirement. We find
9 schemes similar to this occurring in other Federal
10 Order and they disrupt orderly marketing practices
11 there. We wish to avoid their spread.

12 The counties included in the non unit
13 marketing area include those now present in the order.
14 Thus the language we would propose for Order 124 would
15 amend the pool supply plant and producer milk
16 definitions to require that milk from specified
17 locations be reported by individual state units, each
18 of which would be subject to the new performance
19 standards applicable to supply plants and producer milk
20 by adding a new paragraph C-5 in Section 1124.7 and
21 redesignating Section 1124.13, Paragraph E-5 as E-6 and
22 adding a new paragraph E-5 to read as follows:

23 Since the statement is going to be submitted,
24 I am only going to read Section C-5ii because we do
25 have a correction to our proposal and C-5ii.

1 Section C-5ii: "At least the required minimum
2 percentage and delivery requirements specified in
3 1124.7-C and C-1 of the producer milk of each unit of
4 handler shall be delivered to plants described in
5 1124.7-A or B. And such deliveries shall not be used
6 by the handler in meeting the minimum shipping
7 requirement, shipping percentages required pursuant to
8 Section 1124.7-C and C-1." And ii: "The percentages of
9 Section 1124.7-C-5ii are subject to any adjustments
10 that may be made pursuant to 1124.7-G." Note we have
11 added and, the language "and C-1" to specify our
12 intent. We have made a, in two, we have made a text
13 change to our proposal reflecting the renumbering of
14 the paragraphs.

15 Section 1124.13, again, since the statement
16 is going to be entered as written, I am going to omit
17 reading the language in E-5 and (I) and just read the
18 language E-5ii and iii.

19 "For pooling purposes each reporting unit
20 must satisfy the shipping standards specified pursuant
21 to 1124.7-C and C-1 and such deliveries shall not be
22 used by the handler in meeting the minimum shipping
23 percentages required pursuant to Section 1124.13-E-1."
24 And iii, "The percentages of 1124.13-E-5 are subject to
25 any adjustments that may be made pursuant to

1 1124.13-E-6." Note we have added some technical
2 changes to the proposed language to further specify our
3 intent.

4 Proposal 9 for Federal Order 135.
5 Proposal 9 establishes performance standards for milk
6 pooled on 135 from farms and plants located outside of
7 the order boundaries. This concept is already in place
8 in Federal Order 1, the Northeast Order and was in
9 place in Federal Order 2 prior to reform. So, it has
10 already stood the test of time and legal challenge.

11 Enactment of Proposal 10 alone could mitigate
12 the problem from pooling California milk to other
13 orders. A more uniform application to all orders such
14 as expanding the Order 1 provisions would solve or
15 alleviate greatly this concern is a superior choice.
16 It is a better solution to identify the issue and
17 institute the remedy than to have to resort to a future
18 hearing to do so. Hearings are costly and it takes a
19 long time to get a notice, a hearing, a recommended and
20 final decision implemented.

21 Three, it recognizes the principal of both a
22 marketing area and the performance aspect of market
23 wide pooling. It has a measurable economic consequence
24 that is in line with existing order principals that if
25 the economics are positive, regulation does not

1 prohibit pooling. Yet, it provides a reasonable and
2 defendable hurdle for distance milk to overcome. As
3 shown in Exhibit 19, Table 3, the provision that each
4 state must be treated individually and perform as a stand
5 alone entity under the same 30 percent performance
6 standard, and that standard is the one that is offered
7 in Proposal 5, as any other in area milk supply
8 provides a reasonable economic test of whether or not
9 the market needs the milk supply for local Class 1 use.
10 The economic return must be earned in the market place
11 and not on the pooling report. At the 30 percent
12 shipping level, and the same PPD and delivery costs,
13 there are months of negative returns and some months of
14 positive ones, thus, raising the hurdle of economic
15 risk.

16 By requiring performance like other local
17 milk supplies the intangibles of rejected loads, bad
18 weather and variable demand from bottlers makes the
19 return less dependable and the risk greater but more
20 like the decision making that local milk must pass
21 under every day. For the 26 month period, January 2000
22 through February 2002 the producer price differential
23 for Order 135 has averaged \$1.12. If milk were to
24 deliver regularly from California sources to the Salt
25 Lake City, Utah Class 1 markets, it would earn a

1 negative return of \$1.67 per hundred weight from
2 Turlock, California. Certainly no one would want that
3 opportunity. However, by attaching to a local milk
4 supply and then diverting a much higher return could be
5 earned without achieving a reasonable performance
6 standard. No accurate measure of this return is
7 possible because of the many possible combinations.

8 However, application of our proposal would
9 reduce the return from a \$1.12 per hundred weight to 60
10 cents per hundred weight and in some months would cause
11 it to be negative. This would force a more economic
12 measure of whether or not the milk could associate and
13 perform for the market. The performance would be based
14 on the delivery of 30 percent of the volume, the same
15 amount that a local milk supply would deliver. And in
16 the case, in the specific case of milk supplies
17 originating in California, Proposal 1 would intervene
18 and dictate the final conclusion.

19 The individual state unit concept is an
20 adequate and reasonable safeguard for a lower
21 utilization order in which tighter diversion
22 limitations or supply plant restrictions might
23 otherwise cause hardship.

24 Furthermore, the no unit provision prevents
25 an in area milk supply from qualifying distance milk.

1 It also discourages distant milk from seeking a large
2 volume supply from a nearby state and forming a unit to
3 ease the performance requirement. We find schemes
4 similar to this occurring in other federal orders and
5 they disrupt orderly marketing practices there. We
6 wish to avoid their spread.

7 The counties included in the non unit
8 marketing area include those now present in the order.
9 Thus, the language we would propose for Order 135 amend
10 Sections 1135.7 and 1135.13 to establish state unit
11 standards for milk from specified supply locations and
12 add a new paragraph C-3 to the pool supply plant
13 definition in Section 1135.7. Redesignate Section
14 1135.13 Paragraph D-6 as Paragraph D-7 and add a new
15 paragraph, D-6 to the producer milk definition to read
16 as follows:

17 Again, I will forgo reading C-3i, moving only
18 to the Cii section.

19 "At least the required minimum percentage and
20 delivery requirements specified in Section 1135.7 C and
21 C-1 of the producer milk of each unit of the handler
22 shall be delivered to plants described in 1135.7 A or B
23 and such deliveries shall not be used by the handler in
24 meeting the minimum shipping percentages required
25 pursuant to Section 135.7 C and C-1."

1 Note we have added "and C-1" in Section
2 1135.7 C-3ii to further specify our intent.

3 With regard to Section 1135.13 skipping down
4 to Section D-6ii. "For pooling purposes each reporting
5 unit must specify the shipping standard specified
6 pursuant to Section 1135.7 C and C-1 and such
7 deliveries shall not be used by the handler in meeting
8 the minimum shipping percentages required pursuant to
9 Section 1135.13 D-2." And note we have inserted D-2
10 versus C-2 in Section 1135.13 D-6ii in order to refer
11 to the correct section.

12 MR. BESHORE: Mr. Hollon, I have a couple of
13 additional questions.

14 BY MR. BESHORE:

15 Q Would you turn to Exhibit 19, your exhibits
16 or tables?

17 And just briefly review each one beginning
18 with Table 1, the Comparison of Class 1 Utilization by
19 Order, Reform Final Rule Projection versus Actual
20 Experience.

21 A This data was taken, there are four columns,
22 the first column is the name of the current Federal
23 Orders. The column labeled "Reform Final Rule" those
24 percentages were taken from tables published in the, in
25 the Reform document where projections were made by USDA

1 of what the Class 1 utilization might be in the
2 proposed orders. The actual 2000 is the actual for the
3 year and actual 2001, the actual for the year. So, for
4 example, in the Western Order the writers of Reform
5 anticipated a 32.5 percent Class 1 utilization. Actual
6 for 2000 was 25.1. And actual for 2001 was 22.1.

7 Q Okay. Could you turn then to Tables 1, 2 and
8 4, which are similar and beginning with Table 2,
9 describe, you know, exactly how the, how the
10 calculations were made and their significance has been
11 noted in your testimony, but walk us through just a
12 little bit, how you, how you made these calculations on
13 Tables 2, 3 and 4?

14 A Exhibit 19, Table 2, attempts to give some
15 idea of the economic consequences of making a delivery
16 from Fortuna, California, or Turlock, California, to a
17 Portland, Oregon distributing plant for the time period
18 January 2000 to February 2002. The consonant used in
19 this analysis assumed a 47,000 pound load of milk, a
20 rate per mile of \$1.95, the miles 417 between Fortuna
21 and Portland, Oregon and 677 between Turlock and
22 Portland, Oregon. And the rate per hundred weight
23 simply takes the number of hundred weights, I am sorry,
24 the number of miles times the rate per mile and divides
25 by the number of hundred weights to arrive at a

1 transport cost of \$1.71 for the Fortuna to Portland and
2 \$2.78 for the Turlock to Portland. Both of those
3 locations represents pools of milk supply that could
4 conceivably find their way into a Portland distributing
5 plant.

6 The first column labeled Federal Order 1124
7 Monthly Producer Price Differential is simply copied,
8 taken from the announced price. It averaged \$1.48 for
9 the entire period. And if you took that \$1.48 and
10 netted it back against the freight cost you would incur
11 negative returns of 23 cents from Fortuna and \$1.30
12 from Turlock. And I would point out in all of these
13 examples, there was no adjustment made for the
14 difference in the county differentials and so that
15 would make some slight difference, it would not be
16 material, but there would be some change in the
17 absolute value.

18 In Column 2, those two columns simply take
19 those per hundred weight returns and multiply them out
20 times the 47,500 pound load and point out that you
21 would lose \$85,000.00 in one example, nearly 86, and in
22 the other example, you would lose \$487,951 over the
23 period. And from an economic standpoint, no one would
24 make the decision to seek this market, sell this milk,
25 perform this transaction.

1 Column 3 attempts to take the proposal that
2 we have had and the, the provisions that it would be
3 subject to. So, milk from California then could not,
4 with have to stand on its own qualifications, so, 20
5 percent of it would have to deliver and occur a hauling
6 cost and for that to happen, that return then would be,
7 I am sorry. Let me first say the first column there
8 under the block labeled Column 3, under Fortuna, where
9 it says pooled, that would be the return that you would
10 get if you didn't have to worry about the haul, which
11 is what happens in the current open pooling scenario,
12 that once you touch base once in the order, you do not
13 have to deliver again. So, instead of losing 23 cents
14 a hundred, you make \$1.48 per hundred weight. So, it
15 points out that if you had the ability to make that
16 transaction, you would certainly try to do that.

17 If, however, you had to stand alone on your
18 performance requirements, and pay the haul as would the
19 supply plant six months out of 12, your \$1.48 would go
20 down to 18 cents. I am sorry, the haul would cost you
21 18 cents and the \$1.48 would go down to \$1.30. And
22 there would be, there was at least one month in this
23 scenario where the return was negative. And in every
24 case the return would be, oh, in every case where the
25 haul was involved, the return would be less.

1 Q Mr. Hollon, in the delivery column, why are
2 there blank, blanks in those entries?

3 A Because the supply plant provision requires
4 delivery six months out of 12 or controversially it
5 does not require delivery in six months out of 12. And
6 so, the distant milk would met that performance
7 requirement just like an area supply plant would. And
8 would have to deliver six months out of 12.

9 Q Presently in the order and as proposed, there
10 is no requirement for a supply plant to deliver during
11 those six months of the year.

12 A That is correct.

13 Q Regardless of where it is located.

14 A That is correct. And the proceeding in
15 Seattle there were no proposals made that would affect
16 that provision in the order.

17 Q Okay. So, the same thing, the Turlock
18 analysis then is, you know, of this same manner.

19 A In the same manner and in the return
20 comparisons.

21 Q Okay. Would you go then to Tables 3 and 4?
22 Do they follow the same methodology.

23 A That is correct.

24 Q And the same model, but for different
25 geographic movements.

1 A Table 3 compares an Idaho source to Roy,
2 Washington as a delivery point. And makes the same
3 type of comparison with the end result being after the
4 application of the standard, the return would go from
5 \$1.48 down to \$1.13 and in some months would indeed
6 occur a negative return. And in all months where the
7 haul is involved, a less return.

8 Q Okay. Now, as far as Proposals 1 and 2 go,
9 would Proposal 1 have any effect upon this milk
10 movement at all?

11 A Proposal 1. Yes.

12 Q The Jerome to Roy? Proposal 1 being the
13 double dipping proposal.

14 A Oh, okay. No. No, it would not.

15 Q So, it doesn't, Proposal 1 doesn't address
16 possibilities of distance movements of milk --

17 A No.

18 Q Going on the Pacific Northwest Order, unless
19 they are from state regulated sources.

20 A Right. Unless they came from California.

21 Q Market wide pool regulated.

22 A Unless it came from California.

23 Q Okay. Move to Table 4 then.

24 A Table 4 was computed under the same
25 methodology application of the same standard. From a

1 Turlock, California delivery point to a Salt Lake City,
2 Utah demand. All the other consonants were the same.
3 And the results, if it delivered every day like local
4 producer milk would do, would lose \$1.67. If it just
5 touches base once, makes \$1.12 and if it has to meet
6 the 20 percent delivery standard, I probably should
7 have used 30 percent there, but the 20 percent delivery
8 standard, the return would go down to 60 cents.

9 Q Okay. And in months when, it would be
10 negative a number of the months in which deliveries
11 were actually required.

12 A That is correct.

13 Q And if, assuming it is a supply plant type
14 free ride situation, you would assume deliveries would
15 not be required in six months of the year.

16 A Correct.

17 Q Okay. Now, Mr. McBride in his testimony
18 earlier this afternoon referred to deliveries from
19 Northern California to West Farm Foods bottling plant
20 in Medford, Oregon and to deliveries from Cottonwood,
21 Idaho locations to a Class 1 handler in Spokane,
22 Washington. Do you recall that testimony?

23 A That is correct. That is correct.

24 Q Okay. Would Proposal 2 and those are milk
25 movements that are pooled under 124 at the present

1 time.

2 A Right.

3 Q I gather. Would Proposal 2 impact the
4 pooling of those milk movements in any way?

5 A If I understand Mr. McBride's statement, it
6 was that they went from the farm to a pool distributing
7 plant, so I don't think there would be any impact.

8 Q Because they are performing for the market.

9 A Right.

10 Q Okay.

11 (Pause.)

12 MR. BESHORE: Thank you. I have no other
13 questions on direct for Mr. Hollon and he would be
14 available for cross examination, Your Honor.

15 JUDGE CLIFTON: Thank you, Mr. Beshore.

16 Who would like to begin?

17 (Pause.)

18 JUDGE CLIFTON: Mr. Marshall.

19 MR. MARSHALL: Thank you, Your Honor.

20 CROSS EXAMINATION

21 BY MR. MARSHALL:

22 Q Good afternoon, Elvin.

23 A Good afternoon, Doug.

24 Q First I want to note with satisfaction that
25 we actually agree to a great extent on the fact that

1 the fundamental cause of the problems we are dealing
2 with are the lack of appropriate process during that
3 Reform proceeding and the lack of opportunity to
4 comment on the final rule, before it was put together
5 in one packet and some of the things that might not
6 have been intended, therefore, escaping public review.
7 I hope I am characterizing our agreement.

8 A I will look forward to reading that in your
9 newsletter.

10 Q Pardon me?

11 A I will look forward to reading that in your
12 newsletter.

13 Q Yes. There is one about to hit the streets
14 today.

15 And we find ourselves, both cooperatives,
16 find ourselves not having to deal with the problem of
17 distant pooling created by, created by the Federal
18 Order Reform process and the reliance on the Class 1
19 price surface, to price producer milk that might be
20 then given location value that is determined quite
21 differently today than it was before the so called
22 Reform process.

23 You have proposals, you have two proposals
24 here designed to address that oversight.

25 A That is the intent.

1 Q We understand each other so far then. And I
2 have some questions. I will tell you at the outset
3 that we are not here today to oppose you with respect
4 to 2 and 9. We are simply trying to learn more at this
5 hearing about the ways they would work and the
6 consequences.

7 First of all, you indicate that Order 1 has
8 some similar provision and involves a unit, state unit
9 pooling requirement. Are you familiar with how that
10 works, whether it is actually utilized in Order 1?

11 A I am certainly familiar with the language and
12 have quizzed back and forth the Market Administrator's
13 Office and several persons with, you know, things that
14 they do in their everyday practice, like I do about how
15 it works. I am not aware that that provision has
16 actually, you know, been used or not used. But, I
17 know that it is in place. It has some historical
18 precedence. And I have talked to a number of folks in
19 the marketplace, you know, who are aware of the
20 mechanics of it.

21 Q Okay. I didn't quite follow you. Did you say
22 you are not aware of whether it has been used in
23 practice?

24 A I cannot tell you if it has or has not been.

25 Q Okay.

1 A Also, I am not sure if there would be a way
2 that you would know that. I don't know that there
3 would be a published statistic that would say that.

4 Q Right. Yeah, I am not aware either, that is
5 why I was hoping maybe you would know whether it was
6 seen a workable provision.

7 The --

8 A Oh, I do have a comment on that. It was
9 sought, it was sought after by the cooperatives in the
10 marketplace as reform moved forward. It was not
11 inserted in Order 1 by accident. My understanding they
12 requested that those provisions carry forward.

13 Q Do you know if it pre existed the 1999
14 decision?

15 A It existed in Order 2. It existed in Order 2
16 prior to Reform.

17 Q I have a couple of questions relating to
18 the --

19 A Doug, I want to make one more comment, is
20 that it is both there and it has been noticed now in
21 multiple hearings, so I guess if it were somehow
22 illegal or wasn't suppose to work right, it probably
23 has passed those judgements already.

24 Q Okay. Just to the mechanics, in your exhibit,
25 excuse me, in the information you requested from the

1 Market Administrator's Office that began an exhibit,
2 there is a reference to a plant in Cedar City, Utah,
3 that has been a distributing plant for most of the
4 prior two calendar years. Are you familiar with that
5 plant at Cedar City, Utah?

6 A Not intimately, but I am familiar with it.

7 Q Yeah. It is not very far from Cedar City to
8 some of the milk that is, that the Market
9 Administrator's Exhibit identifies as being pooled
10 currently on the Western Order from the San Bernadino
11 County, California area and that part of California.

12 A That is correct.

13 Q It would be logical, I suppose, especially if
14 milk supplies were short in the eastern side of the
15 Great Basin, for California milk to go to, from that
16 area to Cedar City, Utah. Do you know if any such milk
17 moves that way today?

18 A I am not familiar that it does.

19 Q The, it didn't obviously, it could have on,
20 at the time the Market Administrator's Exhibit depicts,
21 which I think was December. Are you aware, outside of
22 that December time frame, whether any milk was moved
23 into that plant from Arizona, let's say or New Mexico,
24 other points south?

25 A I don't think that is case, and I also think

1 that in, at least in the case of DFA milk supplies that
2 are noted on that map, that those milk supplies touched
3 base in Salt Lake City. I don't think that they
4 touched base in Cedar City.

5 Q Okay. Let's hold with the assumption for a
6 minute, though, that whether it goes to Cedar City or
7 Salt Lake City, there is a milk in San Bernadino County
8 or its neighbors down there, the way this proposal is
9 drafted, if sufficient, if 20 percent of the milk in
10 California that a cooperative were to pool, were to
11 come from those nearby counties, would that allow the
12 counties up north to be pooled on the Western Order,
13 have a so called free ride without having to be
14 delivered from those northern --

15 A Counties up north in the State of California?

16 Q Yes, for example, around --

17 A Each state would perform as a unit, so it --

18 Q Right.

19 A If all the counties were in the same state,
20 then yes that would be the case.

21 Q So, milk around Fortuna, California and I
22 think it is Humble County in the northern part of
23 California could be pooled based on the southern part.
24 Similarly in the case of the Pacific Northwest Order
25 proposal, the milk that we historically have

1 associated, we at NDA, have historically associated
2 with the Pacific Northwest Order in those northern tier
3 of, I guess Siskiyou County, California, that could be
4 used to multiply our leverage, the pooling of milk in
5 Southern California under your proposal, as I
6 understand it.

7 A I think that would be true.

8 Q My question then is, does it make sense here
9 out west where you have much larger state boundaries
10 then you do the general vicinity of Order 1, would it
11 make sense to perhaps divide states up into more
12 natural geographic boundaries or reflective of milk
13 sheds?

14 A You know, at the Order 30 hearing I was asked
15 a judgement question that I answered quickly and later
16 regretted. And so, what I think I am going to say to
17 you is that in general, I think there maybe some value
18 to that and I would say it maybe an item for brief. I
19 wouldn't reject that outright. And that at a later date
20 you may be able to convince me that that is not such a
21 bad idea.

22 Q Maybe it is something we can talk about later
23 during this hearing.

24 All right, let me shift gears to some aspects
25 of your prepared testimony. And I note as I read

1 through it, it is very well done, thank you. Good job
2 in trying to go through some of the history of the
3 Reform provisions and so forth. But, there are a couple
4 of things that will come up later on in connection with
5 other proposals than just 2 and 9. And would it be
6 fair to examine further on some of this stuff at that
7 time?

8 A Sure.

9 Q There is one thing then at this point that I
10 want to particularly focus on, your Exhibit 18, your
11 prepared testimony. At the top of page four, and then
12 again on page eight. As to your reference on top of
13 page four to your "Customers beginning to understand
14 that as local milk goes out of business, milk will come
15 from further away and cost more to deliver." Similarly
16 over on page eight, in the third paragraph, "The value
17 to a Salt Lake City processor of milk produced from
18 farms in Utah is greater than that of milk produced in
19 California." And again, you are noting, what I gather
20 to be the cost of transportation that makes that
21 difference in value. My question of you is in your
22 experience, does DFA charge its customer handlers for
23 the cost of transportation or does DFA charge producers
24 for the cost of moving milk to market?

25 A It is always a moving target. There is some

1 of each market to market to market, so there is no
2 absolute answer to that.

3 Q And as I see the kind of theory underlying
4 your concepts about performance, it seems to be, for
5 example, in what is quoted at the top of page three,
6 "It is not important where non performing milk
7 originates, but that all milk meets reasonable and fair
8 performance standards." But, if the key is the
9 willingness to deliver to the market, right?

10 A Yes.

11 Q And the delivery is typically at the
12 producers' expense in the milk industry, is it not?

13 A They typically, but again not always. There
14 are cases where you are able to pass along some of that
15 cost.

16 Q And yes, I am sorry, did you finish?

17 A Yes.

18 Q So, I guess the question now then to make
19 sure I understand where you are coming from, is are you
20 talking about, why would milk be worth more to a Salt
21 Lake City processor coming from this immediate Salt
22 Lake City area versus so Southern Idaho, versus for
23 that matter Turlock, California or Humble County,
24 California or anywhere else, as long as the cost is the
25 same FBO of the plant?

1 A Well, in many cases, first of all, the cost
2 may not always be the same. That would be one.
3 Sometimes there is a transportation cost, again, it
4 gets passed onto, depending on the time of the year,
5 the season, sometime you may pay them to take it, if it
6 is a flush, you know, transaction, so you may discount
7 the transport costs. There is also the availability
8 of, I need one more load, and I need it right away.
9 The retailer called and said we need X more. And so,
10 you know, that load, if it is coming from a long way
11 away, may not, even if it is available, it may not be
12 able to get there. There are sometimes freshness,
13 quality considerations that have a bearing and there is
14 always the intangible that it comes from local farms.
15 There are, we have some customers who that is part of
16 their advertising routine, the image that they put out
17 in the marketplace that their produce, you know, is
18 from local producers.

19 Q That last point, is that a legitimate Federal
20 Order concern as to how milk should be valued, for
21 example, is it appropriate that there be a local supply
22 of milk for every bottler?

23 A There is probably some division in there
24 somewhere.

25 Q I take it by your answer you mean not always

1 that would be a legitimate Federal Order concern.

2 A Not always would that be a legitimate
3 concern. That is correct.

4 Q The premise of the Proposal 9 though is that,
5 correct me if I am wrong, but is it not the premise of
6 Proposal number 9 that there are producers in distance
7 markets who would want to deliver milk a distance to a
8 given pool and perform by delivering to bottling plants
9 who presumably would be willing to take their milk even
10 though it has come a long distance?

11 A If there is a willingness to do that and a
12 willingness to perform at the performance level, we
13 wouldn't say that regulations should prohibit that.
14 So, the level, the examples, and the economics that we
15 try to lay out says that in some cases the economics
16 may not, you know, may not overcome that distance. And
17 if that is the case, and that is the standard and the
18 performance is at that standard, then we wouldn't buy
19 fiat say, no, you can't do that do. I don't think
20 orders can do that.

21 Q Would you agree that in the examples you were
22 using, pick one specific, Northwest for the Western
23 Order and the tables that you have that the, if milk
24 were needed from that distant market, that distantly
25 pooled milk were actually needed, that a way to deal

1 with that would be effect those location economics by
2 adjusting the diversion percentages or the pool supply
3 plant performance percentages, I guess would be the
4 most direct way to do it, to ensure that more of that
5 market that is riding the pool from the distant source
6 would be delivered?

7 A That could be a way. I would agree it could
8 be.

9 Q Let's go back to local milk being worth more
10 or less if it is coming from a long distance. In your
11 contracts, are you familiar with DFA's contracts with
12 the Salt Lake City Bottlers?

13 A I think you may be headed in a direction that
14 familiar or not, I would not feel comfortable in
15 answering.

16 Q Let me ask the question then, if you choose
17 to --

18 A Okay.

19 Q -- if you choose to so answer, that is fine.

20 The question, that was just foundational.
21 The question I was going to ask is do you know whether
22 currently in the Salt Lake City market DFA does charge
23 a premium to bring in milk from distant locations or
24 whether the cost is the same regardless of the
25 location?

1 A I actually don't know the specifics of all
2 the contracts, so I can't tell you, I don't know the
3 answer to that question.

4 Q Okay. And just a follow up question. Do you
5 know if there is an additional provision that would
6 require that if a handler does not give sufficient
7 notice and milk must come from a longer distance, that
8 he would in that event pay for an additional hauling or
9 transportation cost?

10 A There are times when those kind of conditions
11 result in that, that without a doubt additional freight
12 may get passed on. There are times when it does not.

13 Q Are you saying that could happen or are you
14 saying that is part of the contracts in Salt Lake City?

15 A I am saying that it could happen.

16 Q In Salt Lake City?

17 A Actually I don't know necessarily. My
18 experience is not in the Salt Lake City market for that
19 occurrence, but in other markets, it has happened, so.

20 MR. MARSHALL: Well, I think I am going to
21 have a few questions but at the moment my mouth is dry
22 and I think I am going to sit down and let somebody
23 talk at you for awhile and maybe I will have a chance
24 later. Thank you, Elvin.

25 MR. HOLLON: You are welcome.

1 JUDGE CLIFTON: Thank you, Mr. Marshall.

2 Are there other questions now of Mr. Hollon?

3 Cross examination questions? Mr. Vetne?

4 MR. HOLLON: -- mark your active entrance.

5 MR. VETNE: Your Honor, I respond to your
6 inquiry questions now. I do have questions concerning
7 statements made in the testimony, that appear to be
8 more generic to the range of proposals rather than
9 specific as to these proposals. I don't want to
10 foreclose myself from referring back to this testimony
11 at a future time, when I can better fit all the
12 questions back in. So, if I may reserve and not be
13 foreclosed, I will not have questions at this time.

14 JUDGE CLIFTON: All right, I think that is a
15 good plan, Mr. Vetne.

16 (Pause.)

17 JUDGE CLIFTON: All right, does anyone else,
18 yes, sir?

19 MR. CARLSON: Yes, my name is Rodney,
20 R-O-D-N-E-Y, Carlson, C-A-R-L-S-O-N.

21 CROSS EXAMINATION

22 BY MR. CARLSON:

23 Q Mr. Hollon, as I understand your statement,
24 it appears as though you are saying the problem in the
25 Federal Order system right now is the lack of zone out

1 differentials within each of the markets. But, you are
2 looking at solving the problem by using higher
3 performance standards, would that be accurate?

4 A That would be reasonable, yes.

5 MR. CARLSON: Okay. That is all I wanted to
6 ask. Thank you.

7 JUDGE CLIFTON: Thank you, Mr. Carlson.

8 Mr. Carlson, have you given your card to the
9 Court Reporter?

10 MR. CARLSON: Yes, I have.

11 JUDGE CLIFTON: Very good.

12 All right, I would like to know now, it is
13 four o'clock, I would like to know whether you want to
14 go until five tonight?

15 MR. HOLLON: Or six.

16 JUDGE CLIFTON: Or six, says the witness. He
17 is ready to go. And I would like to get an idea at
18 this point what time you would like to start in the
19 morning. We will have Utah's Commissioner of
20 Agriculture at nine, whether you want to resume at 8:30
21 or whether you want to resume at nine is up to you,
22 folks. And I know you have additional questions for
23 Mr. Hollon, but I thought this might be a good time for
24 us to take care of that housekeeping issue.

25 Mr. English?

1 MR. ENGLISH: If the Court Reporter is
2 available, if the Parties are available, I would like
3 to at least try to go to six today. I have a sense
4 that, I had scheduled this for three days. I am not
5 sure if anybody else scheduled it for three days, but I
6 have a sense that this is not presently on course to
7 finish in three days. And, you know, maybe we can get
8 a little extra time in. I would certainly like to
9 start at six. I don't know if, I mean, go to six. If
10 we go to six, given the fact that the Commissioner is
11 going to be on at nine, I am not sure it makes much
12 sense to start at 8:30 and basically interrupt. So I
13 guess I would then say, you know, gee, let's go to six
14 and start at nine tomorrow. At least that is what I
15 would like to try to get done.

16 I have at least one factual witness with
17 respect to one proposal, that if we could get on
18 tomorrow, I would like to at some point. It does not
19 have to be in the morning. And it doesn't absolutely
20 have to be tomorrow, but it would be strongly
21 preferred.

22 JUDGE CLIFTON: What witness is that?

23 MR. ENGLISH: That is a witness from Meadow
24 Gold Dairies, on the factual side. Mr. Connor will be
25 speaking on the expert side, but he is available any

1 time during the hearing.

2 JUDGE CLIFTON: All right. And would your
3 Meadow Gold Dairies witness be speaking with regard to
4 particular proposals?

5 MR. ENGLISH: Speaking with respect to
6 Proposal numbers 11, 12, 13 and 5.

7 JUDGE CLIFTON: Okay. Thank you. I would like
8 to hear from others as to whether you are willing to go
9 until six tonight and what time you would like to start
10 in the morning. Mr. Beshore?

11 MR. BESHORE: I think going to six and
12 starting at nine is a good plan. I am, I think we do
13 need to figure out what other witnesses there are and
14 proposals. I mean, we basically wound down with Mr.
15 Hollon and 1, 2, 9 and 10 here, I think. One thing I
16 would like to avoid, if it is possible, Mr. Hollon had
17 several other statements relating to other proposals
18 and groups of proposals, you know, I would like to
19 avoid having him be halfway through his statement or
20 examination on something and, you know, resume midday
21 tomorrow with it. He has, for instance, he has a
22 statement, if we were going numerically, that addresses
23 Proposals 3, and several others. As a group they fit
24 together conceptionally, but it is, you know, fairly
25 substantial statement. And I think it will draw more

1 interest from folks like Mr. Vetne, perhaps, than, you
2 know, than this one has. And it would, I would rather
3 not start that now and be not get finished with it.

4 JUDGE CLIFTON: Now, sometimes there is value
5 in letting people have things overnight. So, you know,
6 if we are going to go to six, you wouldn't object,
7 would you, Mr. Beshore, if we start on a new one with
8 Mr. Hollon, even if we don't finish it?

9 MR. BESHORE: Well, no, that is what I was,
10 that was what I was hoping to avoid, actually, if it is
11 possible.

12 JUDGE CLIFTON: See, sometimes and again my
13 experience in these hearings is limited, but there is
14 some value to getting an idea and being able to think
15 about it overnight.

16 MR. STEVENS: Two ways --

17 MR. BESHORE: It is a two ways sword in, you
18 know, there are some, I will leave it at that.

19 JUDGE CLIFTON: All right, does anyone
20 adamantly opposed to going until six tonight?

21 MR. HOLLON: I would like to ask you one
22 question.

23 JUDGE CLIFTON: Mr. Hollon.

24 MR. HOLLON: Is that perhaps instead of by the
25 hour, by the topic might be a better way to try to fit

1 that out. If we can finish this topic tonight, unless
2 we are going to go too much later than six, I am not
3 sure we are going to get too far in another one.

4 JUDGE CLIFTON: See, I don't have any great
5 premium on finishing the topic. I realize you and your
6 counsel do, but I would just as soon stop when we stop
7 and I mean, you are not going to be disadvantaged by
8 having to pick up after intervening witnesses because
9 you know this subject so well, so.

10 MR. HOLLON: I will discuss that with you
11 later.

12 JUDGE CLIFTON: All right, we will go six
13 tonight, even if we start some proposals that we don't
14 finish. We will start at nine in the morning.

15 And one other housekeeping matter, I don't
16 believe that I admitted into evidence the Market
17 Administrator's Statistical Exhibits. Mr. Stevens,
18 could you help me with those?

19 MR. STEVENS: I am not sure that we did, and I
20 guess my thought about it was that, of course, we were
21 ready for the appearance of Mr. Vetne, because we
22 certainly wanted to give him an opportunity to work on
23 those matters with the Market Administrator's
24 representative. We wanted to give him that
25 opportunity. So, I don't believe we moved for their

1 admission and we were waiting for that. And if there
2 were other concerns to be addressed before we moved
3 their admission. But, depending on Mr. Vetne's wishes,
4 we are ready to move them into admission.

5 JUDGE CLIFTON: Mr. Vetne, those were Exhibits
6 5 through 11. The first three were the documents that
7 the Market Administrator had initiated preparation of,
8 the statistical exhibits and each of the next four was
9 in response to a request by one interested person or
10 another.

11 Would you like a chance to look at Exhibits 5
12 through 11 before they become part of the evidence?

13 MR. VETNE: Your Honor, I looked at the back
14 table for five through 11 and there were none there.

15 MR. STEVENS: That was part of the plan, Your
16 Honor.

17 MR. VETNE: And I did get a purple exhibit and
18 whatever number that was, and a couple of others, but,
19 yeah, I would like to see if, I have seen a preliminary
20 copy of some that were sent to me, and I have no
21 objection to their receipt. I do have a desire to ask
22 some questions of the Market Administrator's witness on
23 those. It may actually help me to talk to some folks
24 later this evening to see if those questions have
25 already been asked, since I wasn't here.

1 JUDGE CLIFTON: Okay. Mr. English?

2 MR. ENGLISH: Well, I guess with all due
3 respect to Mr. Vetne's schedule, I am just wondering,
4 why did we spend four hours this morning doing that, if
5 we are going to redo it?

6 JUDGE CLIFTON: Because Mr. Vetne is a quick
7 study.

8 MR. ENGLISH: Well, no, I guess my point is
9 what about the rest of us who made the financial and
10 time commitment to being here and to doing that this
11 morning, and I am just troubled by this aspect of doing
12 it twice. And I am also worried about setting a
13 precedent that somebody will say later, you know, at
14 another hearing, "oh, you know, let's keep coming back
15 and not doing it." I just, I am a little concerned
16 about what this says and means for getting the job done
17 as opposed to just saying anybody can do whenever they
18 jolly well feel like it. I am troubled by the
19 precedent.

20 JUDGE CLIFTON: Mr. Stevens?

21 MR. STEVENS: Your Honor, I understand those
22 concerns. And certainly I think there is something to
23 be said for that. We are, we are ready to offer Mr.
24 Vetne a copy of these exhibits as well as we can gather
25 them together for him to look at in total, with the set

1 that we are talking about here, I guess, five through
2 11. So, at least he can look at them and see what
3 this, what the state of those exhibits are at this
4 point.

5 In terms of the questioning, I totally agree.
6 We don't want to repeat questions that have been
7 previously asked. I would think that Mr. Vetne might
8 take it upon himself to maybe to talk to some other
9 participants and see what has been covered, at least
10 get some idea and we would not object to him asking
11 questions of the Market Administrator's representative,
12 that were not repetitive unduly so and that he did have
13 an opportunity to do that. Understanding fully the
14 position of the other participants that there does have
15 to be an order to this hearing and people who are here
16 should be able to participate and people who are not
17 here, it is at their risk and their client's risk to be
18 in that position. It can't be any other way because
19 that is the fair way to do it for everyone.

20 JUDGE CLIFTON: Thank you, Mr. Stevens.

21 Mr. English?

22 MR. ENGLISH: One quick thing. I note that
23 the Market Administrator indicated very modest changes
24 to what was sent out, so, in terms of needing time to
25 review it, the fact of the matter is that there was

1 very little done to change it and most of us and I know
2 Mr. Vetne certainly does is prepare in advance. So I
3 would think that we can get it done now, especially
4 since there doesn't seem to be any witness eager to
5 come up and testify.

6 JUDGE CLIFTON: Well, thank you, Mr. English.

7 I do hereby admit into evidence Exhibits 5
8 through 11. I will also give Mr. Vetne adequate
9 opportunity to cross examine about those.

10 Mr. Stevens, I am grateful that you will make
11 sure he gets copies of each of those before the
12 evening.

13 And Mr. Vetne, you may cross examine on those
14 issues tomorrow.

15 We are returning to the witness, John
16 Mykrantz, regardless, because a number of the questions
17 that he was asked on cross examination, he needs
18 recourse to other documents or other people before he
19 can respond to. And I made it clear we would recall
20 him and any witness or any representative of any party
21 would be free to recall him during the hearing.

22 So, I don't think you are going to miss any
23 opportunity nor do I expect that your questions will be
24 unduly repetitive. But, if I find them so, I will let
25 you know.

1 MR. VETNE: Thank you.

2 JUDGE CLIFTON: You are welcome.

3 All right, I think Mr. Hollon is quite
4 willing to continue to testify. Mr. Marshall.

5 MR. MARSHALL: Thank you, Your Honor, I have a
6 few additional questions after consulting with my
7 consultants.

8 BY MR. MARSHALL:

9 Q And I would like to turn your attention, Mr.
10 Hollon, to Exhibit 19, your tables and just talk a
11 little bit about them.

12 Starting with the second page, Table 2 and in
13 particular I wanted to just note that you are showing a
14 47,500 pound transport volume. Why such a low volume
15 number there?

16 A I think when I initially put these documents
17 together, and I talked to some of our folks in
18 California, they pointed out that crossing a number of
19 states and that was initially done in Order 30,
20 provided some weight limit issues for them. And so, I
21 simply have stuck with that.

22 Q I can represent to you for purposes of this
23 question that it is typical in our organization to see
24 50,000 pound loads when they are tended to cross into
25 California because of load limits there. One could

1 similarly, I suppose, could change these numbers and
2 reproduce this exhibit, if one wished to, for purposes
3 of briefing, could they not, and use a higher number if
4 they thought that were justified?

5 A I think so.

6 Q The rate per mile is more interesting. How
7 did you acquire, how did you develop that number of
8 \$1.95?

9 A The same, I inquired of our people in
10 California and asked them to go back and look at some
11 invoices and those were the numbers they gave me.

12 Q Well, just out of curiosity, now, are you
13 telling me that there are existing invoices being
14 delivered for the, being billed to DFA for the delivery
15 of milk from Fortuna and Turlock to Portland?

16 A No, but from delivery of milk from California
17 to mileages that would be along this line.

18 Q Okay. So, you believe that that would
19 reflect the competitive market for contract milk
20 haulers and those source designation source or --

21 A Yes.

22 Q -- designation market?

23 A Yes, yes.

24 Q Turning to Table 3. First of all, I note you
25 have picked Roy, Washington as the delivery point as

1 opposed to say Salem, Washington, which might be
2 closer, any particular reason for that?

3 A I knew that there might be an opportunity for
4 that transaction to take place, so, I picked that as an
5 example.

6 Q And one could, again, reconfigure this by
7 making different assumptions about locations.

8 A Certainly.

9 Q And --

10 A Pick near ones or farther ones away.

11 MR. MARSHALL: Your Honor, one of the issues
12 that we are going to have contend with in briefing is
13 the question of whether a mileage between two points is
14 in evidence or not. And I was wondering if it would be
15 possible to take some kind of administrative notice or
16 official of something as a common reference point for
17 mileages?

18 JUDGE CLIFTON: Mr. English?

19 MR. ENGLISH: In the past, at least, we have,
20 the Department has taken official notice of the
21 Household Goods Carrier's Guide, which used to be a
22 very large publication, now I think is completely
23 computerized, that provided that. It maybe the
24 Department has switched to using something else, but
25 that is a standard point of reference at least before

1 Federal Order Reform. I think we are up to Issue number
2 16 of that Household Goods Carrier Guide. I am not
3 sure where we are now because we haven't been using it
4 lately. But, that is at least the reference point that
5 has always been used by USDA.

6 MR. HOLLON: I will tell you these references
7 came from a Rand McNally Trip Maker Program and
8 frequently when I talk to Market Administrators that is
9 the program that they use.

10 MR. MARSHALL: Trip Maker is the software?

11 MR. HOLLON: Yes.

12 JUDGE CLIFTON: I don't think it is necessary
13 for us to have only one reference point for mileage,
14 but I would ask that in the briefs you identify the
15 source of the information you are using.

16 MR. MARSHALL: That is a wonderful solution to
17 the problem. I appreciate that very much, Your Honor.

18 JUDGE CLIFTON: You are welcome, Mr. Marshall.

19 BY MR. MARSHALL:

20 Q Let's continue on this Table 3, Elvin, the
21 \$1.95 rate, I assume is based on a load under 50,000
22 pounds, is that correct?

23 A Yes.

24 Q If a load were to be heavier as to say would
25 encompass more hundred weights, the rate per mile, per

1 hundred weight, might well be different.

2 A Again, I asked them for a series, asked them
3 to go back and look at some invoices and give me some
4 typical numbers. So, I would say that they were
5 representative of this kind of transport. But,
6 certainly, you know, you can go and find any
7 combination.

8 Q I can represent to you that between Idaho and
9 Washington, and indeed between Idaho and Oregon because
10 the road goes through all three states, their load
11 limits typically now will permit the use of 70,000 to
12 72,000, in fact, sometimes 74,000 pound loads in making
13 those long haul distances. And I assume for sake of
14 briefing, one could adjust the expected volumes to
15 correspond to one's assumptions without objection from
16 you, right?

17 A That would be reasonable.

18 Q Okay. I think just one other question that
19 occurred to me on the break, as I was looking at your
20 page, of your prepared testimony, page eight, and the
21 discussion of Criteria 6. Some handlers, at the
22 beginning of I think the second sentence, "Some
23 handlers gain additional revenue streams from this
24 pooling activity not available to all, due only their
25 ability to exploit the provisions better than others."

1 Would you argue there that might, as an expert
2 economist here of dairy industry, that this might
3 constitute disorderly marketing conditions?

4 A Yes.

5 MR. MARSHALL: Great. Thank you very much.

6 JUDGE CLIFTON: Thank you, Mr. Marshall.

7 Mr. English?

8 CROSS EXAMINATION

9 BY MR. ENGLISH:

10 Q Exhibit 19, start with Table 2 for a moment.
11 If I understand this correctly, your Column III is
12 based upon assumptions of Proposal 2 being adopted, is
13 that correct, Column III of Table 2?

14 A Yes.

15 Q Okay. And just to make the record clear, if
16 Proposal 2 were adopted, the Proposal 1 is not adopted,
17 okay. So, that means that one can still pool milk on
18 California and in this instance, Pacific Northwest.

19 A Okay.

20 Q Okay. Correct. That net return is only the
21 dollars from the Federal Order pool, correct?

22 A Yes.

23 Q And so, on the 80 percent of the milk that is
24 not delivered, there would be assuming the rules that
25 are in Exhibit 14 and 15 are abided by, the ability to

1 collect money out of the California pool on that milk,
2 correct?

3 A That is true, yes.

4 Q And so that by way of example of showing
5 that, that at least as to Table 2, one could see a real
6 economic benefit to still pooling twice the milk, if
7 you don't adopt one and two, correct?

8 A Yes.

9 Q And Table 4 for Order 135, while the number
10 is smaller for 60 cents, I take it again, Column III
11 then is reflecting of adoption of Proposal 9, correct?

12 A Well, if I thought far enough, it would be
13 yes, but, I forgot to put the 30 percent standard in
14 there.

15 Q Okay.

16 A So, the numbers are done basically on 20,
17 but, if the diversion proposal that we would make,
18 which would be a 70 percent or 30 percent delivery,
19 then that would be the --

20 Q Then the number would be less because the
21 delivery would be greater, correct?

22 A Correct. That is correct.

23 Q Regardless, is it your conclusion there would
24 probably be a positive number there, even at 30
25 percent.

1 A Yes.

2 Q Okay. And again, those numbers do not
3 include, assuming for a moment that Proposal 10 is not
4 adopted, and therefore, milk can be pooled
5 simultaneously on California State Order and on Order
6 135, those numbers do not include a pool benefit from
7 California, correct?

8 A Correct.

9 Q And that would reflect then the fact that if
10 you adopt Proposal 9, but did not adopt Proposal 10,
11 there would remain an economic incentive to double pool
12 the milk, correct?

13 A Yes.

14 MR. ENGLISH: Thank you.

15 JUDGE CLIFTON: Other cross examination at
16 this time of Mr. Hollon?

17 Mr. Tosi.

18 CROSS EXAMINATION

19 BY MR. TOSI:

20 Q Thank you for appearing today, Elvin.

21 Three questions. Do you have any testimony
22 or any opinion regarding whether or not the Department
23 should treat your proposal or Proposals 1 and 10 on an
24 emergency basis? That is --

25 A In the later statement, I deal with the

1 emergency issue, so, I will cover that --

2 Q That will be answered later.

3 A Yes.

4 Q Okay. Also, regarding the double dipping of
5 milk on the Western Order, do you have any firsthand
6 knowledge of which organizations are double dipping on
7 the Western Order from California?

8 A I know of at least one.

9 Q Okay. You don't expect to unilaterally
10 disarm?

11 A I do not expect to unilaterally disarm them.
12 Not voluntarily anyway.

13 Q All right. Regarding your testimony here on
14 the establishment of state units and then having those
15 state units perform as if they were supply plants.

16 A Yes.

17 Q I want to ask you a hypothetical question
18 about that. If instead, if we, if the reference to
19 state units were changed to have milk from states
20 outside of the states that currently comprise the
21 marketing area, do you follow along with that so far?
22 Some states have --

23 A We are not --

24 Q For example, a portion of the states included
25 in the marketing area and a portion of the state is not

1 included in the marketing area.

2 A Run it by me one more time.

3 Q Let me say it again. If the reference to
4 state units were changed to have milk from states
5 outside of the states that comprise the marketing area,
6 do you understand that part so far?

7 A I think so.

8 Q Okay. If that were changed and instead of
9 saying state units that the milk from outside of the
10 states that comprise the marketing area be organized
11 and reported separately without reference to which
12 state it came from, would that be an acceptable
13 alternative? Would a, excuse me, would that be in your
14 opinion achieve what you hope your proposal to achieve?

15 A In general, I think, yes. The one area
16 where there maybe a problem is, it was on the front
17 end, where we have gone through and described county by
18 county, there was some rationale to end the marketing
19 area and out and because sometimes there is large milk
20 supplies on that county by county basis. So, if the
21 inference on your question, is on the back end of part,
22 I think I would be reasonably happy with it. But, I
23 think that there is some cases where an order is
24 composed, just of all of one state and one county up
25 here, and you say, well, we are going to exclude all

1 these other counties because there is one county in the
2 state, I think I could think of some places where that
3 would, would not meet the objective. I mean, you know,
4 a specific example might be in Order 32, where there
5 are two counties in Wisconsin that are included as part
6 of Order 32. Under the way I heard you, you would say
7 all other counties in Wisconsin would not have to
8 perform under whatever unit that we set up. I think
9 in that scenario, it wouldn't work quite as well.

10 Q I think we are saying the same thing. Let me
11 ask, may I just --

12 A Yes.

13 Q -- ask it just to make sure we are thinking
14 the same way.

15 A Okay.

16 Q To give you a for example, if you look,
17 considering the boundaries of the current Pacific
18 Northwest Order as an example, part of Idaho is part of
19 that, is included within that marketing area of the
20 Pacific Northwest?

21 A Right.

22 Q Under the hypothetical situation that I gave
23 you, it would only be milk that would come from say
24 states that were, that would not include Idaho, for
25 example, milk that would come, that would be received

1 say from Montana, from Wyoming, from Nevada, from
2 California, without reference to where it came from
3 other than it is from outside the area and then it is
4 reported, organized and reported separately.

5 A Okay. You said it is outside the area and
6 organized and reported --

7 Q Yes, outside of the, yes, outside of the
8 marketing area.

9 A Yes.

10 Q Rather than outside of the states that
11 comprise the area.

12 A Okay. I think that is, I do not have an
13 objection to that characterization.

14 Q Okay. Okay. But, because Idaho --

15 A Under your example, under that example, Idaho
16 would have some geography in and some geography out.

17 Q Right.

18 A Yes, okay. I am okay with that.

19 Q Okay. We are clear with each other then.

20 A Yes.

21 MR. TOSI: Thank you very much. That is all I
22 have.

23 JUDGE CLIFTON: Thank you, Mr. Tosi.

24 Any other cross examination before I ask Mr.
25 Beshore to follow up with redirect?

1 (Pause.)

2 JUDGE CLIFTON: There maybe. Let's take a 10
3 minute break. Please be back at about 4:36.

4 (Whereupon, a short recess was taken.)

5 JUDGE CLIFTON: We are back on the record.
6 We are back on the record at 4:39.

7 Mr. Hollon, you may resume the stand.

8 Were there any other cross examination
9 questions before Mr. Beshore asks what redirect
10 questions he has at this juncture?

11 There being none. Mr. Beshore.

12 REDIRECT EXAMINATION

13 BY MR. BESHORE:

14 Q Mr. Hollon, before we go into the language of
15 an intent of, back to the intent of Proposals 2 and 9
16 and those language. Let me ask you a question about
17 Exhibit 19, the mileage and hauling rate tables. And
18 this is just a follow up and clarify Mr. Marshall's
19 inquires about the size of load.

20 The information that you used here was, rate
21 per mile was based on, you know, that size load,
22 correct? Based on a 47,500 --

23 A Yes, yes.

24 Q Okay. So, that if you were going to change
25 the transport size, you would need to look at other

1 information with respect to what the cost would be and
2 you don't, you didn't look at that and you don't have
3 it available.

4 A That is correct.

5 Q Okay. And it may, I presume, if you have got
6 a 70,000 pound load, it is going to, you are going to
7 pay more than \$1.95 per load at mile --

8 A In some discussions --

9 Q -- to haul.

10 A And some discussion with some of our folks in
11 this market, they describe, you know, I think they call
12 it a tube transport where there is a trailer, a single
13 unit and pulls a trailer with it. And you certainly,
14 if you have that, you can transport more, but you also
15 have more capital costs because you have to have two
16 tank units of some kind. The weight is more, so it is
17 going to cost more to operate. So, you would have with
18 a 70,000 pound payload, you would have more costs that
19 the hauler would expect to recover.

20 Q Whether the rate per hundred weight or per
21 unit would be the same or different, we don't know,
22 because we don't know what the cost would be.

23 A That is right.

24 Q Okay. Now, let's go back then to questions,
25 clarifications with respect to the operation of

1 Proposal 9 or 2, as intended.

2 Some questions have come up with respect to
3 how that would, well, what your intention is with
4 respect to how it would work, for instance, the
5 proposed language for Section 1124.7, which is at the
6 bottom of page 12 and the top of page 13 of Exhibit 18.
7 Okay. Could you just relate what your intent is with
8 respect to that language and what you understand to be
9 the possible questions that the language raises?

10 A The intent or I guess the philosophy behind
11 our request is perhaps best done with an example. But,
12 we will just use Federal Order 124 as an example and we
13 will take a supply plant at Smithfield, Utah.

14 Q Smithfield, Utah.

15 A If that supply plant wishes to be pooled on
16 Order 124, then under our proposal, it would have to
17 meet the supply plant rule, the delivery rule, which is
18 currently 20 percent for six months out of the year,
19 and it would get a free ride for six months out of the
20 year because that is what the 124 language, you know,
21 proposes. And so, we made an attempt to craft the
22 verbiage to meet that, perhaps, I did, perhaps I
23 didn't, but, that is the intent. If there was a block
24 of milk that wanted to, that was in the same county,
25 and it wanted to pool as producer milk and not go

1 through the Smithfield supply plant. It was 10 farms.
2 Then the production of those 10 farms would have to
3 meet, would have to deliver 20 percent of their milk
4 supplies six months out of the year and get a free ride
5 six months out of the year. If it met that standard,
6 then it could pool on Order 124. And that standard of
7 20 percent and in six months, and a free ride of six
8 months is the language that is in the Supply Plant
9 Standard in the marketing area.

10 If you came, if you took a Kansas milk supply
11 and came and wanted to pool it in Salt Lake City, if
12 you had a supply plant in Western Kansas, which there
13 is not one at the moment, but if you had one in Western
14 Kansas and our proposal for 30 percent was accepted,
15 that supply plant would have to deliver to Salt Lake
16 City or a pool distributing plant, six months out of
17 the year, 30 percent of its milk and six months out of
18 the year it would not have to, it would get a free ride
19 and that supply would qualify.

20 If milk came off of a farm, if 10 producers
21 wanted to, you know, collectively pool their milk
22 supply, then their collective production in a month
23 would have to deliver 30 percent six months out of the
24 year, six months out of the year it would not have to
25 deliver and that producer milk supply would qualify.

1 Q Would I be correct stating at the most
2 conceptionally, most broadly, but, hopefully clearly,
3 that the intend of the proposal is to have the milk in
4 the out of state units, out of area state units
5 perform, be required to perform at the same level as a
6 free standing block of milk of the same type within the
7 marketing area?

8 A As a free standing supply plant in the
9 marketing area. That is C-1, C-2 proposals or
10 language.

11 Q And in particular, the concept of having
12 them, having the out of area state unit be required to
13 perform on its own, is to prohibit or eliminate the
14 scenarios that presently exist where in area milk can on
15 paper perform for out of area milk, which then has no
16 performance requirements in essence at all.

17 A That would be correct. There is a second
18 question about the relationship of that out of area
19 performance can it then be used to help the
20 computations of the in area milk and that would be no.
21 That just like the in area supply should not be able to
22 provide performance criteria for the out of area milk
23 the same, reverse standard would apply.

24 Q Okay. So, deliveries from out of the area
25 could not be used by a handler who also had in area --

1 A That is correct.

2 Q -- milk, to lower or reduce other, what would
3 otherwise be the requirements on the in area milk.

4 A That is right.

5 Q Okay. Now, Mr. Tosi asked you a question or
6 two, hypothetical question or two, with respect to
7 possible changes in the language or operation of the
8 Proposals 2 and 9, if I understood them correctly.

9 A Right.

10 Q And I want to make sure that your views with
11 respect to those hypotheticals are clear. Would, would
12 you support a possible revision to Proposal 2 or 9
13 which allowed all out of area milk to be aggregated in
14 one of area and I am using that term not without,
15 using out of area conceptionally and not meaning
16 anything specific. But, to have only one out of area
17 reporting unit.

18 A No.

19 Q Okay. Why not?

20 A You can, as you look over the procurement
21 areas of the country, you can, you can quickly pick up
22 where small volumes of large blocks of milk could, in
23 essence, you would end up with, you could end up with
24 the same situation that we have now. And it would, we
25 would, there could be some geographic areas where you

1 could gain, but in the long run, I don't think that
2 that would be persuasive enough to solve the problem.

3 Q In all orders and all --

4 A In all orders and all places.

5 Q Okay. Have you analyzed that option --

6 A I have not.

7 Q -- precisely with respect to Pacific
8 Northwest or the Western Order?

9 A No, I haven't.

10 Q Okay. And so you are talking, you have looked
11 at it with respect to how it might not be viable,
12 obviously not be viable in other areas.

13 A Yes, that is right. We have looked and we
14 have identified areas where we think that an
15 enterprising pooler could, you know, could come back to
16 the same spot that we are now. So, that was why we
17 moved in the direction that we had.

18 One of the things, I guess, what I was
19 hearing Mr. Tosi say is that there might be some other
20 designation other than state that might apply, and that
21 would be a workable thing, but to have only one out of
22 area block, I think would not work in the long run. We
23 would be back in this scenario again before too much
24 longer.

25 Q And I think Mr. Marshall probably asked you

1 about designations other than states and whether they
2 might be viable and, you know, even, you know, good
3 ideas and you said you would want to deliberate on it
4 and think it through.

5 A That is correct. Yes.

6 Q Okay. And that position stands?

7 A Yes.

8 Q Now, with, specifically with respect to the
9 Pacific Northwest Order or 124, would it be viable in
10 your view to define the in area as states, as the
11 marketing area or states of the marketing area?

12 A I think for the most part, yes, again having
13 gone detail by detail, map by map, but, you know --

14 Q Well, given the fact that part of Idaho is in
15 the area, part of the State of Idaho, but the rest of
16 Idaho including Southern Idaho is not in the area in
17 124.

18 A Yeah. That could be a problem. I was
19 thinking of it from the 135 side, but from the 124
20 side, that might not work too good.

21 Q Okay. In 124, isn't it true, Mr. Hollon, with
22 respect to 124, the Pacific Northwest Order, you would
23 certainly want Southern Idaho milk to be considered out
24 of area milk.

25 A That is correct.

1 Q That had to perform on its own if it was
2 pooled there.

3 A That is correct.

4 Q And could not be qualified by milk of a
5 handler in the Order.

6 A That is correct.

7 Q Okay. So, having, so any in area definition
8 that was stated as the marketing area and states of the
9 marketing area wouldn't work.

10 A That is right.

11 MR. BESHORE: That is all I have, thank you.

12 JUDGE CLIFTON: Thank you, Mr. Beshore.

13 Recross?

14 (Pause.)

15 JUDGE CLIFTON: All right, there appears to be
16 no further examination from Mr. Hollon on this issue?

17 (Whereupon, the witness was excused.)

18 JUDGE CLIFTON: Mr. Beshore, are you prepared
19 to go into another proposal? Mr. Carlson?

20 MR. BESHORE: I know that Mr. McBride is
21 prepared to testify with respect to those proposals at
22 this time and that would certainly, I think be the next
23 order of business. My reluctance to begin something we
24 are not going to complete, remains, my objection to
25 beginning something that we cannot possibly complete

1 tonight remains.

2 JUDGE CLIFTON: All right, thank you, Mr.
3 Beshore.

4 Mr. Carlson?

5 MR. CARLSON: Yes, I have a few brief
6 statement on Proposals 9 and 10, myself.

7 JUDGE CLIFTON: Oh, all right. Very good. Do
8 you want to go first and then we will have Mr. McBride?

9 MR. CARLSON: I think so.

10 JUDGE CLIFTON: All right, Mr. Carlson.

11 (Pause.)

12 JUDGE CLIFTON: Thank you. Have you provided
13 one for the Court Reporter? He has got his. All
14 right.

15 Mr. Carlson, please be seated and I believe
16 this is the first time you have testified in this
17 hearing, is that correct?

18 MR. CARLSON: At this hearing, that is
19 correct.

20 JUDGE CLIFTON: All right, would you raise
21 your right hand, please.

22 Whereupon,

23 RODNEY CARLSON

24 having been first duly sworn, was called as witness
25 herein and was examined and testified as follows:

1 JUDGE CLIFTON: All right, please again state
2 your full name and spell your names for the record.

3 MR. CARLSON: My name is Rodney, R-O-D-N-E-Y,
4 Carlson, C-A-R-L-S-O-N. And I am appearing on behalf
5 of River Valley Milk Producers, Incorporated,
6 Cooperative Associations of Dairy Farmers.

7 DIRECT TESTIMONY BY MR. CARLSON:

8 MR. CARLSON: Members of River Valley Milk
9 Producers have farms located in Southwestern Idaho,
10 within the boundaries of the Western Milk Marketing
11 area. Milk marketed from these farms is pooled on the
12 Western Marketing area and milk from member farms is
13 normally delivered to the Sorento Lactalis plant in
14 Nampa, Idaho. Sorento provides a very important
15 balancing function in the market. They help process
16 surplus seasonable milk and weekend milk into storable
17 products and they supply milk to the Class 1 market on
18 weekdays and other times when milk is needed at the
19 local food milk processing plant.

20 As far as myself, I have a BS and MS in
21 Agriculture Economics from North Dakota State
22 University. I worked for eight years in Market
23 Administrator offices in St. Louis, Missouri, Denver,
24 Colorado. I worked for five years for Land O' Lakes as
25 an agriculture analyst. And I worked for 16 years for

1 Milk Marketing Incorporate, a cooperative headquartered
2 in Ohio and I had a number of titles there, but it at
3 all times I was responsible for Federal Milk Marketing
4 activities, order activities. So, that is my
5 background.

6 I have a very brief statement on Proposals
7 number 9 and 10.

8 JUDGE CLIFTON: I would like to mark those
9 as an exhibit.

10 MR. CARLSON: Okay.

11 JUDGE CLIFTON: That would be Exhibit 20.

12 (The document referred to
13 was marked for identification
14 as Exhibit 20.)

15 JUDGE CLIFTON: And how many of you have
16 copies of Exhibit 20?

17 All right, does any of you wish to voir dire
18 the witness about his Exhibit 20?

19 (Pause.)

20 JUDGE CLIFTON: Is there any objection to
21 Exhibit 20 being admitted into evidence?

22 There is none. Exhibit 20 is hereby admitted
23 into evidence.

24 (The document referred to,
25 having been previously marked

1 as Exhibit 20 was received in
2 evidence.)

3 JUDGE CLIFTON: You may proceed.

4 MR. CARLSON: Okay. It is very obvious that
5 adequate milk and supplies of milk produced within the
6 marketing area are readily available to meet the fluid
7 needs of the market. There is no justifiable reason
8 for distant milk to be attached to the market. And I am
9 referring to Federal Order 135 in this case.

10 Such milk can only dilute the pool and reduce
11 the blend price for local producers unnecessarily. We
12 support the adoption of Proposals 9 and 10 to reduce
13 the possibility of distant producers and handlers
14 abusing the liberal pooling requirements in the market.
15 Local producer milk should not be used to help qualify
16 distant milk. We believe producers from outside the
17 market should be expected to meet pooling requirements
18 on their own merit in order to produce faith in the
19 blend price.

20 We also believe that producers participated,
21 participating in a market wide pooling program in
22 another area should not be allowed to participate in
23 another market wide pooling program.

24 Federal Order Markets prevent the possibility
25 of producer milk participating in more than one Federal

1 Order market. Producer milk that participates in a
2 state market wide pool, should also be prohibited from
3 participating in an Federal Order pool.

4 River Valley Milk Producers supports the
5 adoption of both Proposals 9 and 10. And that is the
6 end of my statement.

7 JUDGE CLIFTON: Thank you, Mr. Carlson.

8 Cross examination questions? Mr. English?

9 CROSS EXAMINATION

10 BY MR. ENGLISH:

11 Q Mr. Carlson, just a couple of questions. I
12 was looking in Exhibits 5 and 6 and don't see River
13 Valley Milk Producers listed. Is it a cooperative?

14 A Yes, they are a cooperative.

15 Q Are they a 9C handler?

16 A No, they are not.

17 Q Do they operate a plant?

18 A No, they do not.

19 Q Are they, are they, therefore, a 9B handler?

20 A No, they are not.

21 Q Okay. Are they handler at all?

22 A They are not a regulated handler. DFA is the
23 pooling agent for their milk, for this group of
24 producers.

25 Q How long has this group of producers been --

1 A Less than a year.

2 Q How many producers are we talking about?

3 A Six.

4 MR. ENGLISH: Thank you.

5 JUDGE CLIFTON: Other cross examination

6 questions for Mr. Carlson?

7 MR. CARLSON: I will add that those six
8 producers produce about 700,000 pounds of milk per day.

9 JUDGE CLIFTON: Mr. Vetne?

10 CROSS EXAMINATION

11 BY MR. VETNE:

12 Q My questions just got reduced by one.

13 Mr. Carlson, are these producers part of a
14 dedicated supply to Sorento Lactalis?

15 A I would say, yes, they are.

16 Q Okay. When these producers have to touch
17 base at a pool plant, do you know what pool plant?

18 A The Meadow Gold Plant at Boise.

19 Q Is that part of DFA's supply commitment to
20 the Meadow Gold Plant?

21 A Yes, it is.

22 Q Prior to the formation of River Valley Milk
23 Producers, what affiliation did these six producers
24 have, if any?

25 A They were, again, part of the milk supply for

1 Sorento Lactalis and whenever Sorento could qualify or
2 did qualify in the market, those producers would be
3 involved in that participation in the market. They
4 participated to whatever degree Sorento did.

5 Q Were they independent producer patrons of
6 Sorento before the coop was formed?

7 A Yes, they were.

8 Q Okay. Were they able to pool through DFA
9 before River Valley was formed?

10 A No. Were they able to?

11 Q Did they?

12 A Did they? No.

13 Q Did they?

14 A No, they did not.

15 Q Do you know whether they sought to pool
16 through DFA before River Valley was formed?

17 A Not to my knowledge.

18 Q Does Sorento Lactalis arrange for the pooling
19 of any other of its milk supplies?

20 A Yes.

21 Q Do you know how that is done?

22 A Again, again, that is through DFA.

23 Q So, it is, let me see if I understand. It is
24 basically either DFA member milk or Sorento Lactalis
25 patrons who are pooled by diversion on the DFA report,

1 is that correct?

2 A Yes, I think, based on how I understand your
3 question, I think that is correct, yes.

4 MR. VETNE: Thank you.

5 JUDGE CLIFTON: Would you spell of us Sorento
6 Lactalis?

7 MR. VETNE: It is in Exhibit number 8. On the
8 fourth page, alphabetical list of handlers by month and
9 type. And it is S-O-R-E-N-T-O, L-A-C-T-A-L-I-S. And
10 that is in Nampa, N-A-M-P-A, Idaho.

11 JUDGE CLIFTON: Thank you. Mr. Beshore?

12 MR. BESHORE: Yes.

13 CROSS EXAMINATION

14 BY MR. BESHORE:

15 Q Mr. Carlson, you are not privy to the
16 agreement that DFA has with Sorento Lactalis with
17 respect to any terms of qualification of their milk
18 supply, are you?

19 A No, I am not.

20 Q Okay. So, wouldn't, you would not know, for
21 instance, whether they are required to perform at a
22 level higher than the, what, 95 percent Class 2, 3 and
23 4, that has been shown in the Market Administrator
24 Exhibits as the going level of priority bulk tank
25 handlers?

1 A I am not privy to that information.

2 Q But, your testimony indicates, like anybody
3 else, if they are going to pool, they ought to perform,
4 right?

5 A That was the intent of my, what I indicated,
6 my testimony, yes.

7 MR. BESHORE: Okay. Thank you.

8 JUDGE CLIFTON: Further questions for Mr.
9 Carlson?

10 Mr. Tosi?

11 CROSS EXAMINATION

12 BY MR. TOSI:

13 Q Thank you, Rodney.

14 Just one question for clarity. Your
15 testimony seems to apply support for the end of double,
16 the ability to double dip. Would that be a correct
17 observation?

18 A Would you please ask the question again?

19 Q Yes, in your written statement.

20 A Yes, sir.

21 Q Your testimony contained therein, seems to
22 suggest supporting the end of double dipping.

23 A The end of double, oh, okay, that is the part
24 I didn't hear you the first time.

25 Q Okay.

1 A Yes, we support the end of double dipping,
2 yes.

3 Q And in that regard, would it be accurate to
4 say then that you are supporting Proposals 1 and 10 in
5 that regard?

6 A We certainly, we are not involved in Federal
7 Order 124, so, I did not make any statement to that
8 regard, but, yes, unofficially, we obviously support
9 that as well.

10 JUDGE CLIFTON: I need clarification. When
11 you say you support the end of double dipping, do you
12 mean the termination of double dipping or you mean the
13 objective of double dipping?

14 MR. TOSI: The termination of double dipping
15 that is contained in Proposals 1 and 10.

16 JUDGE CLIFTON: All right. And that is how
17 you understood it as well, Mr. Carlson?

18 MR. CARLSON: Yes.

19 JUDGE CLIFTON: Thank you.

20 BY MR. TOSI:

21 Q Well, there is just one other thing.
22 Regarding Proposals 1 and 10, would you be of the
23 opinion that should be handled on an emergency basis by
24 the Department?

25 A I believe it is something that should be

1 handled as quickly as possible, because of the economic
2 harm it is causing. So, yes, we would support that.

3 Q And how about with regard to Proposals 9 and
4 10, the state unit proposals?

5 A Same thing, yes.

6 Q The same?

7 A Yes, yes.

8 MR. TOSI: Thank you very much.

9 JUDGE CLIFTON: Thank you, Mr. Tosi.

10 Any other cross examination questions?

11 Mr. Stevens, anything further?

12 MR. STEVENS: No, no, I am just scratching my
13 head, Your Honor.

14 JUDGE CLIFTON: All right. Mr. Carlson,
15 anything further to wrap up in conclusion?

16 MR. CARLSON: Nothing further.

17 JUDGE CLIFTON: All right, thank you. You may
18 step down.

19 (Whereupon, the witness was excused.)

20 JUDGE CLIFTON: Mr. McBride, would you like to
21 come forward.

22 (Pause.)

23 JUDGE CLIFTON: Thank you. Mr. Marshall.

24 MR. MARSHALL: Thank you, Your Honor. We ask
25 that prepared testimony of Daniel S. McBride regarding

1 Proposal number 2 and number 9 be marked as an exhibit.
2 Please forgive me, I am not clear if this would be 21
3 or a different number.

4 MR. BESHORE: Twenty one.

5 JUDGE CLIFTON: You are correct, 21. It shall
6 be so marked.

7 (The document referred to
8 was marked for identification
9 as Exhibit 21.)

10 MR. MARSHALL: Thank you. Your Honor, this is
11 a philosophical statement. There are no statements of
12 particular evidence contained therein. It would be
13 entirely possible to have Mr. McBride read this. If
14 there is any portion of his testimony that may not
15 merit being read into the record, this would be it.

16 JUDGE CLIFTON: All right. Are you suggesting
17 that it just come in as an exhibit?

18 MR. MARSHALL: Yes, and that if people have
19 questions, perhaps they could, feel free to ask them on
20 voir dire or in cross examination. But, we, this
21 document includes concerns that addressed and
22 particularly some comment about the Federal Reform
23 process and why where we are where we are in having to
24 deal with issues like this on a piecemeal basis. And
25 the actual statement regarding Proposals 2 and 3, 2 and

1 9 are, the bottom of two and the top of three and are
2 very, very short.

3 JUDGE CLIFTON: All right. Good. Thank you,
4 Mr. Marshall.

5 Let me ask first, if anyone wants to voir
6 dire the witness on this exhibit before I see if there
7 are objections to its being admitted into evidence?

8 Mr. Beshore?

9 MR. BESHORE: Can we just have a couple of
10 minutes to read it.

11 JUDGE CLIFTON: Read through it. Certainly.
12 Let's go off the record while you do that.

13 (Off the record.)

14 JUDGE CLIFTON: We are back on the record at
15 5:10.

16 I have glanced through the statement. It has
17 got a lot of meat to it. I would not, now having read
18 it, I would not want to neglect reading it into the
19 record if there are people in the room who do not have
20 a copy. Does everyone in the room have a copy of Mr.
21 McBride's statement regarding Proposals 2 and 9?

22 MR. MARSHALL: We do have extra copies.

23 JUDGE CLIFTON: Okay. As long as everyone here
24 has a copy, I think not reading it into the record is
25 wise. All right.

1 Yes, Mr. Vetne?

2 MR. VETNE: Is the statement going to be --

3 JUDGE CLIFTON: Please come to the microphone.

4 (Pause.)

5 MR. VETNE: Is the statement going to be
6 incorporated in the transcript as if read? That sort
7 of important because the reading of the transcript
8 gives some kind of flow.

9 JUDGE CLIFTON: It will be incorporated into
10 the body of evidence, but the only --

11 MR. VETNE: I understand.

12 JUDGE CLIFTON: But, the only reference to it
13 in the transcript would be what questions Mr. McBride
14 is asked, and its admission into evidence if that
15 happens.

16 MR. VETNE: Fine, as long as we understand.

17 JUDGE CLIFTON: Okay. All right, let's go
18 back off record while people continue to read it.

19 (Off the record.)

20 JUDGE CLIFTON: We are back on the record at
21 5:15.

22 Questions for Mr. McBride?

23 Oh, first of all, any voir dire questions?

24 There appear to be none. Are there any objections to
25 my admitting Exhibit 21 into evidence?

1 There are none Exhibit 21 is hereby admitted
2 into evidence.

3 (The document referred to,
4 having been previously marked
5 as Exhibit 21 was received in
6 evidence.)

7 MR. MARSHALL: Thank you, Your Honor.

8 JUDGE CLIFTON: You are welcome, Mr. Marshall.

9 Now, cross examination questions for Mr.
10 McBride?

11 Mr. Beshore?

12 MR. BESHORE: I have just a couple of
13 questions, I think.

14 CROSS EXAMINATION

15 BY MR. BESHORE:

16 Q Mr. McBride, you comment at the bottom of
17 page two of Exhibit 21, the paragraph that continues at
18 the top of page three, again, with respect to your
19 concern about the NDA members in Northern California
20 delivering to Medford and Portland and producers in
21 Northern Idaho delivering to Spokane. Are you
22 satisfied after Mr. Hollon's testimony and the
23 interpretation of Proposals 2 and 9 that they would not
24 impact those producers and their supply of those
25 distributing plants?

1 A I understood that it would not impact their
2 supply of those distributing plants, but I would
3 concerned if it would allow additional milk, you know,
4 to be, you know, pooled on the, on the order.

5 Q Do you think Proposal 2 or 9 would allow
6 additional milk to be pooled, that is not now allowed
7 for?

8 A As I understand what Mr. Hollon said is that
9 if those producers that would then be going into
10 Medford, would not be counted as part of my, as part of
11 the NDA sales to a pool distributing plant. They would
12 be considered separately outside of the --

13 Q As a California.

14 A As a California state unit. Which then means
15 that there could be additional milk diverted off of
16 that.

17 Q Off the California state unit.

18 A Off the California, yes.

19 Q But, you can divert, divert milk off of those
20 deliveries now, isn't that correct?

21 A We can as a whole, yes.

22 Q Okay. And in fact, the ability to do that and
23 not be increased by Proposal 2, but it would be, it
24 would be reduced, would it not?

25 A No, but if other people had producers outside

1 the area that were being, that were also delivering to
2 handlers in the, in the Pacific Northwest area, you
3 know, they could have additional milk, pounds of milk
4 associated with it.

5 Q Okay. Are you aware of, other than your
6 producers in Northern California, of other producers
7 outside of the area that are delivering to distributing
8 plants inside the area of Order 124 at the present
9 time?

10 A Yes, I am.

11 Q And what circumstances, what situations are
12 they? Where are the producers and where are they
13 delivering to?

14 A The producers that NDA has in Northern
15 California are located in Siskiyou County. There are -
16 -

17 Q But, other than those northern California and
18 NDA producers.

19 A There are other producers located in, I
20 believe Del Horta County, which is over on the coast
21 that are pooled on the Pacific Northwest Order.

22 Q Well, part of that historical Northern
23 California pocket of NDA milk that has been pooled on
24 Order 124 for a number years, isn't that --

25 A That is not what, the producers on Del Horta

1 are not part of NDA.

2 Q Oh, I see. And but, have they historically
3 been pooled on Order 124?

4 A Historically, yes, but if you look at some of
5 the numbers, I don't think, I don't believe all the
6 milk in California has been pooled on the order through
7 like the last year. If you look at these MA statistics
8 for California, in the Pacific Northwest, there is some
9 variations from month to month. I can only assume
10 that, you know, there are months when the producers are
11 pooled and they are not pooled.

12 Q From Del Horta County?

13 A I would assume Del Horta.

14 Q Well, I just wanted, because I recall Mr.
15 English asking Mr. Mykrantz this morning whether the
16 poolings on Pacific Northwest Order from the Northern
17 California counties, including Del Horta, were
18 historically, supplies that had historically been part
19 of that order for many years. And I understood the
20 answer to be yes. And I take it you have some
21 additional information or different information with
22 respect to that.

23 A Those producers in Northern California, would
24 be Siskiyou and Del Horta, have been associated with
25 the Pacific Northwest Order. But, I think since

1 Reform, there has been months when not all those
2 producers or at least all the milk, has been associated
3 with the Pacific Northwest Order. But, I don't know
4 what the circumstances are, but if you just look at the
5 numbers, there is, you know, months when there is, you
6 know, six million pounds pooled from California and
7 months there is only, you know, three or four million
8 pounds pooled.

9 Q Okay. And do you know where else, where it
10 has been pooled when it is not pooled on Order 124?

11 A That I do not know.

12 Q Okay. What other handler pool production
13 from up there, if they are not NDA members, do you know
14 what affiliations they have?

15 A I believe there are some producers affiliated
16 with Umpqua Dairy and also Valley Crest, a dairy which
17 is down in Myrtle Point, Oregon, I believe.

18 Q Okay. Are those, Umpqua, Valley Crest, are
19 they distributing plants under Order 124?

20 A Umpqua is a distributing plant.

21 Q And how about Valley Crest?

22 A I am not sure. I think I believe they are a
23 non pool plant.

24 Q Okay. With respect to your comments in
25 Exhibit 21 about the producer price applicable at

1 manufacturing plants, the pricing of, you know, of
2 producer milk, at manufacturing plants varied under,
3 before Federal Order Reform with the location of the
4 manufacturing plant, correct? There were location
5 prices for producer milk as you have noted. And they
6 could have been up or down even before Reform, isn't
7 that correct?

8 A Yes, I mean, there location factors in pre
9 Reform.

10 Q And there were situations under some of the
11 orders, pre Reform, where you would have manufacturing
12 plants and plus locations zones, correct?

13 A Correct.

14 Q Okay. Which is no different from what you
15 have now between Utah plants and Idaho plants in Order
16 135, isn't that correct?

17 A In the pre Reform, the Southwest side of
18 Eastern Oregon order, I do not believe there are any
19 location differentials in that order.

20 Q Right, but in Great Basin there were, were
21 there not?

22 A I know the Great Basin Order had a \$1.90
23 differential. I do not know if there were other pricing
24 zones in the Great Basin Order pre Reform.

25 Q Okay. Is it your philosophy that the

1 producer price at manufacturing plants should be the
2 same, should be one flat producer price at
3 manufacturing plants?

4 A I don't understand the question.

5 Q Well, I am not sure I understand the, the
6 philosophical concerns with the price that is paid to,
7 is return to producers under Reform at manufacturing
8 plants in particular, when you, you make some
9 particular comments about the producer prices that
10 applies to milk delivered to cheese plants. Are you
11 with me on that?

12 A Yes.

13 Q Okay. Is it your philosophy that the producer
14 price for milk delivered to cheese plants under, should
15 be the same because manufacturing values are national,
16 national values, as you point out?

17 A I am just pointing out that producers will
18 receive the different prices based on where their milk,
19 you know, is manufactured. I mean, like Southern Idaho
20 versus a plant, a cheese plant in Utah, those producers
21 will receive the additional 30 cents.

22 Q Okay. And do you object to that particular
23 location price within Order 124 of 135, excuse me?

24 A No.

25 Q And certainly when, if there was a problem

1 there, NDA and anybody else had the opportunity when
2 the notice for this hearing, when the pre notice for
3 this hearing went out, to submit proposals suggesting
4 changes in location prices within the order, I suppose.

5 A Correct.

6 (Pause.)

7 MR. BESHORE: Thank you.

8 JUDGE CLIFTON: Thank you, Mr. Beshore.

9 Additional cross examination?

10 Mr. Carlson?

11 CROSS EXAMINATION

12 BY MR. CARLSON:

13 Q On page two of your testimony, the second dot
14 there, the same rules cause an even greater disparity
15 when distant pooling is included in the equation. And
16 you talk about how milk delivered to Colorado would get
17 an additional 55 cents. Would you kindly explain how
18 that works?

19 A The example we are using here is that if you
20 had a manufacturing plant that was located in an area
21 where they had a \$2.45 pricing surface, you know,
22 Class 1 --

23 Q Class 1 differential.

24 A Class 1 differential. And that milk was
25 pooled on the Western Order, that that difference

1 between the \$1.90 and 2.45 would then be sent to the
2 producer whoever was supplying or pooled the milk that
3 was delivered or was that pooled from that plant.
4 Being the milk was, you know, stayed at the plant in
5 the county that had the 2.45 Class 1 differential, it
6 was a manufacturing plant and the additional 50 cents
7 would be taken from the pool value and sent to the
8 handler that it pooled the milk.

9 Q Well, let me try this a different way. As I
10 understand what you are saying, if producer milk pooled
11 on the Western Order is delivered to a plant in
12 Colorado where there is a 55 cent higher Class 1
13 differential, they will receive a blend price for that
14 milk, that is 55 cents higher than milk delivered to
15 Salt Lake City.

16 A Correct.

17 Q Is that correct?

18 A Correct.

19 Q Even though that milk maybe used for
20 manufacturing purposes in that distant plant?

21 A Correct.

22 Q And to you that does not seem right, isn't
23 that correct?

24 A Yes.

25 MR. CARLSON: Thank you.

1 JUDGE CLIFTON: Mr. Vetne?

2 CROSS EXAMINATION

3 BY MR. VETNE:

4 Q Mr. McBride, if you could focus for just one
5 moment on what you have referred to as the Class 1
6 pricing surface applicable to milk used to produced
7 packaged products sold to consumers.

8 It is my understanding from reading this,
9 maybe I am right, maybe I am wrong, it is my
10 understanding from reading your testimony that you have
11 no problem and no objection to the Class 1 pricing
12 surface.

13 A That is correct.

14 Q Okay. It is my further understanding from
15 reading your testimony that you do have a problem and
16 you do see a difficulty in the system with using the
17 same adjustments for producer prices, pool prices as
18 applied to the Class 1 pricing surface.

19 A Correct.

20 Q Okay. Do you think it would be an advisable
21 thing for the Department to address this issue on a
22 national basis?

23 A I believe that is part of the testimony.

24 Q Okay. Do you think that addressing it on
25 that basis or any basis it would be wise for the

1 Secretary to consider whether or not to employ
2 authority that has existed since the 1985 Farm Bill
3 that allows the Department of Agriculture to adjust
4 producer prices at some measure different from Class 1
5 price adjustments?

6 MR. STEVENS: Your Honor, I feel constrained
7 to object to this line of questioning because it is not
8 a proposal that we are hearing today. It is outside
9 the scope of the hearing. It is dealing with what the
10 Secretary should do in some other situation, whether he
11 should call a hearing and have a hearing. And I don't
12 think it is appropriate for us to go into that here.

13 JUDGE CLIFTON: Mr. Stevens, thank you. And
14 your objection is noted and you are correct, but
15 nevertheless I will allow the question and answer. I
16 don't think it will take too much time and it may be
17 valuable.

18 BY MR. VETNE:

19 Q Mr. McBride --

20 A Could you repeat the question?

21 Q Okay. The question is and I will paraphrase
22 it, in considering the proposals before the Secretary
23 today, after the record is closed and the briefs are
24 filed, do you think it would be advisable for the
25 Secretary to consider in adopting or not adopting these

1 proposals whether it would be a good idea as an
2 alternate in the future, to consider adjusting producer
3 prices at a different level than Class 1 prices? So
4 that producers prices are linked to the market that
5 are, the primary market that is served.

6 A We believe that, you know, that there is a
7 problem and it does need to get fixed. I think that
8 Proposals 2 and 9 are an attempt, you know, to put a
9 band-aid on it, but as we say in the testimonies, that
10 we believe that we need to fix the problem, you know,
11 and having a national hearing. How they decide to,
12 what the final decision would be, you know, I wouldn't
13 know, but, I think, you know, a hearing should be, you
14 know, could be held to see what all the issues are.

15 Q Do you believe that reasonably milk that is
16 pooled in a market ought to receive a lower blend price
17 in relation to distance from that market in which it is
18 pooled? Is that your --

19 A Your question is that, I mean, if milk from a
20 distant market should be receiving a lesser price
21 than --

22 Q No, a milk, milk delivered to a distant
23 location from the market in which it is pooled, is it
24 your testimony that that milk ought to receive a lower
25 blend price because of its distance from the primary

1 pooled market?

2 A Milk delivered to a distant market should
3 receive a, yes.

4 Q To a distant plant, yes.

5 A Yes.

6 MR. VETNE: Thank you.

7 JUDGE CLIFTON: Thank you, Mr. Vetne.

8 Mr. Beshore?

9 CROSS EXAMINATION

10 BY MR. BESHORE:

11 Q I did have one question, Mr. McBride. On
12 page three of your statement, the first full paragraph
13 at the top, you say, "Finally, we would be concerned if
14 the result of this proposal" and you are addressing
15 Proposal 2 in that case, "would be to make it easier to
16 pool distant milk on the order."

17 I am wondering how it could, how you would
18 consider that Proposal 2 would make it easier than it
19 is now to pool distant milk on Order 124?

20 A There is some ingenious people out there and
21 if, you know, they may find a way to make it easier to
22 do that, so.

23 Q Well, you are pretty ingenious. What way did
24 you discover when studying that language?

25 A Well, I am not an expert, but, I am little, I

1 mean, that may be a way that this proposal would allow
2 additional milk to be pooled. You know, I couldn't --

3 Q You are not saying that there is. There is
4 no way that you have identified, you understand that it
5 is intended to make it harder, but, nevertheless,
6 conceivably somebody might figure out a way to make it
7 easier.

8 A That is right.

9 MR. BESHORE: Okay. Thank you.

10 JUDGE CLIFTON: Thank you, Mr. Beshore.

11 Mr. Marshall?

12 MR. MARSHALL: One quick line of questioning
13 on redirect, if I may, Your Honor?

14 JUDGE CLIFTON: You may.

15 REDIRECT EXAMINATION

16 BY MR. MARSHALL:

17 Q Mr. McBride, you might recall a question or
18 two from John Vetne regarding our association's policy
19 on Class 1 pricing and he was asking a question, you
20 might recall about the Class 1 price surface
21 legislative by Congress and applied in the Federal
22 Orders. And I believe you stated that there was no
23 issue with the application of that price surface to
24 Class 1 from our association. If you had a chance to
25 change any of the Class 1 price locations, either with

1 or without an act of Congress, are there some changes
2 you might like to suggest such as Yucca County,
3 Washington?

4 A There certainly could be.

5 MR. MARSHALL: Thank you.

6 JUDGE CLIFTON: Any further questions for Mr.
7 McBride on these two proposals?

8 All right, there are none. Mr. McBride, will
9 you be testifying on other proposals as well?

10 MR. MCBRIDE: Yes, Ma'am.

11 JUDGE CLIFTON: All right, we will see you at
12 another time.

13 (Whereupon, the witness was excused.)

14 JUDGE CLIFTON: All right. What would be the
15 best order of things given we still have a good 24
16 minutes to use? Shall we have Mr. Hollon come back
17 over his and his sidekick, Beshore's objections?

18 Does anyone have any different proposal?

19 (Pause.)

20 MR. ENGLISH: I sense a dirth of interest at
21 the moment, Your Honor.

22 JUDGE CLIFTON: All right, thank you, Mr.
23 English.

24 Mr. Beshore?

25 MR. BESHORE: We would be prepared to start at

1 8:30 with Mr. Hollon, tomorrow morning.

2 JUDGE CLIFTON: Well, I already said we would
3 start at nine and several people left with that
4 understanding, so I don't want to change that part.

5 Mr. Marshall?

6 MR. MARSHALL: Your Honor, we would have no
7 objection to quitting early if Mr. Hollon would
8 distribute tonight copies of his testimony tomorrow so
9 we can all get ready for it.

10 JUDGE CLIFTON: All right, I am intent on
11 using this 24 minutes. So, Mr. Hollon, will you resume
12 the stand?

13 (Pause.)

14 JUDGE CLIFTON: I am sorry, was there another
15 suggestion.

16 MR. BESHORE: What about Mr. Mykrantz, why
17 don't we get the Market Administrator done?

18 JUDGE CLIFTON: We can do that if he has more
19 information. Do you have some follow up to what you
20 did earlier?

21 MR. MYKRANTZ: I do.

22 JUDGE CLIFTON: Oh, great idea.

23 (Pause.)

24 JUDGE CLIFTON: All right, instead of Mr.
25 Hollon, I would ask that Mr. Mykrantz resume the stand.

1 (Pause.)

2 JUDGE CLIFTON: Thank you, I appreciate that.

3 All right, Mr. Mykrantz, you have already
4 identified yourself, but if you would again just state
5 your first and last names.

6 MR. MYKRANTZ: My name is John Mykrantz.

7 J-O-H-N, Mykrantz is spelled, M-Y-K-R-A-N-T-Z.

8 JUDGE CLIFTON: All right, thank you.

9 You may present any additional information to
10 what you presented this morning.

11 DIRECT TESTIMONY OF JOHN MYKRANTZ:

12 MR. MYKRANTZ: I guess, Mr. Marshall asked
13 whether there was any milk delivered to non pool plants
14 located in the State of Colorado in December 2001. And
15 the answer is no.

16 (Pause.)

17 JUDGE CLIFTON: Mr. Hollon, please warm up.

18 MR. HOLLON: Twenty three minutes.

19 MR. MYKRANTZ: In the exhibit, I can't recall
20 the number entitled "Statistical Material Prepared at
21 the Request of John Vetne", Request number 5.

22 MR. STEVENS: Nine.

23 JUDGE CLIFTON: Yes, it is Exhibit 9.

24 MR. MYKRANTZ: There was some corrections to
25 be made to the information for the Western Order for

1 the Year 2000, beyond what was already corrected.
2 Beginning January 2000, it should read on the "All
3 eligible milk pooled line", in January, yes, February,
4 yes, March, yes, April, yes, May is correct at no, June
5 is correct at yes, July should be yes. August should
6 be --

7 MR. STEVENS: John, could I ask you to do that
8 one more time, I think, you are so quick, that we need
9 a little time to catch up with you. Could you do it
10 for us again?

11 MR. MYKRANTZ: Okay. For the Western Order,
12 beginning January 2000 on the line labeled as "All
13 eligible milk pooled", January should read yes,
14 February should read yes, March should read yes, April
15 should read yes, May through December should be no.

16 JUDGE CLIFTON: You just said July should be
17 yes.

18 MR. MYKRANTZ: I guess my original statement
19 was incorrect.

20 MR. STEVENS: That is why we went over it
21 again.

22 JUDGE CLIFTON: Okay. So, May through December
23 should be no, and that is the final answer.

24 MR. MYKRANTZ: That is the final answer.

25 JUDGE CLIFTON: Okay.

1 MR. MYKRANTZ: Again, for the Western Order,
2 the next line down for the Year 2000, the line labeled
3 "Eligible Milk Not Pooled" should read, beginning
4 January, no, no, no, no, through April. And then for
5 May through December it should read yes.

6 MR. STEVENS: Well, let me understand that,
7 then you mean June would be yes?

8 MR. MYKRANTZ: Correct.

9 MR. STEVENS: And August would be yes. Where
10 there were blanks, it would be yes?

11 MR. MYKRANTZ: Correct.

12 MR. STEVENS: Thank you.

13 MR. MYKRANTZ: And again for the Western Order
14 the Year 2000, the third line, pounds of eligible milk
15 not pooled for the period January through April should
16 be blank. All eligible milk was pooled.

17 For the period May through December 2000, the
18 amount is restricted, as it represents fewer than three
19 handlers.

20 JUDGE CLIFTON: So that 188.3 should be
21 stricken?

22 MR. MYKRANTZ: Should be stricken and replaced
23 by an R.

24 JUDGE CLIFTON: Okay. And I am going to be the
25 one who is unduly repetitive here. I just want to make

1 sure as we read the bars across of the months, where we
2 see two Januaries there should be a January and a
3 February.

4 MR. MYKRANTZ: Correct.

5 JUDGE CLIFTON: Where we see two Novembers
6 there should be a November and a December.

7 MR. MYKRANTZ: Correct.

8 JUDGE CLIFTON: For each of these lines.

9 MR. MYKRANTZ: Yes.

10 JUDGE CLIFTON: Okay.

11 (Pause.)

12 MR. MYKRANTZ: I believe there is another
13 question, but I don't recall it.

14 JUDGE CLIFTON: Who else asked this witness to
15 locate some additional information?

16 Mr. English?

17 MR. ENGLISH: I asked if it was possible to
18 get a copy of the communication from Mr. Vetne so we
19 would know what other questions had been asked.

20 MR. STEVENS: We have located that letter and
21 we have copies of it and all I would say to Mr. Vetne
22 is, with no objection from him?

23 MR. ENGLISH: He has no basis to object.

24 MR. STEVENS: Maybe he doesn't, but I just am
25 offering him the opportunity.

1 JUDGE CLIFTON: Mr. Vetne, would you come
2 forward, I just want to acquaint you with what I recall
3 of what was said. When this witness explained that
4 some of your requests had gone unanswered, Mr. English
5 asked for a copy of the request. Do you have any
6 objection to that being supplied?

7 MR. VETNE: Actually, I saw them on the back
8 table, a big stack of them. The cat is out of the bag.
9 No, I don't have, I don't have any objection and in
10 fact, I was going to ask that my request be marked so
11 it is a clear what material I believe is, might be
12 relevant is not available for this record from this
13 witness because he has precluded, because of
14 confidentiality from supplying the information.

15 JUDGE CLIFTON: All right, I would like to
16 have you answer, Mr. Mykrantz, whether all of the
17 requests that you did not answer, were on the basis of
18 confidentiality concerns or whether you had other
19 difficulties in supplying the information?

20 MR. MYKRANTZ: We did not supply any responses
21 to the other requests based on confidentiality and also
22 availability of data. Some of the data we just do not
23 collect.

24 MR. VETNE: That is correct.

25 JUDGE CLIFTON: All right, thank you.

1 Do you have questions now, Mr. Vetne?

2 MR. VETNE: I can do a few now.

3 JUDGE CLIFTON: All right.

4 MR. VETNE: Can I go back and get my notes?

5 JUDGE CLIFTON: Certainly.

6 MR. VETNE: Okay.

7 JUDGE CLIFTON: You are being encouraged to
8 take 11 minutes.

9 (Pause.)

10 JUDGE CLIFTON: By the same people who didn't
11 want to give you any time at all.

12 MR. ENGLISH: But, if it is going to happen, I
13 would rather have it now.

14 CROSS EXAMINATION

15 BY MR. VETNE:

16 Q Mr. Mykrantz, referring back to the same
17 exhibit, same table that we were just on, Exhibit 9,
18 Table 5 or Request 5 or whatever it is. There are,
19 for the period of January 2000 through March of 2002,
20 there is only one month in which there is actual hard
21 non confidential data of your estimate of volume of
22 milk not pooled that would have been eligible to be
23 pooled by handlers?

24 A What were the dates again?

25 Q For Western Order, at the bottom of the

1 exhibit, January 2000 through March 2002. The only
2 hard number that is still good is 188.3 for October
3 2001, is that correct?

4 A Correct.

5 Q Okay. And milk that is not pooled is milk
6 that a handler ships to a non pool plant and may elect
7 to report or not to report on the handler's report, is
8 that correct?

9 A That is correct.

10 Q And milk that is not pooled is taken off the
11 report because there is a price relationship between
12 the anticipated blend price and the classification of
13 milk that is depooled.

14 A I guess antidotally, I understand that
15 handlers depool milk typically due to price.

16 Q Okay. Would it be correct to say that the
17 reason this data is restricted for all these months is
18 because the milk that was depooled was classified in
19 Class 4 and there are less than three handlers that
20 divert milk into Class 4?

21 A I guess it is restricted because it reflects
22 fewer, the information of fewer than three handlers.

23 Q During this period of time, were there any
24 months in which the relationship of the Class 3 price
25 to the blend price were such that it was advantageous

1 to depool?

2 A I can say that in October 2001 the Class 3
3 price was higher than the blend price in the Western
4 Order.

5 Q Okay. Would that be the only month in which
6 it would have been advantageous to depool Class 3 milk?

7 A I guess if you go by the indicator of a
8 positive PPD, yes, that would be the only month where
9 there was a negative PPD.

10 Q Okay. Without identifying anybody or any
11 volume, are you aware of any Class 3 milk that was
12 voluntarily depooled in any of the months in which the
13 data is restricted?

14 A Yes.

15 Q Are you aware of any of the months in which
16 the data is restricted, in which the majority of
17 voluntarily depooled was in Class 3?

18 A I would say yes.

19 Q Okay. Are you able to identify the months in
20 which that occurred?

21 A I would just as soon not.

22 Q Okay. Are you able to perhaps give us a
23 lesson in what to look for in reported prices so that,
24 that we may have an indication of those months in which
25 this was likely to occur?

1 A You would have to have intimate knowledge of
2 institutional relationships.

3 Q By that do you mean that there are reasons --

4 A Which I cannot divulge.

5 Q Yes. By that do you mean that there may be
6 reasons for voluntarily depooling milk from some
7 producers, for reasons other than the price
8 relationship between the classified price and the PPD?

9 A I guess you would have to frame your question
10 more specifically.

11 Q By institutional factors in response to your
12 last question, did you mean factors other than the
13 prices announced by USDA or the prices that handlers
14 may anticipate to be announced?

15 A Again, I think it involves institutional
16 relationships that I can't speak to.

17 Q Okay. Let me see if I can, is your use of
18 the term institutional relationship one that
19 encompasses things other than price?

20 A No. Well, it involves price, but it is not
21 the only factor.

22 Q Are you able to identify any factor other
23 than price in the way in which you use the term
24 institutional relationship?

25 A I don't think so, but I will think about it.

1 Q Thank you. There was, Exhibit 11 prepared at
2 the request of Gossner Foods, which shows the pounds of
3 eligible milk not pooled to, due to 80 percent
4 diversion limits.

5 MR. STEVENS: I might ask do you have a copy?

6 MR. MYKRANTZ: I do.

7 MR. VETNE: Okay. Yeah, you can ask.

8 MR. STEVENS: Thank you.

9 BY MR. VETNE:

10 Q Okay. And there was a similar table, for
11 which I thank you, in response to my request, Request
12 number 14, the last page, which looks similar except
13 for 70 percent diversion limits. My question to you is
14 this all the same milk and the difference between the
15 numbers in the far right column represent the
16 difference between 70 percent and 80 percent
17 diversions?

18 A The milk included in the 70 percent diversion
19 limits is a sub set of the 80 percent diversion limits.

20 Q Yes. Okay. That was my question.

21 In preparing both of these exhibits, Exhibit
22 11 and the last page of Exhibit 9, your assumption was
23 that the milk had to have been a different limit, that
24 the milk did not move any differently, that it moved
25 exactly as it was reported, correct?

1 A It just dealt with the information as it
2 existed.

3 Q In the handler's reports.

4 JUDGE CLIFTON: That answer was yes from
5 handler's report.

6 MR. MYKRANTZ: My handler's reports.

7 BY MR. VETNE:

8 Q Okay. Okay. Would you anticipate that if a
9 reduction in diversion limits from 90 percent to either
10 80 percent or 70 percent were adopted, that milk would
11 physically move in a different way, so that not all of
12 the loss of eligible milk would take place?

13 A I guess I couldn't speak to what might
14 happen.

15 MR. VETNE: Okay. I might have some more
16 questions, but, again, I wanted to chat with the
17 witness about what occurred before and it may be no
18 further questions. Thank you.

19 JUDGE CLIFTON: All right, thank you, Mr.
20 Vetne.

21 I would ask Mr. Vetne, with regard to your
22 other inquiries that were not answered, do you want to
23 have that marked as an exhibit?

24 MR. VETNE: Yeah, I did ask for that. They
25 were in the back, I will see if there is enough back

1 here.

2 JUDGE CLIFTON: Okay.

3 (Pause.)

4 MR. STEVENS: Your Honor, may I ask a
5 question?

6 JUDGE CLIFTON: Mr. Stevens.

7 MR. STEVENS: Your Honor, may I ask a
8 question?

9 JUDGE CLIFTON: You may.

10 MR. STEVENS: I am not sure, the John Vetne
11 letter, has that been, is it marked or does it, does
12 anyone want to get it marked and admitted?

13 MR. VETNE: I have asked for it, and the
14 copies in the back seem to be gone. I will address it
15 tomorrow, if that is okay.

16 JUDGE CLIFTON: All right. Do you happen to
17 have extra copies, Mr. Stevens?

18 MR. STEVENS: Oh, there is some in the back.

19 MR. VETNE: There were. There aren't any
20 more. We can have one, and just to put a number on it
21 now.

22 MR. STEVENS: Why don't we do that? What
23 would you like that marked as?

24 JUDGE CLIFTON: That would be Exhibit 22.

25 (The document referred to

1 was marked for identification
2 as Exhibit 22.)

3 JUDGE CLIFTON: Do you have a copy?
4 Excellent, the Court Reporter has a copy. So, he will
5 mark this as Exhibit 22. How many copies do you have
6 of this March 26 letter on Mr. Vetne's letterhead?

7 COURT REPORTER: Three.

8 JUDGE CLIFTON: Great. All right, do you
9 have enough, Mr. Vetne, do you have your own?

10 MR. VETNE: I have one.

11 JUDGE CLIFTON: You do have one.

12 MR. VETNE: I have one.

13 JUDGE CLIFTON: Okay. Good. I will keep this
14 one then.

15 MR. VETNE: Okay.

16 JUDGE CLIFTON: And you may now make your
17 motion.

18 MR. VETNE: That is my request, I move that it
19 be received.

20 JUDGE CLIFTON: All right. I am marking Mr.
21 Vetne's letter as Exhibit 22. Is there any objection
22 to it being admitted into evidence?

23 There being none, it is hereby admitted into
24 evidence.

25 (The document referred to,

1 having been previously marked
2 as Exhibit 22 was received in
3 evidence.)

4 JUDGE CLIFTON: Thank you, Mr. Vetne.
5 Mr. Marshall?

6 MR. MARSHALL: I have a couple of quick
7 questions on the cross examination, if we have time,
8 Your Honor.

9 JUDGE CLIFTON: it is 6:02, I am happy to stay
10 for a few minutes.

11 MR. MARSHALL: It should be brief.

12 JUDGE CLIFTON: All right.

13 REDIRECT EXAMINATION

14 BY MR. MARSHALL:

15 Q Thank you, Mr. Mykrantz, for looking up the
16 information as to December 2001 and the Colorado milk
17 that was pooled on the Western Order from at least two
18 counties. The question and your response to that is
19 no deliveries to non pool plants, was all that milk
20 delivered to distributing plants, either fully
21 regulated or partially regulated?

22 A I would have to make another call, but I
23 believe that not all of it went to pool distributing
24 plants.

25 Q Help me out. Besides pool distributing

1 plants, partially regulated distributing plants, are
2 there any non pool plants, for example, would your
3 definition exclude certain other kinds of plants that I
4 should have asked about?

5 A What state did you, what state were you
6 referring to?

7 Q Colorado, but, the Western Order.

8 A I believe the milk in Western Colorado did
9 not move to any plants in Western Colorado.

10 Q I notice in the exhibit that you prepared on
11 the Western Order, Table 6 has a quantity of 31 million
12 pounds that had been pooled the prior December 2000.
13 During that month of December 2000, can you tell us was
14 any milk delivered to non pool plant located in the
15 State of Colorado?

16 A If I recall correctly, it did move to a non
17 pool plant.

18 Q I did move to a non pool plant in Colorado?

19 A Correct.

20 Q Do you know the county in which it was
21 located and if so, can you disclose that?

22 A I believe it is in the Denver area.

23 MR. MARSHALL: Thank you very much.

24 JUDGE CLIFTON: Thank you, Mr. Marshall.

25 Mr. Mykrantz, thank you, and I know that we

1 may have additional questions as the hearing goes on.

2 Thank you very much.

3 (Whereupon, the witness was excused.)

4 JUDGE CLIFTON: All right, I will see you all
5 at nine in the morning. Thank you.

6 (Whereupon, at 6:06 p.m., the hearing was
7 recessed, to reconvene at 9:00 a.m., Wednesday, April
8 17, 2002.)