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BEFORE THE SECRETARY OF AGRICULTURE

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Milk in the Upper)	Docket No. AO-361-A39;
Midwest Marketing)	DA-04-03
Area; Hearing on)	
Proposed Amendments)	HEARING TRANSCRIPT
to Tentative Marketing)	
Agreement and Order.)	Before Judge
)	Victor W. Palmer

DAY ONE OF THE FEDERAL ORDER 30 HEARING

The following is day one of the Federal Order 30 Hearing, taken before Kelly E. Hanna, Court Reporter, Notary Public, pursuant to Notice of Taking Hearing, at the Sofitel Hotel, 5601 West 78th Street, Bloomington, Minnesota, commencing at approximately 1:08 p.m., August 16th, 2004.

* * * * *

1 THE COURT: Other questions? Anyone?
2 There doesn't appear to be any. Thank you very much,
3 sir.

4 We had one more witness that wanted to
5 get on -- no, we have two more, don't we? Why doesn't
6 Jim Hahn, are you here?

7 MR. HAHN: Yes.

8 THE COURT: Jim Hahn, yes. Sir, could
9 you raise your right hand.

10

11

JAMES HAHN,

12

after having been first duly sworn by
13 the Court, says under oath as follows:

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17 THE COURT: All right, sir, if you
could give your full name and affiliation.

18

19

20 THE WITNESS: My name is James E. Hahn.
I work for Land O'Lakes, Inc. My name is spelled
21 H-a-h-n. I worked for the U.S. Department of
22 Agriculture from 1972 until 2000 in a variety of
23 capacities. In the last ten years, I worked as, seven
24 as the Assistant Market Administrator, and the last
25 three as the Acting Marketing Administrator. Since
July of 2000, I've been employed by Land O'Lakes as

1 director of dairy policy.

2 THE COURT: Sir, you have a statement
3 which I'm marking for identification as Exhibit 16.

4 (Whereupon, Exhibit No. 16 was
5 marked for identification.)

6 THE COURT: I presume, like we've said
7 to everyone, you want the statement to control, but
8 you'll make changes and indicate them as you go along?

9 THE WITNESS: That is correct.

10 THE COURT: All right, sir. If you
11 would proceed.

12 THE WITNESS: Thank you. As I said, my
13 name is James E. Hahn. I'm employed by Land O'Lakes,
14 Inc., and my mailing address is Land O'Lakes, Inc.,
15 4001 Lexington Avenue North, Arden Hills, Minnesota
16 55112.

17 Land O'Lakes, Inc. is a dairy and
18 agricultural products cooperative. LOL Grade A dairy
19 members produce approximately 12 billion pounds of
20 milk annually. Approximately 1,400 of these dairy
21 members produce milk in the Midwest.

22 The majority of the LOL milk produced
23 in the Midwest is used for manufacturing. However,
24 LOL performs at a much higher level than the minimum
25 of 10 percent in which -- in meeting the shipping

1 requirements of Order 30.

2 As such, LOL has moderate impact from
3 the depooling issue resulting from negative PPD's.
4 There are some handlers who are impacted to a greater
5 degree due to shipping at a higher percentage level.
6 Most handlers, however, perform at a lesser level than
7 LOL and, consequently, are impacted to a much lesser
8 degree.

9 LOL supports Proposal 2, because it is
10 a moderate approach in addressing the negative PPD and
11 depooling issue. Proposal 2 allows the flexibility of
12 some depooling with no penalty. It may, however, have
13 significant consequences for those handlers who elect
14 to depool the majority of their milk. This moderate
15 approach will instill more equity amongst handlers
16 with differing levels of shipping performance than
17 occurs today, while allowing some degree of depooling.

18 Proposal 2 also places additional
19 pooling requirements on milk produced outside the
20 states in which Order 30 is located. LOL has gone on
21 record in previous hearings with the position that
22 pooling provisions should be performance oriented as
23 opposed to location base.

24 Since Order Reform, it appears that the
25 dairy division -- I'm sorry. Since Order Reform, it

1 appears the dairy industry is embarking on the second
2 round of individual hearings designed to tighten
3 pooling provisions for the purposes of restricting
4 access to milk originating across Order boundaries.
5 This is amazing, considering the Secretary in the
6 Reform process anticipated milk would cross Order
7 boundaries to become pooled and priced where the
8 greatest needs are exhibited for satisfying fluid
9 demand. This attempt to build higher fences is
10 designed to limit access to Class I markets.

11 LOL firmly believes that this issue
12 must be dealt with on a national level, because Class
13 I utilization continues to decline each year. In 2002
14 the national Class I utilization in Federal Orders was
15 less than 37 percent. The Class I utilization for
16 2003 is skewed upward due to massive depooling, as
17 will be the case in 2004. Fluid sales are down 2
18 percent year over year for the first half of 2004.
19 California Class I is now at 18 percent and falling
20 rapidly -- that should be California Class I
21 utilization is now at 18 percent and falling rapidly.

22 The following basic questions must be
23 addressed at some future point in time. What
24 mechanism should be used to pool surplus reserves not
25 needed by any Order? How will market reserves be

1 addressed? National Federal Order average is 63
2 percent and rising, and that 63 percent is just the
3 inverse or the reciprocal of the 37 percent Class I
4 utilization. Will we come to a point where someone
5 will be denied pooling because the reserves are too
6 high? If so, whose milk? Do all Federal Orders have
7 the burden of pooling excess national reserves?

8 This issue becomes all the more
9 relevant with the termination of the Western Order.
10 Putting additional pooling restrictions on distant
11 milk for Order 30 will only cause pressure to be
12 exerted on some other Federal Order for pooling
13 access. This will undoubtedly create a request for a
14 local hearing to tighten pooling provisions.

15 LOL is supporting Proposal 2 in regards
16 to distant milk, because of its negative impact on the
17 PPD.

18 LOL also supports the limit on
19 transportation credits to 400 miles as provided in
20 Proposal 2.

21 THE COURT: Does this conclude your
22 statement, sir?

23 THE WITNESS: Yes, it does.

24 THE COURT: All right. Let's receive
25 the statement.

1 (Whereupon, Exhibit No. 16
2 was received into evidence.)

3 THE COURT: And are there questions?

4 Mr. Vetne?

5 EXAMINATION

6 BY MR. VETNE:

7 Q. Good afternoon, Jim, John Vetne. Until
8 I got to the next-to-the-last sentence of your
9 testimony, I thought I knew where you stood on the
10 distant pooling, but now I'm not sure, so I'm going to
11 ask you to better characterize your position, and
12 maybe I can ask you if you will agree with me, that
13 you're philosophically opposed to the Proposal 2 on
14 distant milk pooling, but you're in practical support?

15 A. Good afternoon, John. We think this is
16 a bigger issue than just a local Order 30 issue, and
17 philosophically we think that there needs to be a
18 national consensus on the level of reserves in the
19 Federal Order system, because what's happening is,
20 with Federal Order Reform, we had a system that was
21 put in place where the Secretary indicated in the
22 recommended and in the final decision that the higher
23 Class I utilization markets would attract milk from
24 the lower utilization markets, and those blend prices
25 would tend to equilibrate over time, and that, in

1 effect, did happen in 2000 and 2001.

2 Consequently, the higher utilization
3 Class I markets began to recognize that their
4 utilization began to slip from what they had prior to
5 Federal Order Reform, and so we went through a first
6 round of Federal Order hearings to basically start to
7 build some fences. And we did that, and that pushed
8 milk from the higher utilization markets back onto the
9 lower utilization, Class I utilization markets, and
10 they were already carrying an inordinate volume of
11 reserve or level of reserve, much more than was
12 needed. And so what's happening with round two is
13 we're just going to build the fences a little bit
14 higher, and the higher utilization markets are those
15 that are losing milk production, so their Class I
16 utilization is automatically going up anyway. And as
17 they push milk away from the market, it just pushes
18 milk, again, on the lower Class I utilization markets,
19 so they're basically carrying excess national
20 reserves.

21 Now, I think that issue has to be
22 addressed. We don't have a venue today to address it,
23 so Land O'Lakes signed on with a group and developed a
24 consensus position, which is Proposal 2, and we're
25 supporting it.

1 Q. Huh? In the last --

2 A. Let me clarify for your benefit.

3 THE COURT: Well, wait for a question.
4 He's got a question. Go ahead.

5 BY MR. VETNE:

6 Q. Okay. My question is, will you state
7 your clarification.

8 A. Sure. The only venue we have here
9 today is this hearing. Land O'Lakes has a significant
10 number of dairy farmer members located in the Midwest,
11 and so the Idaho milk that's being pooled on the Upper
12 Midwest market is lowering the PPD, and that's
13 impacting Land O'Lakes' local producers. And so we
14 are in favor of limiting access to the Idaho milk to
15 the Upper Midwest, and that's our position today, but
16 that's not going to solve the problem. The problem is
17 still going to exist, it's just going to push it over
18 to some other market, and we think that needs to be
19 addressed, not local, area by area, but on a national
20 basis.

21 Q. Okay. Is it your testimony that you
22 believe it would be unwise to do it on a
23 market-by-market basis?

24 A. Yes, I do, because I don't believe that
25 will solve the problem.

1 Q. Is it your testimony that you're
2 generally opposed to fences, but accept the fence
3 being constructed here for the benefit of your local
4 producers?

5 A. Yes.

6 Q. Is it -- Does it continue to be LOL's
7 position, as stated at the last hearing in
8 Minneapolis, that LOL is not in favor of restricting
9 access to pooling in any market to benefit a select
10 few?

11 A. Generally, that's correct, on a
12 national basis.

13 MR. VETNE: Okay. Thanks.

14 THE WITNESS: You're welcome.

15 THE COURT: Mr. English.

16 EXAMINATION

17 BY MR. ENGLISH:

18 Q. Good afternoon, Mr. Hahn.

19 A. Good afternoon, Jim.

20 Q. Given your statement that you are
21 concerned about regulating the geographic -- using
22 geographic borders, but that the negative impact on
23 the PPD causes you to have a different position for
24 this consensus, does that mean that you agree that
25 when there's a negative impact on the PPD by

1 opportunistic pooling, that you think that's a bad
2 thing?

3 A. We think it causes this -- Land O'Lakes
4 thinks it causes disruption in the marketplace, that
5 is correct.

6 Q. Depooling also causes that disruption
7 in the marketplace?

8 A. Yes.

9 Q. So depooling is also a thing that you'd
10 like to see eliminated?

11 A. We have mixed feelings -- or we have
12 reservations about that. We take advantage, as an
13 organization, of the ability to depool when it's to
14 our advantage. We try to maximize our ability to do
15 that, but we also service the fluid market to a large
16 extent, and so we wear two hats, we're not biased one
17 way or the other to a great extent, and so we think
18 the market would be better off if there was some
19 moderation on the ability to depool milk, and that's
20 what Proposal 2 addresses. It doesn't element it, but
21 it does create some level of orderliness within the
22 marketplace, in our opinion.

23 Q. Some level of orderliness. Your
24 statement says, "Proposal 2 allows the flexibility of
25 some depooling with no penalty." Would you agree that

1 under the present circumstances, there is effectively
2 unlimited depooling permitted by all marketing
3 participants, except for Class I handlers with the
4 milk going through their plant, that has no penalty?

5 A. That's correct, potentially.

6 Q. Other than the economic benefit that it
7 provides to individual organizations, which you
8 yourself said that you have to do to maximize for your
9 entity, depooling has no social benefit, does it?

10 A. Absolutely.

11 Q. Under the Federal Order system?

12 A. It benefits those to who are attached
13 to milk that's not being pooled.

14 Q. That doesn't create uniform pricing,
15 does it, sir?

16 A. No.

17 Q. And Federal Orders are all about
18 uniform pricing; correct?

19 A. As a minimum price, that's correct.

20 MR. ENGLISH: Thanks. I have no
21 further questions.

22 THE COURT: Mr. Beshore.

23 EXAMINATION

24 BY MR. BESHORE:

25 Q. Jim, I just have one question. Your

1 articulation of performance-based pooling has been,
2 you've stated it before and you stated it again, and
3 would it be fair to conclude that when you look at the
4 Market Administrator's information with respect to the
5 Idaho milk where you've had 3 million out of 4.7
6 billion pounds pooled, 3 million came to distributing
7 plants in Order 30, that that's not the kind of
8 performance you talked about when you look for
9 performance-based pooling?

10 A. I have to be careful in answering that,
11 because milk was moved to a distributing plant to
12 qualify that milk at some location, so the minimum
13 requirements were met under the Order to qualify milk
14 in total, but it's obvious, when you look at the
15 Federal Order statistics that that block of milk
16 that's being pooled and is really carried as an
17 excessive reserve on the Upper Midwest Market, is
18 performing very little or no performance in terms of
19 servicing the fluid market.

20 MR. BESHORE: Okay. Thanks.

21 THE WITNESS: You're welcome.

22 THE COURT: Yes. Yes, sir. Come
23 forward and state your name.

24 MR. LAMERS: My name is Richard J.
25 Lamers of Lamers Dairy in Appleton, Wisconsin.