

UNITED STATES DEPARTMENT OF AGRICULTURE  
BEFORE THE SECRETARY OF AGRICULTURE

In the Matter of:	)	
	)	Docket Numbers
	)	AO-368-A30 and
MILK ORDER AMENDMENT HEARING	)	AO-380-A18
FOR MILK IN THE PACIFIC	)	[DA-01-08]
NORTHWEST AND WESTERN	)	
MARKETING AREAS	)	
	)	

Hilton Airport Hotel  
5151 Wiley Post Way  
Salt Lake City, Utah

Thursday,  
April 18, 2002

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

BEFORE: HONORABLE JILL CLIFTON  
Administrative Law Judge

APPEARANCES:

On behalf of the U.S. Department of  
Agriculture:

GARRETT B. STEVENS, ESQ.  
Office of General Counsel  
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On behalf of the Proponents:

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APPEARANCES: (Continued)

On behalf of the Proponents:

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Milspaw and Beshore Law Offices  
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Post Office Box 946  
Harrisburg, Pennsylvania 17108

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15 Powow  
Amesbury, Massachusetts

Also Present:

GINO TOSI, Marketing Specialist  
U.S. Department of Agriculture  
Washington, D.C. 20250

## I N D E X

<u>WITNESS:</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VOIR DIRE</u>
Jeff Williams	745	756 759 764 778 781 783 785 788 789 792	793	--	--
Mark Stoker	803	808	--	--	--
David W. Larsen	812	819	--	--	--
Rodney K. Carlson	837	845 854 863 866 868	--	--	830
David W. Larsen	prev.	872 876 885 892 893 896 900	--	--	--
Sid Munk	902	906 910 912	--	--	--
Jay Hardy	916	--	--	--	--
Ralph Hallquist	921	930 943 944	--	--	--
Gregory J. Radmall	prev.	948	--	--	--

## I N D E X

<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VOIR DIRE</u>
Alan Stutzman	956	960 963 967 969	--	--	--
John Mykrantz	971	974	--	--	--
Elvin Hollon	980	--	--	--	--
Joyce Barrow	1021	1023 1023 1027	--	--	--
Elvin Hollon	prev.	1029 1060 1082 1086 1097	1113	--	--
John Vetne	1119	1157 1162 1165	--	--	--

## E X H I B I T S

<u>EXHIBIT:</u>	<u>IDENTIFIED</u>	<u>IN EVIDENCE</u>
Exhibit Number 37	744	745
Exhibit Number 38	802	802
Exhibit Number 39	809	811
Exhibit Number 40	811	948
Exhibit Number 41	830	869
Exhibit Number 42	955	956
Exhibit Number 43	976	979
Exhibit Number 44	977	979
Exhibit Number 45	978	979
Exhibit Number 46	1118	1133
Exhibit Number 47	1118	1133
Exhibit Number 48	1118	1133
Exhibit Number 49	1118	1133
Exhibit Number 50	1118	1133
Exhibit Number 51	1118	1133
Exhibit Number 52	1118	1133
Exhibit Number 53	1118	1139

## P R O C E E D I N G S

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8:35 a.m.

JUDGE CLIFTON: We're on record now. It's Thursday, April 18th, 2002. This is Day 3 in the rulemaking hearing being held in Salt Lake City, Utah.

I'd like to proceed with the testimony of Mr. Williams first. Then there are a number of people who would like to testify at this stage of the proceeding, and I'd like to, after we hear from Mr. Williams, have those folks identify themselves so we can determine in which order to take those people before we go into any new proposals. Some of those people have indicated that their testimony would cover proposals already addressed and perhaps also some comments on proposals yet to come.

Mr. Williams, would you again state your full name and spell your name for the record?

MR. WILLIAMS: My name is Jeff Williams,  
J-E-F-F --

JUDGE CLIFTON: Your -- your mouth needs to be very close and you're tall, so you can point that upward?

MR. WILLIAMS: Is that better?

JUDGE CLIFTON: Excellent.

MR. WILLIAMS: My name's Jeff Williams,

1 J-E-F-F W-I-L-L-I-A-M-S.

2 MR. VETNE: Mr. Williams, where do you  
3 reside?

4 JUDGE CLIFTON: Just -- just a moment,  
5 please. I have the exhibit that is the testimony of  
6 Jeff Williams, and I'd like to mark that as Exhibit 37.

7 (The document referred to was  
8 marked for identification as  
9 Exhibit Number 37.)

10 JUDGE CLIFTON: And I'd ask if anyone would  
11 like to Voir Dire the witness with regard to that  
12 exhibit? I guess I better swear him in first.

13 Would you raise your right hand, please?  
14 Whereupon,

15 JEFF WILLIAMS  
16 having been first duly sworn, was called as a witness  
17 herein and was examined and testified as follows:

18 JUDGE CLIFTON: Thank you.

19 Would anyone like to Voir Dire the witness on  
20 this exhibit?

21 (No response)

22 JUDGE CLIFTON: No? Is there any objection  
23 to it being admitted into evidence?

24 (No response)

25 JUDGE CLIFTON: There being none, Exhibit 37

1 is hereby admitted into evidence.

2 (The document referred to,  
3 having been previously marked  
4 for identification as  
5 Exhibit Number 37, was  
6 received in evidence.)

7 JUDGE CLIFTON: Thank you, Mr. Vetne.  
8 You may proceed.

9 DIRECT EXAMINATION

10 BY MR. VETNE:

11 Q Mr. Williams, where do you reside?

12 A Twin Falls, Idaho.

13 Q What is your employment affiliation?

14 A I'm Executive Vice President of Glanbia  
15 Foods.

16 Q Okay. What is your professional and  
17 educational background?

18 A I have a Bachelor of Science in Marketing  
19 from the University of Oregon and a Master's in  
20 Business Administration from Columbia University.

21 Q Okay. And your employment and professional  
22 background?

23 A I was a commercial banker for three years and  
24 an investment banker for three years before I started  
25 work for what was at that time Ward's Cheese which was



1       acquired by Avonmore West which changed its name to  
2       Glanbia Foods.

3           Q     Okay.  And when did that employment with the  
4       Glanbia and predecessor companies start?

5           A     That started in August of 1989.

6           Q     Okay.  What are your functions with Glanbia?

7           A     I oversee all of our procurement functions,  
8       sales and marketing of cheese and our logistics  
9       functions.

10          Q     Okay.  And you have a prepared statement to  
11       give?

12          A     I do.

13          Q     Will you proceed, please?

14          A     Yes.  My testimony is in opposition to  
15       Proposals 3 through 7, 9 and 11 through 13.  Glanbia  
16       Foods, Inc., formerly known as Avonmore West, Inc., is  
17       a dairy food company headquartered in Twin Falls,  
18       Idaho.  We operate two cheese plants in the Western  
19       Federal Order that together employ less than 500  
20       people.

21                   The Twin Falls plant, which was formerly  
22       operated by WDCI, now DFA, converts about two million  
23       pounds of milk per day into cheddar, mozzarella,  
24       monterey jack, colby, colby-jack and pepper jack  
25       cheese.

1           Our plant in Gooding, Idaho, is one of the  
2 largest producers of barrel cheese in the world. Every  
3 day, the plant processes over five million pounds of  
4 milk into 500-pound barrels of cheese.

5           Glanbia also operates whey processing  
6 facilities at Gooding and in Richfield, Idaho, where a  
7 variety of whey, whey protein, lactose and whey mineral  
8 products are produced. The whey is regularly supplied  
9 from six Idaho cheese plants.

10           Nearly 90 percent of the milk produced in  
11 Idaho goes into the manufacture of cheese products.  
12 There's little opportunity for producers of Grade A  
13 milk in Idaho whose milk is available but rarely needed  
14 for fluid use to market milk to distributing plants.  
15 Indeed, only about five to 10 percent of the milk  
16 received by Idaho milk plants is used in Class 1  
17 products.

18           The Idaho milk market is extremely  
19 competitive with a half a dozen major milk buyers  
20 operating in our milk procurement area. As a result,  
21 we must premiums to retain our quality milk supply.

22           The market for finished cheese is also very  
23 competitive. Our primary competition is cheese  
24 manufactured in California which enjoys a state-  
25 regulated price advantage over Federal Class 3 milk of

1 about 2.1 cents per finished product pound for Class 4-  
2 B milk used to produce cheese.

3 American cheese production has increased 47  
4 percent over the past four years in California while  
5 U.S. production and Idaho's production has increased  
6 only six percent and seven percent, respectively,  
7 during that same period of time.

8 We have been able to make up most of the 2.1  
9 cents per pound competitive disadvantage due to some  
10 cost savings over California cheese plants in areas of  
11 energy costs, labor costs and slightly lower  
12 transportation costs to Midwestern and Eastern markets.

13 Our Eastern competitors, however, enjoy a  
14 transportation cost advantage over cheese plants in the  
15 Western, Pacific Northwest and California markets by  
16 their proximity to population centers and major food  
17 processing facilities.

18 In order to remain competitive and viable in  
19 this market, Glanbia has sought to improve its  
20 efficiency and maximize revenue for shareholders and  
21 producer patrons. In 2000, Glanbia completed a \$33  
22 million expansion and improvement project at its  
23 Gooding facilities. Glanbia planned to invest an  
24 additional \$5.6 million in 2002 but those plans were  
25 put on hold because of local regulations to discourage

1 dairy farm expansion.

2 Raw farm milk is regularly supplied to  
3 Glanbia Foods by DFA, by Magic Valley Quality Milk  
4 Producers, Inc., both Section 9-C handlers, by High  
5 Desert Cooperative and by independent patrons. A small  
6 portion of this supply is Grade B.

7 Glanbia received over 2.6 billion pounds of  
8 milk in 2001 representing over \$320 million in revenue  
9 to Idaho dairy farmers. Glanbia has pooled a portion  
10 of its Grade A milk supply since 1992 by supplying milk  
11 to Falconhurst Dairy or Smith's Dairy, both small  
12 plants located in Buhl, Idaho. Prior to Federal Order  
13 Reform, we were able to pool virtually all of our Grade  
14 A producer patrons.

15 Federal Reform, unfortunately, adopted more  
16 uniform pool performance rules. The rules for the  
17 Western Market were not well suited for Southern Idaho,  
18 and we were therefore forced to exclude some of our  
19 milk supply from the Western Market pool.

20 If DFA's proposals for reduced diversions and  
21 net shipments had been in place, we would have been  
22 forced to reduce our pooled milk on the Western Market  
23 by an additional 75 percent or more.

24 It appears we are not alone in being unable  
25 to accommodate available Grade A milk in the Reformed

1 Western Market Pool. Data assembled at our request by  
2 the Market Administrator reveals that Western Market  
3 pooled milk delivered to Idaho plants was about a 135  
4 million pounds less during November 2001 than pooled  
5 milk to Idaho plants during November 1999 under the  
6 prior Order 135.

7 Additional milk during 1999 pooled on the  
8 Great Basin Order was delivered to Idaho plants but  
9 this data is restricted. We were, however, able to  
10 mitigate some of the loss of Western Market pooling  
11 opportunity by associating part of our milk supply with  
12 the Upper Midwest Order. This should not have been  
13 necessary and illustrates the tendency of unrealistic  
14 current pooling rules to promote market inefficiency  
15 and foster producer inequity.

16 Proposals 3 and 5 through 7 advanced by DFA  
17 are intended to further preclude many of Idaho's  
18 producers from participating in the Federal Order Pool  
19 because their available Grade A milk is not needed for  
20 fluid use.

21 These producers undoubtedly would be pooled  
22 under DFA's proposals if they elected to join a  
23 cooperative association under contract to supply the  
24 Western Market's few major distributing plants, but  
25 this would not affect the need or lack of need for milk

1 of these producers. It would only adversely affect the  
2 dairy farmers' freedom of choice to market their milk  
3 independently or to choose to never ship to one  
4 cooperative over another. This result is contrary to  
5 Principles of the Federal Agricultural Fair Practices  
6 Act as we understand it.

7           Proposals 3 and 5 through 7 would directly  
8 adversely and greatly affect Glanbia and our Grade A  
9 producer patrons. Proposals 4 and 9 will not have an  
10 immediate adverse impact on Glanbia or its patrons.  
11 They are, however, part of the same package designed to  
12 build barriers to market entry and participation by  
13 dairy farmers inside and outside of the milkshed who  
14 may be attracted to the Western Market.

15           There are a few fluid milk plants located in  
16 Southern Idaho and nearby Northern Utah. The larger  
17 distributing plants have a committed and adequate  
18 supply, so there's no genuine opportunity for Idaho's  
19 dairy farmers to find alternative means of pooling if  
20 these proposals are adopted. This is an extremely  
21 important issue and an alarming prospect for the Idaho  
22 dairy industry.

23           Our competitors located in the Midwest as  
24 well as in California are able to pool their milk with  
25 little difficulty. If adopted, DFA's proposals would

1       aggravate the disadvantage we continue to suffer due to  
2       California's low Class 4-B price relative to the  
3       Federal Class 3 price as well as the pooling  
4       opportunities lost to our plant and our producer  
5       patrons as a result of Federal Order Reform.

6                It is doubtful my company would have made a  
7       \$33 million investment in Idaho manufacturing capacity  
8       had the additional regulatory constraints envisioned by  
9       DFA been in effect during the late 1990s. We do not  
10      believe that there is a problem in this market securing  
11      an adequate and efficient supply of milk to  
12      distributing plants.

13              When we first associated milk supply with the  
14      pool, both Meadow Gold and Western Dairymen, now DFA,  
15      shunned our overtures to make milk available for  
16      distributing plant use so that our producers could  
17      enjoy the same benefits of pooling as many -- many of  
18      their neighbors. Since that time, neither DFA, Meadow  
19      Gold or any other major Class 1 handler has asked us to  
20      supply milk for distributing plant use.

21              If the record reveals a problem securing an  
22      adequate supply for fluid use or demonstrates that  
23      Class 1 supplies are suffering a disproportionate cost  
24      that would not be incurred if the same milk were  
25      delivered for manufacturing use, payments or credits

1 for performing Class 1 supply services would be  
2 appropriate as Congress provided in the 1985 Farm Bill.

3 Net shipment restrictions are inappropriate  
4 for this market, whatever their merit may be elsewhere.  
5 Shipments that a distributor may return for  
6 manufacturing use at least represent the ability and  
7 willingness to supply the fluid market, even where  
8 there is no need at the moment. That, in this market,  
9 is sufficient association to permit a producer to share  
10 in the pool.

11 According to data supplied by the Market  
12 Administrator, had DFA's diversion proposal been in  
13 effect during June 2001, over a 150 million pounds of  
14 milk would have been ineligible for pooling as over-  
15 diversion. This represents 34 percent of the total  
16 pool for the month. Some of this milk may have been  
17 pooled if the handlers engaged in marketing  
18 inefficiency but we doubt that inefficiency is a  
19 legitimate goal of Federal Milk Order Regulation. The  
20 only change that can rationally be justified in pool  
21 performance requirements in our opinion is the  
22 modification of diversion limits to 95 percent.

23 DFA, several Utah producer witnesses, and  
24 Utah trade associations testified to the effect that  
25 they seek a level playing field in pooling provisions.



1 This is exactly the same objective that drives our  
2 opposition to Proposals 3 and 5 through 7. It would  
3 create and has created disorder and producer discontent  
4 for some Idaho producers to have access to Order 135  
5 pool qualification while others do not.

6 A level playing field can be achieved if all  
7 Idaho producers are treated the same. As an  
8 alternative to DFA's proposals, we would suggest that  
9 the Western Orders exclude all Idaho-produced milk from  
10 pool participation, somewhat like NDA wants for good  
11 reason to treat California milk. By this means, the  
12 market would not be composed of haves and have nots and  
13 the playing field, though a bit lower, would at least  
14 be level.

15 Meadow Gold's Proposals Numbers 11 through 13  
16 in the Notice of Hearing ask the Secretary to regulate  
17 the price of milk sold by one type of handler, BTUs, to  
18 another, distributing plants, even though the pooling  
19 handler has accounted to the pool of class prices. The  
20 decision which created the Southwest Idaho/Eastern  
21 Oregon Order and provided for BTU pooling explained  
22 that the BTU is responsible for accounting to the pool  
23 and that is all that is required or permitted by the  
24 Act.

25 Apart from concerns of statutory authority,

1       once the Secretary opens the door to price regulation  
2       of handler-to-handler transactions, there is no logical  
3       reason to exclude other transactions in the name of  
4       equal costs. The arguments advanced by Meadow Gold for  
5       price regulation of BTU sales to distributing plants  
6       would apply no less to sales between supply plants and  
7       distributing plants, between two distributing plants,  
8       contract bottling or tolling arrangements, package  
9       remote transfers between plants and pooling fees  
10      charged by DFA that have the effect of subtraction from  
11      minimum prices.

12                 We will study the record and further address  
13      the merits of law and equity raised by Meadow Gold's  
14      proposals in our post-brief -- post-hearing brief.

15                 Q     Thank you, Mr. Williams.

16                 Do you have any additional comments that are  
17      not part of your prepared testimony at this time?

18                 A     No, I do not.

19                 Q     And there was -- there was an earlier exhibit  
20      that addressed a pricing plan attributed to Glanbia or  
21      its predecessor. Do you care to address that now or do  
22      you prefer to wait for the proponent of that exhibit to  
23      ask questions?

24                 A     Either way. I can do that now or if he's  
25      going to ask questions about that, I can do it then.

1           Q     I -- why don't you reserve it to see if there  
2 are questions?

3           MR. VETNE: Thank you.

4           JUDGE CLIFTON: I would invite cross  
5 examination of Mr. Williams.

6           Mr. Marshall?

7                           CROSS EXAMINATION

8           BY MR. MARSHALL:

9           Q     Good morning, Jeff.

10          A     Good morning.

11          Q     Just a few quick questions. I noticed on the  
12 last page of your prepared statement, towards the top,  
13 a reference to what "NDA has proposed for good reason  
14 as to means of treating California milk."

15                    May I take that as support for Proposal  
16 Number 10 in this hearing?

17          A     And that is the double-dipping?

18          Q     Yes, Proposal 10 is the double-dipping  
19 provision proposed by NDA.

20          A     Yes, we would support that.

21          Q     And in your judgment, has the current  
22 condition with respect to double-dipping created  
23 emergency situations which would warrant adopting  
24 Proposal 10 on an emergency basis?

25          A     Yes, I believe it has.

1           Q     I'm curious about your statement on Page 5 of  
2 your testimony, that "it's doubtful your company would  
3 have made a \$33 million investment" had -- "in Idaho  
4 manufacturing capacity had the additional regulatory  
5 constraints envisioned by DFA been in effect during the  
6 late 1990s." This is in effect an argument about  
7 changing the rules.

8                     If the rules were to change, might you have  
9 to consider things that would change the way you  
10 operate to accommodate those new rules? Would you have  
11 to do anything different in order to get your milk  
12 pooled than you do today?

13           A     Well, it would -- I guess we'd have to see  
14 what those changes are and then assess the financial or  
15 economic impact on -- on our business and what we'd be  
16 able to pay our producers and then make changes  
17 accordingly.

18           Q     Can you envision investing even more money in  
19 this Western Order Market perhaps by trying to develop  
20 bottling capacity as a way to pool producers?

21           A     Well, I would have to say that that's  
22 probably not out of the realm of possibility. Being  
23 that our parent company was a business unit that's in  
24 Glanbia Foods is the largest fluid bottler in Ireland.  
25 So, we do have experience in that area. So, I would

1 not -- I would not preclude that. It's not necessarily  
2 in our strategy at this time to be a bottler in the  
3 United States, but if -- if -- if there was some  
4 economic advantages for us or for our producers, we'd  
5 certainly look at that.

6 Q On Page 6 of your proposal towards the  
7 bottom, in the last paragraph that begins on Page 6,  
8 third sentence, you indicate -- I'm not quite sure I  
9 understand all you're saying there, that "it has  
10 created producer discontent for some Idaho producers to  
11 have access to the pool while others do not."

12 Do you mean that even to this point in time,  
13 there has been such a situation of producer discontent?

14 A I would say that the producer discontent  
15 probably isn't as great as it used to be because we are  
16 now participating -- we're pooling a lot of our  
17 producer milk on Federal Order 30. So, they're  
18 enjoying the benefits of -- of that pooling  
19 arrangement. So, that has lessened the discontent.

20 Q You monitor what other producers are  
21 thinking, do you not, as you gauge competitive  
22 conditions in your marketplace?

23 A Other producers that don't ship to Glanbia?

24 Q Right.

25 A Yes, we do.

1           Q     And have you heard rumors that others --  
2     other groups are -- were considering at one time or  
3     another during the past -- since January 1 of 2000  
4     building bottling facilities?

5           A     I've not heard that, no.

6           MR. MARSHALL: All right. Thank you very  
7     much, Jeff.

8           JUDGE CLIFTON: Thank you, Mr. Marshall.  
9     Mr. English?

10                           CROSS EXAMINATION

11                           BY MR. ENGLISH:

12           Q     Good morning, Mr. Williams.

13           A     Good morning.

14           Q     Could you tell me the average distance from  
15     your farms to each of the four plants that you operate  
16     in Idaho?

17           A     We only operate two milk receiving plants.

18           Q     All right. To the milk receiving plants.

19           A     In Twin Falls and Gooding. I would say the  
20     average -- you want the average distance?

21           Q     Yes. To each.

22           A     Oh, 20 miles, 25 miles.

23           Q     Okay. Is it 20 miles for one and 25 for the  
24     other or is that within a range of 20-25?

25           A     There's a lot of milk between the two plants.

1 The Gooding plant tends to be maybe on the northern  
2 edge of our milk procurement area, but -- so, we  
3 probably truck milk a little bit further into that  
4 plant maybe than we would Twin Falls, being -- Twin  
5 Falls being maybe a little bit on the south end but  
6 more in the center. So, it's -- I'd say that's a rough  
7 guess for both plants.

8 Q Okay. And what is the average distance from  
9 the farms to Falconhurst Dairy in Buhl, Idaho?

10 A That's probably 20 miles.

11 Q And what is the distance, say, from  
12 Falconhurst Dairy in Buhl to your Twin Falls plant?

13 A Probably 20 miles.

14 Q And the average -- the distance from  
15 Falconhurst Dairy to -- to the Gooding plant?

16 A That's probably about 40 miles, 35-40 miles.

17 Q Okay. Now, you mentioned in your testimony  
18 an entity called Smith's Dairy, and I looked in vain in  
19 Exhibit 6 of the Market Administrator for an entity  
20 called Smith's Dairy.

21 Is that -- is that operation not in business  
22 presently?

23 A No. That operation is still in business, but  
24 it's -- it's below the radar screen, I believe, because  
25 of its volume.

1           Q     So, you're saying it's an exempt plant under  
2     the Order?

3           A     I believe that's the correct language.

4           Q     So, for however long it's been an exempt  
5     plant, you're not pooling milk on that operation  
6     presently, correct?

7           A     That's correct.

8           Q     And was there a time that Falconhurst was  
9     purchased by another entity in the '90s? Do you know?

10          A     Yes. Falconhurst was operated by a different  
11     person than -- than the current operator, and they had  
12     a brand called Idaho Country Milk, and the assets of  
13     Idaho Country Milk -- I'm not particularly all the  
14     financial intricacies of that transaction, but the  
15     assets of Idaho Country Milk were purchased by at the  
16     time Dairy Gold.

17          Q     And for some period of years, Idaho Country  
18     Milk, Falconhurst, there was no entity by that name  
19     operating separately outside of Dairy Gold, is that  
20     correct, for some several years?

21          A     There was a period of time, I don't know if  
22     it was several years, but there was a period of time  
23     when the plant, the physical plant was idle. Whether  
24     or not Idaho Country Milk was still an operating brand  
25     in the marketplace, I couldn't tell you, but the plant



1 did sit idle for a number of -- for -- I don't know how  
2 long, but it did sit idle for a period of time.

3 Q And after that period of time, however long  
4 it was, a different set of owners than the prior owners  
5 came along to operate that physical plant again?

6 A Well, the owner of the plant was always the  
7 same person.

8 Q Okay.

9 A It's just that it didn't -- it wasn't  
10 operating at the time, and when -- when Dairy Gold  
11 bought the assets of Idaho Country Milk, they did not  
12 buy the physical plant.

13 Q Okay. Have you ever, after delivering milk,  
14 causing milk to be delivered to Falconhurst or for the  
15 time that you were doing it to Smith's, hauled milk  
16 back out of that plant to a non-pool plant?

17 A Yes.

18 Q Do you do that regularly?

19 A We do it every month.

20 Q Your statement on Page 6, that "the only  
21 change that can be rationally justified is modification  
22 of diversion limits to 95 percent", is that an actual  
23 proposal you're making for this hearing?

24 A No, I don't have that in proposal form.

25 Q Would you agree with me that a 90-percent

1 diversion limitation with no net shipment provision  
2 that allows you, as you say, monthly to haul milk back  
3 out of that plant effectively create something in the  
4 neighborhood of a 97.5-percent upper limit of  
5 diversions?

6 A I don't know. I'd have to see the math.

7 Q Okay. Would you agree with me that hauling  
8 milk back out of Falconhurst permits you a diversion  
9 that ultimately is higher than 90 percent?

10 A I -- I couldn't agree with you, unless I saw  
11 the -- how you came up with that figure.

12 Q Would you agree that the diversion limitation  
13 is based upon milk received at Falconhurst or any other  
14 pool plant and so that if you deliver two million  
15 pounds of milk and take one million pounds out, you  
16 nonetheless get to divert off the two millions that you  
17 actually delivered to Falconhurst?

18 A Yes, I'd agree with that.

19 Q Thank you.

20 You mention on Page 2 of your statement that  
21 you "operate in an extremely competitive environment  
22 with half a dozen milk buyers in the milk procurement  
23 area". You say, "As a result, we must pay premiums."

24 What -- what kind of premiums -- I'm not  
25 asking for levels here. What kind of premiums are you

1 paying in order to be competitive in the procurement  
2 area?

3 A Well, I would consider a premium anything  
4 over Class 3.

5 Q Okay. And it is your testimony that you have  
6 to pay something over Class 3, regardless of whether  
7 you can pool your milk, in order to get that milk  
8 supply?

9 A That's correct.

10 MR. ENGLISH: Thank you. That's all I have.  
11 I'm sorry. I apologize.

12 BY MR. ENGLISH:

13 Q Can you describe for this record what your  
14 pricing arrangements with Falconhurst are?

15 A No, I cannot.

16 Q And is that because you don't know them or  
17 because it's confidential?

18 A It's because it's proprietary information.

19 MR. ENGLISH: Thank you.

20 JUDGE CLIFTON: Thank you, Mr. English.

21 Further cross examination of Mr. Williams?  
22 Mr. Beshore?

23 CROSS EXAMINATION

24 BY MR. BESHORE:

25 Q Good morning, Mr. Williams.

1           A     Good morning.

2           Q     We don't often have investment bankers  
3     testifying at our Federal Order hearings, and I'm just  
4     wondering a little bit. I don't know whether I caught  
5     the way you came to the dairy industry, came to working  
6     with Glanbia.

7                     How long have you been with -- working with  
8     Glanbia or in the dairy industry?

9           A     It'll be 13 years this August.

10          Q     Okay. And was that in Idaho for that --

11          A     Yes.

12          Q     -- entire period of time?

13          A     Yes.

14          Q     How long has Glanbia, which is what, an  
15     affiliate of -- of an Irish dairy cooperative?

16          A     That's correct.

17          Q     How long have they been in Idaho?

18          A     Since August of 1990.

19          Q     Okay. And you've been with them that entire  
20     period of time?

21          A     That's correct.

22          Q     Were you involved in evaluating that -- that  
23     investment that the parent company made in the dairy  
24     industry in Idaho?

25          A     Yes, I was.

1 Q All right. On the investment banking side?

2 A No, not -- not -- not on the investment  
3 banking side. I was just involved as an employee of  
4 Ward's Cheese at the time.

5 Q And who was -- what company is that?

6 A That was the predecessor company that Glanbia  
7 -- that Avonmore West purchased.

8 Q Okay. So, that was a cheese company in  
9 Idaho?

10 A That's correct.

11 Q Okay. Were -- were you -- was that a pool  
12 plant?

13 A No, it was not.

14 Q Okay. So, -- so, Glanbia invested in the  
15 Idaho dairy industry by buying a cheese plant that was  
16 a non-pool manufacturing plant in Idaho, correct?

17 A That's correct.

18 Q And it made that investment knowing exactly  
19 what it was -- what it was getting into, correct?

20 A I would hope so, yes.

21 Q Okay. Well, you -- you were on the sell  
22 side, so you -- you laid it all out to them. We're not  
23 part of the Federal Order and -- but we've got a good  
24 cheese business here in Idaho that you all ought to  
25 buy, right?

1           A     They were interested in the cheese business  
2     and the whey business.

3           Q     Okay. Now, prior to -- prior to Federal  
4     Order Reform, I think the testimony has -- has been and  
5     the record shows, that is, in the years '98, '99, maybe  
6     '97, I'm not -- I'm not certain, you were -- the -- the  
7     cheese plants -- well, let me ask you the question.

8                     Were you -- Avonmore -- Glanbia, I'm sorry,  
9     pooling all your milk on the Southwestern Idaho/Eastern  
10    Oregon Order at that time?

11          A     We started pooling, as I mentioned, in -- in  
12    1992, and we continued to pool not all of our milk but  
13    a portion of our milk through the time that the assets  
14    of -- of Idaho Country Milk were purchased by Dairy  
15    Gold.

16                    At that time, due to the fact that Smith's  
17    Dairy was -- was such a small plant and didn't have  
18    really a proper receiving area, we were not able to  
19    qualify additional milk for that period of time. So,  
20    we just continued to pool what we'd already had on the  
21    pool, and then when -- when Larry Gerdis, the current  
22    owner of Falconhurst, started up the Falconhurst plant  
23    again, then we resumed pooling through the Falconhurst  
24    plant.

25          Q     Is it correct that in the -- in the late

1 '90s, you were able to pool all your milk on the  
2 Southwestern Idaho/Eastern Oregon Order?

3 A We could pool all of our Grade A milk --

4 Q All of your Grade A.

5 A -- and a fair bit of Grade B milk at the  
6 time.

7 Q Okay.

8 A So, we -- we could have pooled all of our  
9 Grade A milk. That's correct.

10 Q Okay. And the way that you were -- what  
11 allowed you to do that was that there was, in effect,  
12 no limitation on the volume of milk or the proportion  
13 of producer's milk that could be diverted to non-pool  
14 plants under the Order?

15 A That's correct.

16 Q Okay. So that, in effect, to pool under that  
17 Order at that time, you just had to be a Grade A  
18 producer who delivered their milk one day to a pool  
19 plant and then, as long as your milk was reported, you  
20 were part of a pool?

21 A I believe to qualify, you had to bring one  
22 day's production into the plant for three consecutive  
23 months at that time, and then -- then you never had to  
24 -- that milk did not have to go through the pool plant  
25 after that.

1           Q     Now, after you made that initial association,  
2 pooling was in essence an entitlement of any -- of that  
3 Grade A producer in Idaho, correct?

4           A     I don't know if you would call it an  
5 entitlement. It was something that created an equity  
6 among producers in Idaho and that, as Mr. Davis stated  
7 yesterday, those rules were suspended by a combination  
8 of WDCI and DCA because of uneconomic movement of milk.

9           Q     Okay.

10          A     And so, we just figured out a way to allow  
11 our producers to take advantage of that suspension  
12 rule.

13          Q     Well, why wouldn't you call it an entitlement  
14 if it was something that -- if it was money that you  
15 were entitled to receive every month for doing nothing  
16 in essence?

17          A     Well, I -- I guess I don't call it an  
18 entitlement because it wasn't -- in our opinion, it was  
19 just good business. It was a -- a method of getting  
20 our producers on an equal footing with the co-op's  
21 producers. So, if it's an entitlement for us, it was  
22 an entitlement for the co-ops as well.

23          Q     Okay. Now, at that time, -- and -- and  
24 that's the same type of system that you would like to  
25 see at the present time, is it not?



1           A     That's correct.

2           Q     Okay.  And that's basically how things are  
3 working right now with the milk you're pooling on Order  
4 30, is it not?  Once you -- do you have any fluid milk  
5 customers on Order 30?

6           A     Yes, we do.

7           Q     And --

8           A     I'm sorry.  Fluid milk customers?  We have --  
9 we have delivered some milk to fluid bottlers on  
10 Federal Order 30, yes.

11          Q     And do you deliver to them every month?

12          A     No, we do not.

13          Q     Okay.  What bottling plants have you  
14 delivered to in Order 30?

15          A     We've delivered to a couple of bottling  
16 plants, either managed or supplied by Family Dairies.

17          Q     Family Dairies manages bottling plants in  
18 Order 30?

19          A     I'm not sure if they manage any plants, but  
20 they supply milk to some bottling plants in the Midwest  
21 and that's who we supply our milk to.

22          Q     Okay.  They're your -- your pooling -- your  
23 pooling contact in Order 30 is through Family Dairies?

24          A     That's correct.

25          Q     Okay.  Are you paying a fee, monthly fee per

1 hundredweight to have Family Dairies pool your milk in  
2 Order 30?

3 A Yes, we do.

4 Q What's the amount of that fee per  
5 hundredweight?

6 A For competitive reasons, that's proprietary  
7 information.

8 Q How much per hundredweight is that fee  
9 returning you in pool payments monthly on Order 30?

10 A It's not returning Glanbia anything. It's  
11 returning a better price to our producers.

12 Q Okay. Now, let me -- let me explore your --  
13 Glanbia's competitive situation with -- with plants in  
14 other areas. I gather that you feel Glanbia is  
15 competitively disadvantaged with other cheese producers  
16 if it's not able to pool all its milk, is that -- is  
17 that your testimony?

18 A Could you repeat the question, please?

19 Q Okay. Yeah. The question is, is -- is it  
20 your testimony that Glanbia is competitively  
21 disadvantaged with cheese manufacturers in other parts  
22 of the country if it's unable to pool all its milk?

23 A By -- by virtue of our pooling arrangements,  
24 it allows us to keep our producer base competitively  
25 priced with others that we compete with in the

1 procurement area for milk. In terms of -- in terms of  
2 cheese sales and -- and how we compete with our  
3 competitors there, there's a whole host of other  
4 issues.

5 I alluded to the fact that the California 4-B  
6 price, which at some stage I'm sure we'll have another  
7 hearing about Class 3 pricing, that's an important  
8 issue for us because we compete head-to-head with  
9 cheese coming out of California.

10 Q So, your -- the competitive -- well, let me  
11 ask this question. Isn't -- aren't you -- aren't you  
12 in a better situation with respect to your competitors  
13 who have lower minimum regulated prices, such as those  
14 in California, if you do not have any minimum regulated  
15 price that you're required to pay for your milk  
16 production?

17 A Well, I guess, you know, if you want to  
18 follow that argument, yeah. The low -- obviously the  
19 lowest price we can pay for milk makes us more  
20 competitive in the marketplace, but we have to have the  
21 milk to make cheese, and if we don't pay a competitive  
22 price for milk, we don't make cheese.

23 Q Okay. The price you pay for milk, is -- is  
24 it determined by a cheese yield formula that you have  
25 with your producers?

1           A     Some of our milk is based off the cheese  
2     yield formulas. Milk that we pool is based off of  
3     Federal Market Component Pricing.

4           Q     Okay. The -- the milk -- do you pool the  
5     same -- same producers every month in Idaho?

6           A     Yes.

7           Q     Same proportion of their milk every month?

8           A     Not necessarily. It depends on route sales  
9     of Falconhurst Dairies.

10          Q     Okay. How many -- how many checks -- is it  
11     -- would it be correct that producers, pooled  
12     producers, Glanbia pool producers don't have all their  
13     production pooled every month?

14          A     That's correct.

15          Q     Okay. So, how many checks do those producers  
16     get from Glanbia?

17          A     They could get three checks.

18          Q     And what would those three checks be?

19          A     Well, the -- the check on the 26th would be  
20     the advanced check for pooled milk. They could get a  
21     check on the 1st, if they have some fixed amount,  
22     whether that be through a fixed forward contract with a  
23     cheese supplier or a futures contract that the dairyman  
24     has sold short to the futures market, and then the  
25     final check would be the settlement check on the 18th.

1           Q     Okay.  Assuming that one of your producers  
2     does not have a futures contract, would they get two  
3     checks?

4           A     Yes.

5           Q     Okay.  And what if that producer has some  
6     milk that's pooled and some milk that's not pooled?  
7     They still get the same two checks?

8           A     Well, actually, let me -- let me retract that  
9     because if they -- they do have some milk that's not  
10    pooled and paid off cheese yield, they would still get  
11    a check on the 1st, yes.  Excuse me.  So, they get  
12    three checks.

13          Q     So, if they have milk that's not pooled and  
14    based off of cheese yield, what -- what production and  
15    what rates would the check on the 1st represent?

16          A     It depends on how much milk wasn't pooled.

17          Q     For -- okay.  So, on the first of May, your  
18    producers get -- and do not have milk pooled get a  
19    check based on what, April production?  March  
20    production?

21          A     The check on the 1st would be for the first  
22    half of April.  If it was the check on May 1st, for  
23    instance, it'd be for the first half of April, the milk  
24    that was not pooled.

25          Q     Based on their non-pooled milk from the first

1 half of April and the cheese yield formula, correct?

2 A Yes. Yes.

3 Q Okay. Are -- are some producers never pooled  
4 -- some Glanbia producers never pooled?

5 A Yes, we have some Glanbia producers that are  
6 not pooled.

7 Q Some Grade A producers who are not pooled?

8 A Yes.

9 Q Okay. Is that by your choice or their choice  
10 or why would that be?

11 A It's -- I would say it's by their choice,  
12 whether that be because they're maybe a Jersey herd  
13 with high components and feel that the cheese yield  
14 formula provides them with the better pay price or  
15 maybe their quality is not up to -- up to standards  
16 that we would want to associate that milk with the  
17 pool.

18 Q Well, if you're not delivering it to a pool  
19 plant, what impediment would there be to -- to pooling  
20 the milk?

21 A I would say it's -- it's a bit of probably  
22 internal standard for quality, plus the fact that we do  
23 have to maintain a bulk tank unit, and some of those  
24 producers might jeopardize the bulk tank unit if they  
25 were on it.

1           Q     Okay.  How many of your producers, Grade A  
2 producers are -- are not pooled because they get a  
3 better price on cheese yield regardless or they have  
4 quality problems?

5           A     I -- I don't have that information at hand.

6           Q     Do you have an estimate of what proportion it  
7 would be?

8           A     I don't have an estimate.

9           Q     Okay.  Now, why is it that some producers,  
10 Jersey producers would -- wouldn't want to be pooled at  
11 all?

12          A     Evidently they feel they get a better price  
13 off the cheese yield formula than they do with the  
14 pricing in the Federal Order System.

15          Q     Wouldn't -- okay.  Now, with your -- the  
16 producers -- do I understand you correctly then that  
17 the producers who are pooled do not get paid on a  
18 cheese yield formula?

19          A     They do not get paid on the cheese yield  
20 formula for that portion of the milk that's pooled.

21          Q     Okay.  Let's assume you've got -- I assume  
22 that you have a large number of producers whose milk is  
23 completely -- whose total production is pooled on Order  
24 30?

25          A     That -- for month-to-month, that could be the

1 case, yes.

2 Q Okay. So, for all of those producers,  
3 they're not -- if all their production's pooled on  
4 Order 30, they're not getting paid on the cheese yield  
5 formula at all, is that correct?

6 A That's correct.

7 Q And they're just -- they're being paid  
8 strictly the minimum value, component values under  
9 Order 30 plus the Order 30 producer price differential?

10 A That's correct.

11 Q No premiums, minimum values, correct?

12 A That's correct.

13 Q Okay. Now, is that the same case for  
14 producers whose milk is pooled on Order 135?

15 A On Order 135, because of the limitations on  
16 our ability to pool, there's -- most months, we're not  
17 able to pool all of our producer milk on Federal Order  
18 135.

19 Q So, those producers then pay on a cheese  
20 yield formula in any event?

21 A For that portion, no. If it's not pooled,  
22 they're paid on a cheese yield formula.

23 Q Do they get four checks? Two checks on the  
24 cheese yield formula for their non-pooled milk and two  
25 checks on Federal Order Values for their pooled milk?



1           A     I'm not sure. I'd have to research that.

2           Q     Okay. Is it -- do I understand your -- your  
3 testimony on Page 5, at the bottom, that, you know, in  
4 your -- in your view, there's presently no problem in  
5 Order 135 in getting milk to distributing plants?

6           A     That's correct.

7           MR. BESHORE: Okay. I don't have any other  
8 questions at the moment, Mr. Williams.

9           JUDGE CLIFTON: Thank you, Mr. Beshore.

10           Does anyone else have questions of -- cross  
11 examination-type questions of Mr. Williams at this  
12 time? Yes, sir?

13           MR. RADMALL: Greg Radmall with Utah  
14 Dairymens Association.

15                           CROSS EXAMINATION

16           BY MR. RADMALL:

17           Q     Good morning.

18           A     Good morning.

19           Q     Last evening, we heard Mr. Davis testify that  
20 he pined for the days prior to Order Reform when a  
21 hundred percent of his Grade A producer milk could --  
22 was able to be pooled, and prior -- and on Page 3,  
23 you've made a similar statement to what we talked  
24 about, it's been talked about, about being able to pool  
25 virtually all your Grade A producers.

1                   Can you recall the Class 1 utilization  
2 percentage in -- in that pool? Maybe which -- which  
3 Order did you -- were you able to pool on?

4                   A     We were pooling on Order 135 which at the  
5 time was known as the Southwest Idaho/Eastern Oregon  
6 Federal Order.

7                   Q     Okay. Thank you.

8                   Can you remember the utilization percentage  
9 in that Order?

10                  A     I believe you probably have access to the  
11 statistics. I don't have them memorized.

12                  Q     I -- I -- as I recall yesterday, I think in  
13 Mr. Hollon's -- some of his supporting material, it was  
14 five to eight percent. Does that sound familiar?

15                  A     I suppose that would depend on how much milk  
16 was pooled in any given month. There were some months  
17 when milk wasn't pooled or not as much milk pooled and  
18 obviously that would raise the -- the utilization.

19                  Q     Okay. We've heard testimony over the course  
20 of the last couple of days that the Class 1 usage in  
21 the Great Basin Order ranged between 45 and 51 percent  
22 in '98 and '99. Now, in the Western Order, it is  
23 approximately 20 percent. I think February, we heard  
24 testimony that it was 17 percent.

25                  On Page 6, you've mentioned that a level

1 playing field is desired, it's your desire, as is many  
2 other entities. Is your opinion -- if all of the milk  
3 in Idaho were to be pooled in the Western Order, would  
4 that be close -- would that bring the utilization  
5 closer to eight percent or closer to the 45 percent?

6 A I don't know what it would do.

7 Q You have no idea the impact that that would  
8 have?

9 A Well, if it's 17 percent now, I think the  
10 answer's pretty obvious.

11 Q And obvious being?

12 A Being it would be less than 17 percent.

13 Q So, it would -- your opinion, it'd be closer  
14 -- the level playing field would be better if it was  
15 eight percent then?

16 A The level playing field -- my comments about  
17 the level playing field is that I feel that -- Glanbia  
18 feels that all producers should be treated equally in  
19 terms of pooling.

20 Q Okay. And how do you feel about performance-  
21 based for that milk to perform to the fluid market?

22 A As far as I know, I mean, we are performing  
23 as -- as dictated by the Order that we're operating  
24 under. So, I guess it depends on what you mean by  
25 performance.

1           Q     Well, performance would be to be able to  
2     serve the fluid market, as I understand it.

3           A     We're ready to serve the fluid market at any  
4     time. You just give me a phone call, and I'll have you  
5     milk tomorrow.

6           Q     Well, and that's admirable and that's  
7     certainly a comforting thought, that there's all that  
8     milk in Idaho that's willing to come to Salt Lake, but  
9     in my understanding of performing to -- to the market  
10    would be that it actually -- there would be a need for  
11    that milk to be bottled and that would thereby drive  
12    everything else.

13          A     Well, I've heard a lot of testimony in this  
14    hearing that there is a need and that need is going  
15    unmet, but to this date, I've not had a phone call from  
16    any distributing plant asking me to buy milk.

17                   MR. RADMALL: Okay. That's all. Thank you.

18                   JUDGE CLIFTON: Thank you, Mr. Radmall.

19                   Mr. English?

20                                   CROSS EXAMINATION

21                   BY MR. ENGLISH:

22           Q     Mr. Williams, just a couple of other  
23    questions. Page 5, you referenced "when we first  
24    associated milk supply with the pool, both Meadow Gold  
25    and Western Dairymen shunned our overtures."

1                   Relating back to Page 3, you indicated that  
2                   you associated the supply with the pool since 1992.  
3                   Would it be fair to say that your statement about "when  
4                   we first associated milk supply with the pool"  
5                   regarding Meadow Gold, that was back in '92 or even  
6                   maybe '91?

7                   A     I don't remember the exact date. I mean,  
8                   there were several overtures that we made to -- to  
9                   Meadow Gold to try to pool milk. I don't know the  
10                  exact dates.

11                 Q     But it was about the time that you were  
12                  trying to associate milk with the pool before you  
13                  started associating with Falconhurst and Stoker?

14                 A     That -- that's probably correct, yes.

15                 Q     Okay. I'm not trying to belabor the point  
16                  and wondering if you were here yesterday for an  
17                  examination of Mr. Reitsma. Are you aware that Meadow  
18                  Gold has gone through several asset purchase  
19                  arrangements since 1992?

20                 A     Yes.

21                 Q     Okay. So that, the owner of the operation in  
22                  1992 was different in terms of assets than the owner  
23                  today?

24                 A     That's my understanding.

25                 Q     Thank you, sir.

1                   With respect to the two plants that are milk-  
2 receiving plants, are either one of those two plants  
3 qualified as Grade A facilities?

4                   A     No, they are not.

5                   MR. ENGLISH: Thank you, sir.

6                   JUDGE CLIFTON: Thank you, Mr. English.

7                   Mr. Beshore?

8                                   CROSS EXAMINATION

9                   BY MR. BESHORE:

10                  Q     Just a couple other questions, Mr. Williams.  
11 Is it -- is it fair to say -- you mentioned milk not  
12 being pooled because of quality concerns. It -- it --  
13 it's fair, is it not, that there's some cost at the  
14 producer level and at the supplier level to assuring  
15 the right quality of milk for fluid market when you're  
16 supplying the fluid market?

17                  A     That's correct.

18                  Q     Okay. And by the same token, when you as a  
19 cheese manufacturing plant operator give up milk from  
20 your manufacturing plant to the fluid market, there's  
21 an opportunity cost in terms of the lost manufacturing  
22 volume associated with -- with that giving up that  
23 milk, is there not?

24                  A     Yes.

25                  Q     Okay.

1           A     That's correct.

2           Q     And -- and there's -- the flip side of that  
3     is that additional volume into your plant is  
4     incrementally valuable in terms of adding -- of -- of  
5     the additional product it will generate and the  
6     additional plant efficiency that it will enable you to  
7     have, additional volumes of -- of milk coming into your  
8     manufacturing plant.

9           A     Is that a question?

10          Q     That's a question.

11          A     Could you --

12          Q     It was supposed to be a question.

13          A     Could you rephrase that into a question,  
14     please?

15          Q     Well, I -- I was just trying to follow  
16     through with the flip side of the -- the economics in  
17     terms of giving up milk out of a plant. There's an  
18     opportunity cost to that. The flip side of it is, if  
19     milk -- additional volume of -- volume of -- volumes of  
20     milk are supplied or made available to your  
21     manufacturing plant, there is a value to that in terms  
22     of added efficiencies and the ability to manufacture  
23     additional product at your plant.

24          A     We try to -- our -- our -- our goal is to run  
25     our plants at maximum capacity at all times.

1           Q     Because that's the -- that gives you the best  
2     -- the most profitable way to operate them?

3           A     That's correct.

4           Q     Okay.  When you say on Page 5, top of Page 5,  
5     that there is "no genuine opportunity for Idaho's dairy  
6     farmers to find the fluid market" essentially, be  
7     pooled by finding the fluid market, might it be  
8     possible that there is not a need for that milk in --  
9     in any fluid markets that you're aware of?

10          A     I'm not sure if I understand your question.  
11     When you say "need", what do you mean by that?

12          Q     Well, aren't the fluid markets served with --  
13     with a supply of Grade A milk to meet their needs at  
14     the present time?

15          A     Well, --

16          Q     To the best of your knowledge?

17          A     -- to the best of my knowledge, there is an  
18     adequate supply of milk to meet the fluid needs of the  
19     Class 1 market.

20                   MR. BESHORE:  Okay.  Thank you.

21                   JUDGE CLIFTON:  Thank you, Mr. Beshore.

22                   Mr. Marshall?

23                                   CROSS EXAMINATION

24                   BY MR. MARSHALL:

25           Q     Jeff, I think we might want to clear up the



1 record with respect to some terminology that you used  
2 and with respect to how Grade A and Grade B  
3 considerations are dealt with.

4 In this hearing, we're talking about  
5 something called a proprietary bulk tank handler, and  
6 during your testimony, I believe you used the --  
7 referenced the term out of the regulatory environment  
8 called a "bulk tank unit". Did I understand you  
9 correctly?

10 A Yes.

11 Q And a bulk tank unit is not the same as  
12 proprietary bulk tank handler, is it?

13 A No, it is not.

14 Q And would you tell us what a bulk tank unit  
15 is and what -- what -- what it means to you in terms of  
16 ascertaining your Grade A versus non-Grade A milk  
17 supplies?

18 A My understanding of a bulk tank unit is a --  
19 a group of producers that form a -- a unit and that --  
20 that -- and those -- that's a Grade A supply that is  
21 eligible for interstate milk shipper shipments of milk,  
22 and they are inspected from time to time by federal  
23 regulators to ensure that their dairy facilities and  
24 quality of milk is -- is up to standards for those  
25 shipments of milk.

1           Q     Inspected by both federal and state  
2 authorities, are they not?

3           A     That's correct.

4           Q     And the regulatory agency in Idaho would  
5 designate a group of Glanbia shippers as a separate  
6 Glanbia bulk tank unit, is that correct?

7           A     That's correct.

8           Q     And only your Grade A producers could be --  
9 could qualify for that bulk tank unit, correct?

10          A     That's correct.

11          Q     So, if you had a producer -- you had a  
12 request from a Class 1 handler for milk, you could only  
13 go to your bulk tank unit of producers in order to  
14 supply the Class 1 market, is that correct?

15          A     That's correct.

16          Q     And those then are all pre-approved as Grade  
17 A shippers for purposes of delivery to pool plants, is  
18 that correct?

19          A     That's correct.

20                   MR. MARSHALL: Thank you.

21                   JUDGE CLIFTON: Thank you, Mr. Marshall.

22                   Any further cross examination questions? Mr.  
23 Stevens?

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CROSS EXAMINATION

BY MR. STEVENS:

Q Good morning, Mr. Williams.

A Good morning.

Q I have a question about your statement on Page 4. You -- in that paragraph -- in the paragraph, middle paragraph, toward the end of it, you make the statement concerning the "Ag Fair Practices Act".

I -- I've -- could you expand on that a little bit? What -- what is your concern there? Does it concern the issue of the -- of the dairy farmers' freedom of choice to market their milk independently or to join one cooperative or another?

A I -- I'm not intimately familiar with the Act, but my understanding is that -- I mean, I -- I guess it's just a general statement. We would like to see that whatever rules are in place would not impede a dairy farmer's choice for -- or ability to market his milk through whoever he chooses to milk -- market his milk through, whether that be a cooperative or a proprietary handler.

Q All right. And my -- the purpose of my question, of course, is to -- is to ascertain, if you know, of any situations of this type, if you would like to -- to make the Secretary aware of any of those

1 situations, not that you would do it here on the record  
2 today, unless you want to, or -- or have the counsel,  
3 your representatives, to contact the Secretary with any  
4 information on this matter.

5 A I'm not aware of any, but I will talk to my  
6 counsel afterwards, and if there are any situations  
7 like that, I will make you aware of them.

8 MR. STEVENS: Thank you very much.

9 JUDGE CLIFTON: Mr. Tosi?

10 CROSS EXAMINATION

11 BY MR. TOSI:

12 Q Thank you for appearing today, Mr. Williams.

13 I want to refer to Page 6 of your written  
14 testimony. It's my understanding from your testimony  
15 that the concept of net shipment provisions in the  
16 pooling standards for Order 135, that you would be  
17 opposed to those, is that correct?

18 A Yes.

19 Q And in that regard, you're concerned about  
20 efficiency, efficient milk movement and avoiding the  
21 uneconomical movement of milk?

22 A I'm not sure if that's our -- our main  
23 concern there. I mean, as I reread the paragraph, I  
24 don't necessarily see anything that would lead me to  
25 believe that, you know, inefficiency is -- is one of

1 the requirements.

2 Q I guess in the first full paragraph on that  
3 page where you're talking about making a shipment and  
4 the distributor then returns it back to the  
5 manufacturing plant, that you consider that to be  
6 sufficient association for producers whose milk is  
7 pooled that way to be -- to be eligible to be pooled  
8 that way?

9 A Yes.

10 Q Would -- would your view be that that's in  
11 itself is inefficient?

12 A I would say that that's inefficient, yes. I  
13 would agree with that.

14 Q Also, to the extent you supply the Class 1  
15 market, are you able or do you receive premiums for  
16 milk going to Class 1 markets?

17 A When we supply milk, yes, we do receive  
18 premiums when we do that.

19 Q Is the -- with -- is one of the bases for the  
20 premium would be the -- the -- whatever you're  
21 referring to as the opportunity costs, the loss to your  
22 ability to operate in your cheese plants at maximum  
23 capacity?

24 A I would say that's one of the costs, and then  
25 the transportation would be another one that we'd be

1 looking for premiums to overcome.

2 Q There are times when your plants do not  
3 operate at capacity because of limited milk supply?

4 A That's very rare when that happens.

5 Q To your knowledge, would you be of the  
6 opinion that producers incur costs that are higher when  
7 they're serving the fluid market versus when their milk  
8 is being used in manufacturing uses, for example,  
9 making cheese?

10 A Are you talking about their net costs or --  
11 or their -- I would say their -- their costs might be  
12 higher, but then the -- the return would be higher as  
13 well.

14 Q So, the -- the reward for serving the Class 1  
15 market is the ability to enjoy the higher price that  
16 goes along with that?

17 A That's correct.

18 MR. TOSI: Thank you. That's all I have.

19 JUDGE CLIFTON: Thank you, Mr. Tosi.

20 I know it's a little early for a break, but I  
21 need one. We'll take a 10-minute break.

22 (Whereupon, a recess was taken.)

23 JUDGE CLIFTON: All right. Let's go back on  
24 record. We're back on record at 9:50.

25 I'd invite other questions, cross examination

1 questions for Mr. Williams. Mr. English?

2 CROSS EXAMINATION

3 BY MR. ENGLISH:

4 Q This is a follow-up from Mr. Tosi. In an  
5 answer to a question that I asked about premiums, you  
6 indicated that you pay producers, you know, -- that in  
7 your definition, premium was something over the Class 3  
8 price.

9 Then Mr. Tosi asked you about whether or not  
10 you get premiums when you sell milk into the Class 1  
11 market. When -- and you answered yes, I believe. When  
12 you used the term "premiums" in answer to Mr. Tosi's  
13 question, was that the same definition of premiums as  
14 you used for me as being something over the Class 3  
15 price?

16 A I think I was a bit confused by -- by Mr.  
17 Tosi's question. I was thinking of milk that we were  
18 selling into Federal Order 30. When -- when we supply  
19 milk to Family Dairies for bottling purposes, we do get  
20 premiums over Class 3 for that. Obviously the  
21 transportation is a huge issue. So, that pretty much  
22 negates the premium, but the -- the -- we do not get  
23 premiums out of our sales to -- to distributing plant  
24 or Falconhurst in -- in Federal Order 135.

25 Q Having gone that far into it, can you confirm

1 for me whether you collect from Falconhurst at all  
2 times Class prices for the milk that you deliver to  
3 Falconhurst and that stays there at the plant for  
4 processing into Class 1?

5 A I can confirm to you that we get as much as  
6 we can for our milk when we sell it, but I can tell you  
7 that we do not get minimum pricing for the milk.

8 MR. ENGLISH: Thank you, sir.

9 JUDGE CLIFTON: Thank you.

10 Does that prompt any other questions on the  
11 issue of premiums?

12 (No response)

13 JUDGE CLIFTON: All right. Any other cross  
14 examination of Mr. Williams?

15 (No response)

16 JUDGE CLIFTON: Any redirect examination?  
17 Mr. Vetne?

18 REDIRECT EXAMINATION

19 BY MR. VETNE:

20 Q Mr. Williams, do you have a copy of Exhibit  
21 33 in front of you?

22 A I don't have it in front of me, no.

23 Q I'll provide it to you.

24 A Okay.

25 JUDGE CLIFTON: Is that your only one, Mr.



1 Vetne? You may borrow mine. You're okay?

2 BY MR. VETNE:

3 Q Mr. Williams, the last page of Exhibit 33  
4 contains what appears to be a pricing formula which was  
5 employed at some point by a company called Avonmore  
6 West, Inc., correct?

7 A That's correct.

8 Q And that was an exhibit that you addressed  
9 before in questions, and you had some additional  
10 comment you wanted to make as a witness.

11 A Yes.

12 Q Okay.

13 A That's correct.

14 Q Let me ask you this first. Is Avonmore West,  
15 Inc., the same corporate entity under a different name  
16 as Glanbia Foods, Inc.?

17 A Yes.

18 Q Okay. And can you look at that exhibit and  
19 determine with any precision what time period that  
20 pricing formula applied to?

21 A This pricing formula applied to a period  
22 prior to July 1st, 1997.

23 Q Okay. Do you have any other comments  
24 concerning that exhibit?

25 A No, I do not.

1           Q     Okay.  At the time of that pricing formula,  
2     was -- do you recall whether Glanbia was able to pool  
3     any part or all of its Grade A milk supply?

4           A     At the time of this -- that -- at the time  
5     that we were utilizing this formula, yes, we were  
6     pooling milk on Federal Order 135.

7           Q     Okay.  Do you recall whether that was at a  
8     time when you were constrained in the amount you could  
9     pool as you described earlier or whether it applied to  
10    a time when you could pool virtually all of it because  
11    of the suspension of diversion limits?

12          A     It was -- I believe it was during the time  
13    when the diversion limitations were still suspended.

14          Q     Okay.  In response to some questions, you  
15    referred to the competitive significance of other  
16    cheese makers in this market or other markets being  
17    able to return to their suppliers pool participation  
18    revenue and the effect on your company if you were  
19    unable to do so.

20                 Let me ask you this.  Would your inability to  
21    return to your producers a pool draw because those  
22    producers were ineligible to participate in the  
23    marketwide pool affect your competitiveness in finished  
24    product sales with manufacturers who are able to return  
25    pool proceeds to their producers on all of their Grade

1 A milk?

2 A Yes, it would.

3 Q Okay. And for -- for purposes of that  
4 conclusion, does it matter whether your competitor is  
5 located in Oregon, Washington, Idaho, Utah, California  
6 or New England?

7 A No, it does not, because we -- we operate in  
8 pretty much a national cheese environment.

9 Q And you were asked one question about  
10 operating at capacity for purposes of maximum  
11 efficiency. Do you recall -- actually, it was a series  
12 of questions. Do you recall that?

13 A Yes, I do.

14 Q Okay. Is there a point at which your receipt  
15 of milk would put you in a position of over-capacity,  
16 so that by getting more milk, it actually costs you  
17 more per hundredweight rather than less per  
18 hundredweight?

19 A Yes, that can and does happen from time to  
20 time.

21 MR. VETNE: Okay. Thank you. That's all the  
22 redirect I have.

23 JUDGE CLIFTON: Thank you, Mr. Vetne.

24 Any recross?

25 (No response)

1                   JUDGE CLIFTON:  There being none, Mr.  
2 Williams, you may step down.  Thank you.

3                   (Whereupon, the witness was excused.)

4                   JUDGE CLIFTON:  Oh, Mr. Vetne?

5                   MR. VETNE:  I'm through with this witness.

6                   JUDGE CLIFTON:  Oh.

7                   MR. VETNE:  However, one of the people that  
8 was here yesterday, who I was afraid had to leave and  
9 left and wouldn't be here, actually turns out to be  
10 here, Mark Stoker, owner of Stoker Wholesale, one of  
11 the small distributors to whom reference has been made,  
12 and he would like the opportunity to present a very  
13 short statement of which I have one copy, with  
14 permission of the Court.

15                   JUDGE CLIFTON:  All right.  And his testimony  
16 would fit in well at this time?

17                   MR. VETNE:  Yes.

18                   JUDGE CLIFTON:  All right.  I'd like to find  
19 out who else would like to testify now, and it may be  
20 possible that by just taking one or two witnesses  
21 before his, you could make more copies of -- or someone  
22 could make more copies of his statement.

23                   Has anyone located a copying capacity here?  
24 Is there one at the front desk?

25                   MR. ENGLISH:  There's something at the front

1 desk.

2 JUDGE CLIFTON: Okay. Because I'd like to at  
3 least have enough copies so that the court reporter has  
4 two, the witness has one, and I have one, and what  
5 would be ideal is that the key counsel and other  
6 representatives here who've been participating so  
7 actively each have one.

8 All right. So, I'd like to ask now -- I have  
9 -- I'm going to take names. So, Mr. Stoker represents  
10 who, Mr. Vetne? Mr. Vetne, who does Mr. Stoker  
11 represent?

12 MR. VETNE: Stoker Wholesale, the  
13 distributing plant customer of Davisco Foods,  
14 concerning which Jon Davis testified last night.

15 JUDGE CLIFTON: All right. Good. It sounds  
16 like he'd be the natural next witness, but let me find  
17 out who else would like to testify next or very soon.

18 If you'd come to the podium and identify  
19 yourself and tell me who you represent or are  
20 associated with?

21 MR. LARSEN: I am David Larsen. I'm  
22 associated with Gossner Foods, and we would like to  
23 testify as soon as possible. We also have two producer  
24 patrons who are here to testify, and due to their time  
25 restraints, we would ask that, if possible, that be

1 done before lunch.

2 JUDGE CLIFTON: All right. So, they -- they  
3 are dairy farmers?

4 MR. LARSEN: Yes, they are.

5 JUDGE CLIFTON: All right. Thank you.

6 MR. STUTZMAN: I'm Alan Stutzman with Magic  
7 Valley Quality Milk Producers.

8 JUDGE CLIFTON: And would you spell the first  
9 and last name?

10 MR. STUTZMAN: Alan, A-L-A-N, Stutzman,  
11 S-T-U-T-Z-M-A-N. And if the Gossners need to go before  
12 me, I can wait till after lunch, but I got to be home  
13 tomorrow.

14 JUDGE CLIFTON: Very fine. Thank you.

15 I -- I should also for the record have  
16 indicated the spelling of Larsen. I do have Mr.  
17 Larsen's card, and Larsen is S-E-N.

18 Yes, next? Mr. English?

19 MR. ENGLISH: Your Honor, while it doesn't  
20 have to be next, it's quickly appearing that there's a  
21 long line here, and that I would remind you that  
22 yesterday, I had a witness who really needed to get on  
23 yesterday, and we couldn't, Mr. Hallquist.

24 Now that he's here today, he's done some  
25 other business in the morning, he's available till mid-

1 afternoon, but we really do need to get him on by mid-  
2 afternoon.

3 JUDGE CLIFTON: All right. And spell his  
4 last name for me, please?

5 MR. ENGLISH: H-O-L -- I'm sorry.

6 MR. HALLQUIST: H-A-L-L-Q-U-I-S-T.

7 MR. ENGLISH: H-A-L-L. It's really good when  
8 the lawyer can't spell his client's name.

9 JUDGE CLIFTON: H-A-L-L-Q-U-I-S-T. Thank  
10 you.

11 MR. RADMALL: Greg Radmall. I have a letter  
12 from Mr. Arthur Douglas, Utah Farmers Union, that I'd  
13 like to have submitted.

14 JUDGE CLIFTON: All right. Good. Mr. Tosi?

15 MR. TOSI: Yes, Your Honor. Mr. Mykrantz  
16 would need time as well for the testimony regarding  
17 Proposals 14 and 15 and 16 that were offered by the  
18 Market Administrator.

19 JUDGE CLIFTON: And he wants to leave at what  
20 time today in order to catch today's plane?

21 Mr. Mykrantz? By 5. Okay. All right.

22 Mr. Carlson?

23 MR. CARLSON: I have a 1:00 flight, and I  
24 would like to get on it today, if at all possible.

25 JUDGE CLIFTON: All right. Mr. English,

1 tomorrow. Mr. Carlson, if you'd come back, you -- you  
2 had -- come back to the microphone for just a moment,  
3 please. You had indicated to me the proposals that  
4 your testimony would concern, and I have forgotten.  
5 Would you tell me the numbers?

6 MR. CARLSON: Proposals 5, 6 and 8.

7 JUDGE CLIFTON: 5, 6 and --

8 MR. CARLSON: 8.

9 JUDGE CLIFTON: -- 8. Yes, Ms. Barrow?

10 MS. BARROW: I'd like time today, later this  
11 afternoon after Proposal 8.

12 JUDGE CLIFTON: Okay. Good. Thank you. All  
13 right. I think I have enough information to order  
14 those who would testify, and I would like to take Mr.  
15 Stoker next. So, if we could start with his testimony,  
16 unless the copies are not yet here. Are the copies  
17 here?

18 MR. STEVENS: The copy boy has arrived.

19 JUDGE CLIFTON: Oh, Mr. Stevens, thank you.

20 (Applause)

21 JUDGE CLIFTON: Would you be seated? Thank  
22 you. Thank you.

23 All right. I'm going to ask the court  
24 reporter to mark Mr. Stoker's statement, which is two  
25 pages, as Exhibit 38.



1 (The document referred to was  
2 marked for identification as  
3 Exhibit Number 38.)

4 JUDGE CLIFTON: And, Mr. Stoker, would you  
5 please identify yourself and spell both names?

6 MR. STOKER: My name is Mark Stoker, M-A-R-K,  
7 S-T-O-K-E-R.

8 JUDGE CLIFTON: Does anyone wish to Voir Dire  
9 the witness on his written statement?

10 (No response)

11 JUDGE CLIFTON: Is there any objection to his  
12 written statement being admitted into evidence?

13 (No response)

14 JUDGE CLIFTON: There being none, Exhibit 38  
15 is hereby admitted into evidence.

16 (The document referred to,  
17 having been previously marked  
18 for identification as  
19 Exhibit Number 38, was  
20 received in evidence.)

21 JUDGE CLIFTON: Mr. Stoker, would you raise  
22 your right hand, please?

23 Whereupon,

24 MARK STOKER

25 having been first duly sworn, was called as a witness

1       herein and was examined and testified as follows:

2                   JUDGE CLIFTON: Thank you.

3                   Mr. Vetne, you may proceed.

4                                   DIRECT EXAMINATION

5                   BY MR. VETNE:

6                   Q    Mr. Stoker, where do you live?

7                   A    Burley, Idaho.

8                   Q    Can you give a really concise description of  
9                   your experience in the dairy industry, if you can?

10                  A    Born and raised and probably die there.

11                  Q    All right. Pretty concise. Do you have a  
12                  prepared statement?

13                  A    Pardon?

14                  Q    Do you have a prepared statement?

15                  A    I do. Before I begin my prepared statement,  
16                  I'd just like to say that Larry Gerdis from Falconhurst  
17                  Dairy was here yesterday and wasn't able to stay, and I  
18                  think that his views and my views are somewhat similar,  
19                  being small processors in the Idaho -- in the Western  
20                  Order, and I'm not saying anything that his statement's  
21                  the same as mine, but just that he was here prepared to  
22                  say something similar to what I will have to say.

23                                  My name is Mark Stoker. I am the manager and  
24                                  owner of Stoker Wholesale, Incorporated, Burley, Idaho.  
25                                  Our operation is a third generation family business.

1           We have been involved in the dairy business  
2 since the early 1940s. The operation began even before  
3 there was a Federal Order in South Central Idaho. When  
4 the Southwest Idaho/Eastern Oregon Order went into  
5 effect in 1981, we initially were termed as a producer  
6 handler. We produced, processed and marketed the milk  
7 production of our own dairy herd. Later, we sold our  
8 dairy animals and began as a pool distributing plant in  
9 what is now called the Western Order.

10           Today, we market approximately a million  
11 pounds of fluid milk products a month. We only package  
12 that milk in gallons and half gallons. We distribute  
13 mainly to convenience stores because of the desire of  
14 larger processors to keep us out of the grocery store  
15 chains.

16           Since October of 1994, we have had an  
17 arrangement to receive our milk supply from Jerome  
18 Cheese, a proprietary bulk tank handler in the Western  
19 Order. This arrangement has worked well for both of  
20 us. Jerome Cheese provides us with local, consistent  
21 and high-quality and a competitive price milk supply.  
22 Jerome Cheese also provides a convenient and  
23 competitive outlet for my surplus cream.

24           I am not an expert on complex Federal Orders  
25 or complicated marketwide pooling. However, I do

1 understand that Proposals 5, 8, 11 and 12 will  
2 jeopardize my ability to remain competitive with large  
3 processors with whom I compete. I compete for a very  
4 small portion of the total market of fluid market  
5 products, but I strongly feel that I am providing local  
6 consumers with a local high-quality and competitive  
7 price alternative product. I feel that providing  
8 consumers with an alternative choice of dairy products  
9 is in the public interest.

10 Having to pay Class 1 price is not my main  
11 concern. I feel that by paying Class 1 price, I would  
12 have to change the way I market my product by being  
13 more aggressive in going after a bigger share of the  
14 market in order to stay in business. My concern is  
15 that if a dominant cooperative gets all the market  
16 power, the Class 1 price will not be the only charge.

17 I have had that experience soon after leaving  
18 producer handler status when I started purchasing my  
19 milk from a co-op. Although I started out by paying  
20 Class 1 price, it soon began to include surcharges,  
21 premiums and added delivery charges, and I suppose that  
22 all of that added cost was decided by the cooperative.

23 Having to pay all those added charges would  
24 be devastating to me and to all small entities that are  
25 trying to compete. I feel that once a cooperative gets

1 a stronghold in the marketplace, there will be -- they  
2 will be able to dominate them from then on. It can  
3 eventually result in far too much monopolistic market  
4 power. This does not serve the producers, processors  
5 or consumers in the long run, and I feel this is  
6 contrary to the public interest.

7 I have appreciated the opportunity I now  
8 enjoy of being able to work with Jon Davis at Jerome  
9 Cheese. Our arrangement has worked well for both  
10 parties, which would include me, myself, Jon, Jerome  
11 Cheese and producers. I feel that it would be a  
12 mistake to take away proprietary bulk tank handler  
13 status from Jerome Cheese. My purchases from them have  
14 allowed their Grade A producers to participate in the  
15 Class 1 market.

16 I feel we should not be permitted to -- from  
17 continuing our win-win and I'll add another win for the  
18 public relationship.

19 JUDGE CLIFTON: I want to make sure I  
20 understood your reading of your one prohibited. Is  
21 that what you said? "I feel we should not be  
22 prohibited from continuing our win-win relationship"?

23 MR. STOKER: That's correct.

24 JUDGE CLIFTON: Thank you.

25 Mr. Vetne?

1 BY MR. VETNE:

2 Q Mr. Stoker, you refer on Page 2 to you and  
3 other small entities. How many employees does Stoker  
4 Wholesale have?

5 A Ten.

6 Q Okay. And are you somewhat familiar with  
7 Falconhurst?

8 A Yes, I am.

9 Q Okay. Would it be fair to say that  
10 Falconhurst's employee numbers are not much different  
11 from yours?

12 A Probably a little smaller.

13 Q Okay. They clearly have less than 500  
14 employees, correct?

15 A They do.

16 MR. VETNE: Okay. That's all I have. Thank  
17 you.

18 JUDGE CLIFTON: Thank you, Mr. Vetne.

19 Would you spell Larry Gerdis's name for the  
20 record, Mr. Stoker?

21 MR. STOKER: I will attempt to.

22 L-A-R-R-Y Gerdis, I think, is G-E-R-D-I-S.

23 JUDGE CLIFTON: All right. And Falconhurst,  
24 I think we already have in the documents.

25 Cross examination for Mr. Stoker? Mr.

1 Beshore?

2

CROSS EXAMINATION

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BY MR. BESHORE:

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Q Mr. Stoker, your final sentence in your statement says, "I feel we should not be prohibited from continuing our win-win relationship". You're referring to your business relationship with Jerome Cheese.

What -- which proposal would prohibit you from buying your milk supply from Jerome Cheese?

A Well, as I mentioned, I don't understand all -- every -- I've read over them, and I don't understand them as well, but taking away proprietary bulk tank handler status from Jerome Cheese, I don't know if that would prohibit them from being able to purchase milk from them. If it does, then that's what I'm referring to.

Q Okay. And if it doesn't, you wouldn't have that concern?

A Then that wouldn't be that concern for us.

MR. BESHORE: Thank you.

JUDGE CLIFTON: Thank you, Mr. Beshore.

Other cross examination of Mr. Stoker?

(No response)

JUDGE CLIFTON: Any redirect?

1 MR. VETNE: No, Your Honor.

2 JUDGE CLIFTON: Thank you, Mr. Vetne.

3 Thank you, Mr. Stoker.

4 MR. STOKER: Thank you.

5 JUDGE CLIFTON: You may step down.

6 (Whereupon, the witness was excused.)

7 JUDGE CLIFTON: I'd like now to take David  
8 Larsen, Gossner Foods, and the two producer patrons in  
9 whatever order the three of you would like to proceed.

10 MR. LARSEN: If it's okay with Your Honor,  
11 I'd like to go first and then the two producer patrons.

12 JUDGE CLIFTON: Very fine. Thank you. Thank  
13 you, Mr. Larsen.

14 I would like the court reporter to mark the  
15 three-page statement that is being presented on behalf  
16 of Gossner Foods as Exhibit 39.

17 (The document referred to was  
18 marked for identification as  
19 Exhibit Number 39.)

20 JUDGE CLIFTON: And, Mr. Larsen, would you  
21 state your full name and spell your names for us,  
22 please?

23 MR. LARSEN: Yes. David Larsen, D-A-V-I-D  
24 L-A-R-S-E-N.

25 JUDGE CLIFTON: All right. Would you raise



1 your right hand, please?

2 Whereupon,

3 DAVID LARSEN

4 having been first duly sworn, was called as a witness  
5 herein and was examined and testified as follows:

6 JUDGE CLIFTON: Thank you.

7 And, Mr. Larsen, are you presenting what I've  
8 marked as Exhibit 39 on behalf of Gossner Foods?

9 MR. LARSEN: Yes, I will be.

10 JUDGE CLIFTON: Is there anyone who would  
11 like to Voir Dire the witness on the exhibit before I  
12 ask if there are any objections?

13 (No response)

14 JUDGE CLIFTON: How many of you have copies  
15 of it?

16 MR. LARSEN: There will be copies coming. I  
17 have handed two to the court reporter. There are a few  
18 circulating, but there will be some more coming. They  
19 should be here any second.

20 JUDGE CLIFTON: All right. Let's go off  
21 record for just a moment while we wait for those.

22 (Pause)

23 JUDGE CLIFTON: All right. We're back on  
24 record at 10:15.

25 In the interim, I would like Mr. Radmall to

1       come forward. Oh, you have them right now? Oh, all  
2       right. Mr. Radmall, go ahead and distribute what  
3       you've got, if you will.

4                       (Pause)

5                       JUDGE CLIFTON: Thank you.

6                       So that I don't confuse myself, I am marking  
7       what Mr. Radmall has handed me, this one-page letter,  
8       dated April 12, 2002, on Utah Farmers Union letterhead,  
9       as Exhibit 40.

10                      (The document referred to was  
11                      marked for identification as  
12                      Exhibit Number 40.)

13                      JUDGE CLIFTON: We'll come back to that, and  
14       now I'd like to ask if there's any objection to the  
15       admission into evidence of Exhibit 39?

16                      (No response)

17                      JUDGE CLIFTON: I know some of you just got  
18       it. So, I will be liberal with regard to your concerns  
19       about it after the witness has testified.

20                      I do admit into evidence Exhibit 39.

21                      (The document referred to,  
22                      having been previously marked  
23                      for identification as  
24                      Exhibit Number 39, was  
25                      received in evidence.)

1                   JUDGE CLIFTON:  And, Mr. Larsen, if you'd  
2                   first give us a little information about yourself  
3                   before you go into this document that's offered on  
4                   behalf of Gossner Foods?

5                   MR. LARSEN:  Be happy to.

6                                   DIRECT TESTIMONY

7                   MR. LARSEN:  I have been employed at Gossner  
8                   Foods since 1986.  My duties at Gossner Foods include  
9                   producer relations, milk procurement, and the financial  
10                  reporting for some of our activities at both of our  
11                  plants.

12                  Gossner Foods has been in business for over  
13                  35 years.  We currently have two plants on Federal  
14                  Order 135, one of which is a fluid milk plant that  
15                  processes UHT aseptic milk, and by UHT, that stands for  
16                  Ultra-High Temperature.  It is milk that does not  
17                  require refrigeration.  So, we're not a typical fluid  
18                  processor, but in that regard, we do have a fluid  
19                  plant.

20                  Our second plant is located adjacent to our  
21                  fluid plant.  It is a cheese manufacturing and  
22                  packaging facility where we manufacture Swiss cheese  
23                  and Muenster cheese.

24                  I'd like to go ahead and read our concerns on  
25                  some of the proposals that we have and afterwards be

1 happy to answer any questions.

2 Gossner Foods is a small business as defined  
3 under the Regulatory Flexibility Act, and such as  
4 stands to be seriously impacted by several of the  
5 proposed regulatory changes to the Western Federal  
6 Order. It is the purpose of these written comments to  
7 define the impact that each of the proposed changes  
8 would have upon the operation of our business and to  
9 state our position regarding their implementation.

10 Regarding Proposals 3 and 7, we strongly  
11 oppose Proposal 3 and Proposal 7. These two proposals  
12 seek to eliminate the option of receiving milk at a  
13 pool plant and then transferring it to a non-pool  
14 plant. We are greatly concerned about the potential  
15 negative impact of this proposal upon our business  
16 operation.

17 The large percentage of our fluid milk  
18 business consists of contracts with governmental  
19 agencies. These contracts are bid on a yearly basis,  
20 sometimes with an extension or rollover option that can  
21 extend the contract. These contracts represent a large  
22 portion of our Class 1 sales.

23 The bidding process is very competitive and  
24 should we ever lose the contract, then the proposed  
25 pooling requirements could become very difficult to

1 meet until new business is developed.

2 The effect of not allowing transfers is to  
3 effectively reduce the amount of milk that we could  
4 potentially pool by significant amount. The reduction  
5 in pooling potentially could, under certain conditions,  
6 become far more burdensome than the proposed diversion  
7 percentage changes.

8 We do not currently transfer milk nor do we  
9 intend to do so in the future, but having the ability  
10 to transfer in the event that a major contract is lost  
11 is critical for the orderly operation of our business.  
12 Approval of this proposal would greatly reduce our  
13 ability to provide an alternative market for milk  
14 producers in this region.

15 Market alternatives for milk producers in  
16 this region are already very limited, and this  
17 provision could eliminate them all together. We  
18 strongly oppose this extreme change in pooling  
19 regulations.

20 In regards to Proposal 4. While this  
21 proposal applies only to cooperative associations, we  
22 feel that it is -- the intent is to reduce the  
23 potential for additional cooperatives to enter -- to  
24 either be formed or market milk in this Order. Again,  
25 our position is that producers should have several

1 options relative to marketing their milk. Competition  
2 provides the basis for better milk prices.

3 Proposal 6. This proposal also has a  
4 potential to greatly disrupt our current business  
5 operations, and we strongly oppose its implementation.  
6 Our opposition to this proposal is founded on the same  
7 concerns set forth in our oppositions to Proposals 3  
8 and 7.

9 We are trying to provide producers within  
10 this Market Order with access to the Grade A market  
11 through some other channel than DFA. DFA already holds  
12 a virtual monopoly on the Grade A fluid milk market in  
13 Utah and Southern Idaho. They provide all milk to Dean  
14 Foods, Meadow Gold and Kroger's. All school contracts  
15 are currently filled with milk provided by DFA. The  
16 milk dominance enjoyed by DFA has come about as a  
17 result of various mergers and acquisitions.

18 Our perception is that they are using this  
19 hearing to try to modify pooling requirements in a  
20 fashion that will greatly enhance their ability to  
21 retain that position. We do not believe that the  
22 interests of the dairy farmers in this Order are best  
23 served by having a single buyer for their products.  
24 Modifying diversion limits would have a negative impact  
25 on all Grade A handlers in the Order.

1           Since a large portion of our Grade A producer  
2 milk is sold outside Federal Orders and in many cases  
3 outside of the United States, we feel that producers  
4 within the Order will benefit by leaving us the  
5 flexibility to add producers as we need them and still  
6 react to market changes in milk contracts without  
7 completely disrupting the orderly marketing of milk.

8           I would like to add a couple comments to  
9 this. To give an example of our position on Proposal  
10 6, as I mentioned earlier, we are not a typical fluid  
11 milk plant. I'll give an example of some of the  
12 variations that we could see in our Class 1 sales.

13           As I mentioned earlier, we do have a lot of  
14 governmental contracts. Some of those are military  
15 contracts. For instance, right after the September  
16 11th incident, we received a call immediately for  
17 substantial increase in the amount of milk that we were  
18 supplying the military. Those needs, in our opinion,  
19 need to be there and available to meet the military  
20 needs. We have to have milk available to fill those  
21 contracts immediately.

22           Another example would be milk that we send  
23 out of the country. We send a lot of milk to Puerto  
24 Rico. There have been times when there's been  
25 hurricanes or other natural disasters where we have

1 received calls stating that they need loads of milk  
2 immediately.

3 So, it is our position that changing the  
4 diversion limits from 90/10 to 70/30 would greatly  
5 affect our ability to meet these needs.

6 In regards to Proposal 8, and I'd like to  
7 just make a comment on that while we're up here, it  
8 appears that this proposal has made an attempt to allow  
9 the dominant cooperative in the area to transport milk  
10 from distant locations, such as Boise, Idaho, into the  
11 Salt Lake City market. If our calculations are  
12 correct, between the transportation credit and the  
13 assembly credit, milk could be brought from distant  
14 locations into the Salt Lake City market at the same  
15 cost to the cooperative as local milk. The cost of  
16 transportation and assembly would be borne by the pool.

17 It seems very inappropriate that local  
18 producers would be funding the transportation of  
19 distant producer milk into local market. What makes it  
20 even more inappropriate is that other organizations are  
21 ready and willing to supply milk into this market  
22 without being subsidized.

23 Proposals 11 through 13. We have no  
24 positions on these proposals, except a brief comment  
25 concerning producer payments. Under previous



1 regulations, milk payments to our producers were due on  
2 the 15th and 30th of the month. Under new regulations,  
3 milk payments to producers are now due on the 17th and  
4 25th of the month. Cash flow disruptions, both on the  
5 processor and on the producer levels, are a very real  
6 impact of the new payment dates, and we would request  
7 that serious considerations be given to returning to  
8 the old payment dates.

9 Just in closing, it seems appropriate to make  
10 adjustments to some Order regulations, particularly  
11 with regard to double dipping. However, many of the  
12 changes proposed clearly favor the dominant milk  
13 marketer in this Order. We support the elimination of  
14 double pooling and would like to wait and see what  
15 impact that has on Order price.

16 The elimination of transfers is a very  
17 radical move that moves an important safety valve that  
18 can be used during periods of market disruptions.  
19 Diversion allowances need to remain at their current  
20 levels so that we can remain competitive as we bid for  
21 business and so that we can continue to offer an  
22 alternative market to producers in this area for their  
23 Grade A milk.

24 Transportation and assembly credits would be  
25 an unnecessary cost to the pool since other

1 organizations are willing to provide Class 1 milk into  
2 the market without subsidies. The absence of  
3 competition generally has a negative impact upon both  
4 producer prices and the level of service and attention  
5 that the producer receives from those who market his  
6 milk.

7           Given the dominant position that DFA  
8 currently enjoys in this Order, we ask that each of the  
9 proposals be evaluated on whether or not they give them  
10 an unfair advantage in retaining or increasing their  
11 position. The interests of all producers in this  
12 market, whether cooperative members or not, are best  
13 served by allowing competition for producers to remain  
14 viable under new or modified regulations, to make the  
15 changes that are clearly needed, evaluate their impact  
16 and decide if further changes are appropriate.

17           JUDGE CLIFTON: Thank you, Mr. Larsen.

18           Cross examination? Mr. Marshall?

19           MR. MARSHALL: Thank you, Your Honor.

20                           CROSS EXAMINATION

21           BY MR. MARSHALL:

22           Q     Mr. Larsen. It occurs to me in listening to  
23 your testimony that it might be interesting to explore  
24 a little bit about the nature of your food business.

25                   If I were to purchase a Gossner product, what

1 kind of packaging would it be in?

2 A It would be in aseptic UHT packaging. It is  
3 not a plastic fluid jug that you typically would refer  
4 to as a fluid package. It is a -- more of a cardboard  
5 box with a foil lining inside. No chemicals are added  
6 to the milk, but it is aseptically packaged so that  
7 contamination of the milk is not possible. That  
8 remains to stay at room temperature with refrigeration  
9 for a period of up to nine months --

10 Q So, that's --

11 A -- or longer.

12 Q -- a classic example of a value-added  
13 product?

14 A Exactly.

15 Q And your market for that then, I take it, is  
16 military bids, I think you mentioned, and --

17 A That is a large portion of our business. We  
18 do have another large portion of our business that  
19 exits the country into Puerto Rico.

20 Q Again, that would be appealing to the long-  
21 shelf life of aseptic packaging, would it not?

22 A Yes, it would.

23 Q In your business then, your -- the bulk of  
24 your sales are probably going outside of this immediate  
25 Western Order Market Area, would they not be?

1           A     Yes, they are. We looked at the numbers.  
2     It's been awhile, but I believe less than one percent  
3     of our sales stay in our Order.

4           Q     So, you're finding then that milk that you  
5     sell is actually a new Class 1 utilization in the  
6     market, not merely a matter of competing for somebody  
7     else's existing Class 1 utilization?

8           A     Yes, and that was the intent of the plant  
9     when it was built, was not to compete with those who  
10    are currently in the market but to form a new market  
11    and to take the producer milk in this area and exit it  
12    out of the market, thus providing a better market for  
13    producers in this area as well.

14          Q     I believe you told us that after September  
15    11th, the government contacted you, the Federal  
16    Government contacted you for an increased supply. How  
17    -- how predictable are your government bids, and what  
18    is the expected length of those types of  
19    contracts?

20          A     Our government bids do have a set length of  
21    time as far as quantity and range greatly. As I  
22    mentioned, sometimes when things are going and there  
23    are no military activity, we have somewhat of a level  
24    need for our milk. When activities happen in different  
25    parts of the country or an event, such as September

1 11th, happens, we see a substantial need and request  
2 from the military for our milk, and by substantial, I  
3 could mean tenfold what they normally take.

4 Q That is now. What would be the prospect that  
5 a year from now, let's say in the Spring flush of the  
6 year 2003, that you'd be able to count on that same  
7 volume of business?

8 A We have -- we have no idea. We -- we know  
9 that we'll have contracts that extend through some of  
10 that period, but as far as the volume, we don't know  
11 and that is another reason that we support the 90/10  
12 diversion limits. Our -- our diversion percentages can  
13 change so greatly just based upon those reasons that  
14 I've stated.

15 Q So, your future market opportunities for your  
16 aseptically-packaged milk are highly unpredictable?

17 A They are. We do have some business that is  
18 steady, but there is a portion of our business that is  
19 not steady, and as far as that, I mean orders can vary  
20 as far as quantities, unlike the typical fluid plant  
21 whose orders are somewhat level.

22 Q Could you describe where your milk supply is  
23 located?

24 A As far as where we receive our milk from?

25 Q Yes. Where are your producers who ship

1 directly to Gossner?

2 A Our producers go from Delta, Utah, that's as  
3 far south as we go, to Bancroft, Idaho, that's as far  
4 north as we go, and it's just north of Grace, Idaho.

5 Q And where is Grace, Idaho?

6 A That -- Grace, Idaho, is about, I'm going to  
7 say, eight miles from Logan north.

8 Q Just for the benefit of those who may not  
9 know where Logan is, isn't Grace kind of right on the  
10 border between Idaho and Utah?

11 A Grace is actually about 30 miles north of the  
12 Idaho border.

13 Q All right.

14 A But the bulk of our producer milk is located  
15 in the Cache Valley and Franklin Counties. That would  
16 be Cache County, Utah, and Franklin County, Idaho.

17 Q And I believe you testified earlier but I  
18 missed it. Did -- did you -- can you tell us how many  
19 producers you have who supply you and how many from  
20 each of those two states?

21 A We have approximately a 150 producers, 95  
22 which are from Utah. The remaining are from Idaho.

23 Q Now, in your role with Gossner Foods, do you  
24 spend time talking to producers?

25 A Yes, I do. I spend a lot of my time talking

1 to producers.

2 Q And do you help determine what will be paid  
3 to those producers who ship to Gossner Foods?

4 A I provide information to those who make the  
5 decisions and those decisions are based upon  
6 information that I provide.

7 Q What has been the practice with -- of  
8 determining pay prices with respect to the Federal  
9 Order as a guide? Do you always pay at least the  
10 Federal Order price?

11 A To our Grade A producers, they receive at  
12 least the Federal Order blend price. To our other  
13 producers which are less than 10 percent, the price is  
14 determined by management.

15 Q I'm sorry. I didn't hear that.

16 A 90+ percent of our producer milk is Grade A  
17 milk. That price is paid at least the Federal Order  
18 minimum price. The remaining percentage, which is less  
19 than 10 percent, is manufacturing milk, which is, the  
20 price is determined by management.

21 Q And do you often find yourselves concerned  
22 that the Federal Order price is not high enough to  
23 retain your producer base?

24 A We do not have any contracts with our  
25 producers. We shake hands. We do not have producers

1 that leave Gossner Foods once they come. We are  
2 constantly putting new producers on. For example, this  
3 week, we put on three new producers. No contracts are  
4 required, but, you know, as far as that goes, as far as  
5 price, price may be one determination that they are  
6 coming to Gossner Foods. I think there are several  
7 other factors that lead them to want to switch who they  
8 are sending their milk to. Price may be one.

9 Q Do you occasionally pay over and above the  
10 minimum Federal Order price?

11 A Yes, we do.

12 Q You manage to attract a loyal producer base  
13 as a result?

14 A We have a very loyal producer base. Part of  
15 those over-order premiums are not the result of looking  
16 for new milk. It is, as has been described, a three-  
17 legged stool that is at Gossner's, one leg being the  
18 producers, the second leg being the employees, and the  
19 third leg the company. If we need all three legs,  
20 we've got to have the producers. We treat our  
21 producers very well. The employees are treated well,  
22 and the company does well as a result.

23 If the company profits, it may not be from  
24 fluid milk, it may not be from Swiss cheese, it may be  
25 from other products that we produce. Some of those



1 profits are distributed to our producers to thank them  
2 for their -- their loyalness through all the years that  
3 they have been at Gossner's.

4 Q I'm interested in the fact that some  
5 producers have recently decided to ship their milk to  
6 you. Could you describe the competitive environment in  
7 which you operate and what kinds of things you hear  
8 from producers about why they might want to ship to  
9 Gossner Foods?

10 A Well, there's several reasons that I hear.  
11 In our area, there are two main suppliers or purchasers  
12 of milk. There's ourselves and there's DFA. There are  
13 some other handlers who have milk in the area, KDK and  
14 Magic Valley, but for the bulk of the milk, it would be  
15 between ourselves and DFA.

16 I think one of the reasons that I hear often  
17 about wanting to switch from DFA to Gossner's is the  
18 personalized attention that they get at Gossner's, and  
19 they don't feel like a number, part of a big group of  
20 producers but more of a local community, a group where  
21 their milk is processed and they have some local  
22 interest and support in their local communities.

23 Q If these proposals that you've been  
24 testifying on with respect to netting and diversions  
25 and so forth were to be adopted, would you be able to

1 offer a market to additional producers who might be  
2 seeking alternatives?

3 A We would not. It would decrease our ability  
4 to go out and actively search for new producers based  
5 upon our fears that we would not be able to pool the  
6 milk. We want to make sure that we have an adequate  
7 supply of milk to supply the fluid needs, but we would  
8 be hesitant to put on new producers if these proposals  
9 were passed.

10 Q If these -- I couldn't quite hear you. If  
11 these proposals were granted, you'd have difficulty  
12 putting on new producers?

13 A Yes, we would. We would be forced to buy  
14 milk from the co-op, thus strengthening their position.

15 Q It's interesting in your comment about  
16 double-dipping on the final page of your prepared  
17 statement. You've been here throughout the first two  
18 days of this hearing, have you not, Dave?

19 A Yes, I have.

20 Q And now that you've heard the evidence and  
21 hear some of the discussions, do you have an opinion as  
22 to whether -- does Gossner Foods have an opinion as to  
23 whether Proposal 10, which would end the double-dipping  
24 on the Western Order, should be adopted on an emergency  
25 basis?

1           A     Our earlier testimony by Greg indicated that  
2     it was not an emergency basis. We have talked amongst  
3     ourselves and have agreed after hearing further  
4     testimony, we believe it should be adopted as an  
5     emergency basis.

6           MR. MARSHALL: Thank you very much.

7           MR. LARSEN: Thank you.

8           JUDGE CLIFTON: Thank you, Mr. Marshall.

9           Let me just ask. I didn't take adequate  
10    notes on who has to leave when. I believe Mr. Carlson  
11    said he needed to leave by 11 to catch a plane, is that  
12    correct?

13          MR. CARLSON: Yes.

14          JUDGE CLIFTON: All right. Let's -- let me  
15    ask. I did not remember, Mr. Larsen, if you and your  
16    two producer patrons have a deadline for catching a  
17    plane.

18          MR. LARSEN: They do not have a deadline for  
19    catching a plane.

20          JUDGE CLIFTON: All right. Would, in the  
21    interests of allowing one person to make his scheduled  
22    flight, would you be yield the floor at this time?

23          MR. LARSEN: Yes, we would.

24          JUDGE CLIFTON: All right. I appreciate it.  
25    If you would step down, I'm going to call Mr. Carlson,

1 and then I'll call you back. Thank you very much.

2 (Whereupon, the witness was excused.)

3 JUDGE CLIFTON: Mr. Carlson, if you'll come  
4 forward?

5 (Pause)

6 JUDGE CLIFTON: Let's go off record just a  
7 moment.

8 (Discussion off the record.)

9 JUDGE CLIFTON: All right. We're back on  
10 record. It's 10:42.

11 Mr. Carlson, you have previously testified,  
12 is that correct?

13 MR. CARLSON: That is correct.

14 JUDGE CLIFTON: All right. You remain under  
15 oath.

16 Whereupon,

17 RODNEY K. CARLSON

18 having been previously duly sworn, was recalled as a  
19 witness herein and was examined and testified as  
20 follows:

21 JUDGE CLIFTON: Would you again state your  
22 full name?

23 MR. CARLSON: Rodney Carlson, C-A-R-L-S-O-N.

24 JUDGE CLIFTON: All right. I'm going to ask  
25 the court reporter to mark your three pages as Exhibit

1 41.

2 (The document referred to was  
3 marked for identification as  
4 Exhibit Number 41.)

5 JUDGE CLIFTON: I would ask now if anyone  
6 would like to Voir Dire the witness with regard to  
7 Exhibit 41. Mr. English? I would note that the three  
8 pages, one page is Proposal Number 5, the next page is  
9 Proposal Number 6, and the last page is Proposal Number  
10 8.

11 Mr. English?

12 MR. ENGLISH: Yes, Your Honor. I have some  
13 questions on Voir Dire specifically because until I  
14 understand what he's discussing on Page 5, Proposal  
15 Number 8, I don't know whether or not to interpose an  
16 objection to the discussion as being outside the scope  
17 of the hearing.

18 So, if I could ask Mr. Carlson some questions  
19 about Proposal Number 8, Number 5?

20 JUDGE CLIFTON: Yes, you may, Mr. English.

21 MR. ENGLISH: Okay.

22 VOIR DIRE

23 BY MR. ENGLISH:

24 Q Mr. Carlson, in the second paragraph, you  
25 propose, assuming that this comes in, that "Proposal

1 Number 8 be modified so that fluid milk processing  
2 plants that receive milk qualify to receive the  
3 proposed transportation credit would pay a direct  
4 delivery differential to the producer-supplying handler  
5 that delivers the qualified milk." Do you see that  
6 statement?

7 A Yes, sir.

8 Q Is that to come out of the pool?

9 A No, sir.

10 Q Is that to say that handlers, if Proposal  
11 Number 8 is adopted and your modification were  
12 considered and adopted, that handlers would end up  
13 paying more in those instances where the credit  
14 applies?

15 A Yes, they would.

16 MR. ENGLISH: Your Honor, on behalf of Dean  
17 Foods, operating Meadow Gold operations in Salt Lake  
18 and also in Idaho, I would note that there's no part of  
19 the hearing record that indicates -- the Hearing Notice  
20 that would indicate that handlers as a result of  
21 proposal in this hearing would be paying more than they  
22 presently pay for the milk.

23 While I am in the room, I'm certainly not  
24 prepared for this issue. I would note that there are  
25 fluid milk processors who are not in the room, who may

1 have chosen not to attend this hearing because they  
2 didn't believe that their interests were impacted by  
3 the possibility that their prices would be increased.

4 On behalf of Dean Foods, I note my objection,  
5 and for this limited purpose, I enter my appearance for  
6 National Dairy Holdings, Inc., on behalf of Cream o'  
7 Weber plant that is owned by National Dairy Holdings,  
8 Inc., to object on the grounds that they're not here  
9 and this was not part of the Hearing Notice, and  
10 therefore we object to any consideration of Proposal  
11 Number 8 being modified so that handlers would pay more  
12 than they are presently paying.

13 We are not prepared to deal with it. There  
14 are people who are not here, who have chosen not to be  
15 here. I could mention Kroger as one that did not --  
16 you know, for all I know, they read the Hearing Notice  
17 and determined that it did not impact them. But if  
18 this were adopted and Kroger received milk under this  
19 plan, they would end up paying more for the milk than  
20 they're presently paying. That is outside the scope of  
21 the Hearing Notice and should not be considered, and I  
22 object to that portion of Page 5, Proposal Number 8,  
23 being considered, being entered into evidence in any  
24 way, shape or form as being outside the scope of the  
25 Hearing Notice.

1 JUDGE CLIFTON: Thank you, Mr. English.

2 Would anyone else like to be heard with  
3 respect to Order -- to Voir Dire the witness with  
4 respect to this issue?

5 MR. MARSHALL: With respect to the objection?

6 JUDGE CLIFTON: Either to Voir Dire the  
7 witness and voice an objection or to voice an  
8 objection.

9 MR. MARSHALL: Your Honor, Doug Marshall.

10 I would join in the objection. While I find  
11 the proposal very interesting, I'm not prepared to  
12 discuss it. I do think it's unfair to handlers in the  
13 marketplace to proceed with that as a matter for  
14 consideration at this hearing.

15 JUDGE CLIFTON: All right. Thank you, Mr.  
16 Marshall.

17 Mr. Vetne?

18 MR. VETNE: At the risk of speaking on an  
19 issue which I'm not sure I have a player in the  
20 ballgame, I -- I do think that the Secretary may not  
21 lawfully consider a proposal to increase classified  
22 price within the scope of -- of this Hearing Notice,  
23 that in essence was a decision in a case called  
24 Carnation v. USDA, in which the Class 1 price was  
25 increased as a result of the suspension of certain



1 words, and the court decision was you can't do that  
2 unless you go to a hearing.

3           However, I don't think that the testimony of  
4 the witness in any respect ought to be excluded as a  
5 result of that. Understanding the constraints that are  
6 imposed on the Secretary that he may not raise prices  
7 as a result of this hearing, he should also consider  
8 that of the issues that have been noticed, it would be  
9 wise to do so only if prices are raised, which would  
10 require another -- another hearing or an amended  
11 hearing or it would be wise to do so only under  
12 conditions that apparently the proponents didn't think  
13 so, in which case it goes to the merits of the  
14 proposal.

15           So, the proposal is out of order, I believe,  
16 but the testimony is not.

17           JUDGE CLIFTON: All right. Thank you.

18           Mr. Stevens?

19           MR. STEVENS: Yes, Your Honor. I think my  
20 understanding of this is if, as part of this proposal,  
21 there is a -- a -- a request to the Secretary which in  
22 effect would -- would involve changing the classified  
23 pricing, that that issue is outside the scope of the  
24 hearing, and we -- we -- we should not -- we should not  
25 consider it.

1           I -- I note Mr. Vetne's discussion on this.  
2           I'm not -- I -- I don't believe I agree with him, but I  
3           think the reason that the -- that the proposal should  
4           be excluded is that it's outside the scope of the  
5           hearing.

6           JUDGE CLIFTON: All right. Thank you.

7           Does anyone else wish to object or to be  
8           heard with regard to the objection?

9           (No response)

10          JUDGE CLIFTON: All right. Mr. Carlson, your  
11          response?

12          MR. CARLSON: I tend to agree with Mr. Vetne.  
13          The proposal itself is outside the scope, I believe.  
14          There was a proposal made in the Department to -- to  
15          this extent on this matter, and the Department has  
16          chosen not to hear it at this time.

17          What we object to is adopting the proposal as  
18          noticed without adding the additional costs to handlers  
19          to pay for the expense involved and that's what we  
20          wanted to get across in our testimony.

21          JUDGE CLIFTON: All right. Thank you, Mr.  
22          Carlson.

23          Mr. Carlson, I'll allow your statement in as  
24          written. Your statement actually proposes that  
25          Proposal Number 8 be modified. I think you have

1 acknowledged that that would make it a different  
2 proposal. It would not be a proper subject matter for  
3 the hearing, but nevertheless your idea is important.

4 MR. CARLSON: That's --

5 JUDGE CLIFTON: And so, I'll allow you to  
6 keep it in your statement and to offer testimony.

7 To the extent that Mr. Stevens points out  
8 it's outside the scope of what we're considering in  
9 this hearing, I want you to keep your comments very  
10 brief, so that we not let the tail wag the dog, and you  
11 -- you will be allowed to comment on it.

12 All right. Mr. English?

13 MR. ENGLISH: Can I just have clarity for the  
14 record, though, that nonetheless, the proposal is ruled  
15 by Your Honor to be outside the scope of the Hearing  
16 Notice? I mean, the witness has acknowledged it and  
17 all the lawyers have said it. The one thing we've  
18 agreed on in this hearing.

19 JUDGE CLIFTON: Yes, Mr. English. I find  
20 that the suggested modification to the proposal would  
21 be a new proposal which is not under consideration here  
22 and therefore is outside the scope of this hearing.

23 MR. ENGLISH: Thank you, Your Honor.

24 JUDGE CLIFTON: You're welcome.

25 All right. You may proceed, Mr. Carlson.

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DIRECT TESTIMONY

MR. CARLSON: Okay. Thank you very much.

I will start with Proposal Number 5.

Provisions that identify standards for organizations, plants and producers to meet in order to participate in the Federal Order Pool are necessary to prevent abuses of the system.

Many manufacturing plants would prefer not to ship part of their milk supply to fluid milk processing plants if they did not have to. Many manufacturing plants and organizations try to find loopholes in provisions in order that they can maintain their milk supply and still draw the blend price from the pool.

This abuse leads to certain handlers gaining a financial advantage over their competitors and obviously a competitive advantage. Competitive advantages gained as a result of federal regulations certainly cannot be described as contributing to orderly marketing conditions.

Adoption of Proposal Number 5 will be a major step toward eliminating loopholes that groups have used to qualify milk without making milk -- without making any milk available for the Class 1 market, gaining competitive advantages and contributing to disorderly marketing conditions.

1           The bulk tank handler provision is a  
2 provision easily abused. The provision can be used to  
3 qualify large volumes of milk without actually using  
4 milk associated with the manufacturing plant to serve  
5 the Class 1 market. This type of provision has led to  
6 disorderly marketing situations in certain markets.  
7 Handlers have solicited producers located near a  
8 bottling plant, given those producers financial  
9 incentives to become a patron, then used these "new  
10 producers" to qualify milk associated with the  
11 manufacturing plant.

12           The milk of the acquired producers may have  
13 already been servicing the fluid milk processing plant  
14 in question. In this case, no new milk is being used  
15 to serve the fluid market. The milk is now being used  
16 to qualify additional volumes of milk that are not  
17 intended to serve the fluid market.

18           The provision in question is not present in  
19 most markets throughout the country. It is an easily-  
20 abused provision. It does not contribute to orderly  
21 marketing. In fact, in most cases, the provision is  
22 more likely to contribute to conditions described in  
23 the industry as disorderly marketing. The provision  
24 should be eliminated.

25           That's the end of my statement on Proposal

1 Number 5.

2 JUDGE CLIFTON: All right. Thank you, Mr.  
3 Carlson.

4 I'm going to invite you to cover your other  
5 two proposals, and then we'll have cross examination.

6 MR. CARLSON: Okay. On Proposal Number 6,  
7 River Valley Milk Producers supports reducing the  
8 amount of milk that can be diverted to non-pool plants.

9 While we understand that there is a great  
10 deal more milk produced in the area than what is needed  
11 for the Class 1 market, we believe the 90-percent  
12 provision is an overly-generous diversion allowance.  
13 It bothers us that additional volumes of milk can so  
14 easily be added to the pool and water down the blend  
15 price as evidence by the significant variation of  
16 producer milk pooled on the market from one month to  
17 the next.

18 For example, the amount of producer milk  
19 associated with pool on a daily basis -- on a daily  
20 basis increased by more than five and a half million  
21 pounds from October 2001 to November 2001. That was an  
22 increase of 58 percent from one month to the next. We  
23 think that is just one indication of an overly-generous  
24 diversion allowance.

25 Proposal Number 6 would allow handlers the

1 opportunity to divert 70 percent of all milk associated  
2 with the market, including milk diverted. In other  
3 words, handlers could divert 233 percent more milk to  
4 non-pool plants than they deliver to pool plants. This  
5 is a significant change to the present rule that allows  
6 handlers to divert 900 percent of milk they cause to be  
7 delivered to non-pool -- to pool plants.

8 River Valley supports a reduction in the  
9 amount of milk that can be diverted to non-pool plants  
10 to 80 percent. An 80-percent diversion allowance  
11 allows handlers the opportunity to divert 400 percent  
12 as much milk to non-pool plants as they cause to be  
13 delivered to pool plants.

14 We believe a smaller change in the existing  
15 rule is more appropriate in this market, will allow a  
16 smoother transition for regulated handlers and will not  
17 result in inefficient movements of milk.

18 We further propose that Section 1135.13(d)(1)  
19 be amended to identify that milk of a dairy farmer  
20 shall not be eligible for diversion unless the  
21 equivalent of at least one day's milk production of  
22 such dairy farmer has been physically received as  
23 producer milk at a pool plant and the dairy farmer has  
24 continuously retained producer status since that time.

25 There are a large number of producers in this

1 market that market more than one load of milk per day.  
2 Milk from the same day's production may be delivered to  
3 more than one plant. Since milk from the same day's  
4 production can be received at a pool plant and also be  
5 diverted to a non-pool plant, inserting the words "the  
6 equivalent of" will clarify how milk of an individual  
7 producer can meet the requirements of this section.

8 We ask that this proposal be added as an  
9 acceptable addition to the proposal noted in the Notice  
10 of Hearing.

11 JUDGE CLIFTON: Mr. Vetne?

12 MR. VETNE: Your Honor, I think this might be  
13 a good time in the transcript to appear on this -- this  
14 proposal.

15 Dairy Farmers of America testified that there  
16 had been no proposal to change the individual producer  
17 touch-base requirement. There was nothing in the  
18 Hearing Notice concerning the individual producer  
19 touch-base requirement. This is not merely a  
20 modification of existing proposals that were published  
21 concerning aggregate performance but one that applies  
22 to individual producers, and the record shows that  
23 there are quite a few individual producers who market  
24 their milk in the Western Marketing Area.

25 I would ask the Hearing Officer for a ruling



1 for the same reason that we addressed a few minutes  
2 ago, that this as a proposal is beyond the scope of the  
3 Hearing Notice.

4 JUDGE CLIFTON: Thank you, Mr. Vetne.

5 Mr. Stevens?

6 MR. STEVENS: Can we have a minute, Your  
7 Honor? We just need to -- we need a minute to -- we're  
8 looking into the Order, and we'd like to say something  
9 about this, but we'd like to be sure that we say the  
10 right thing.

11 JUDGE CLIFTON: All right.

12 MR. STEVENS: So, could you give us a minute?

13 JUDGE CLIFTON: Yes, you may. Would anyone  
14 else in the meantime like to speak to this issue,  
15 whether this paragraph, the last paragraph regarding  
16 Proposal 6 constitutes a new proposal which is beyond  
17 the scope of the Hearing Notice?

18 (No response)

19 JUDGE CLIFTON: Let's go off record for just  
20 a moment.

21 MR. STEVENS: Okay.

22 (Pause)

23 JUDGE CLIFTON: Back on record at 11.

24 Mr. Vetne?

25 MR. VETNE: My -- my attention has been

1 directed to a proposal not of the parties but of the  
2 Market Administrator, Proposal Number 6, and I withdraw  
3 my objection to the testimony.

4 JUDGE CLIFTON: Proposal Number 16?

5 MR. BESHORE: 16.

6 JUDGE CLIFTON: All right. Mr. Stevens, it's  
7 not necessary for you to comment but you may.

8 MR. STEVENS: Your Honor, if it's not  
9 necessary, I won't.

10 JUDGE CLIFTON: All right. Thank you.

11 The objection is withdrawn.

12 MR. CARLSON: Thank you, Mr. Vetne. I  
13 appreciate that.

14 JUDGE CLIFTON: All right. Mr. Carlson, you  
15 may proceed.

16 MR. CARLSON: Okay. Proposal Number 8.  
17 Proposal Number 8 would provide transportation credits  
18 and assembly credits to handlers meeting certain  
19 requirements in supplying milk to the Class 1 market.

20 We understand that there are situations where  
21 handlers supplying milk to the Class 1 market do incur  
22 expenses that are not covered by handling charges or  
23 over-order charges.

24 Our first preference is that Class 1 handlers  
25 benefitting from the expenses being incurred pay the

1 cost involved. We do not wish to see the blend price  
2 reduced to have such costs covered. However, we also  
3 realize that in a market such as this, competition for  
4 qualifying sales can severely limit the ability to  
5 apply over-order charges.

6 River Valley Milk Producers proposes that  
7 Proposal Number 8 be modified so fluid milk processing  
8 plants that receive milk qualify to receive the  
9 proposed transportation credit would pay a direct  
10 delivery differential to the producer or supplying  
11 handler that delivers the qualified milk.

12 River Valley is aware that some fluid milk  
13 processors require suppliers to incur expenses in order  
14 to supply milk to their plant. Some processors have  
15 inadequate receiving facilities or raw milk storage  
16 capacity. Some processors do not operate seven days a  
17 week and require weekly balancing.

18 I expect there are other reasons that  
19 suppliers may incur costs in supplying a fluid milk  
20 processor. Again, we prefer that recovery of such  
21 costs be handled outside the auspices of the Federal  
22 Order Program. We understand the competitive  
23 conditions can make this difficult. Not all processors  
24 require costly services. Some processors have adequate  
25 receiving facilities and storage capacity. Some

1 operate seven days a week or at least receive milk  
2 seven days a week and do not require weekly balancing  
3 services.

4           Allowing assembly credits under the Order  
5 could result in suppliers being paid for servicing  
6 these processors requiring additional services.  
7 Processors not requiring such services could pocket the  
8 assembly credit. In either case, we do not believe  
9 dairy farmers should subsidize the assembly credit. If  
10 an assembly credit is to be provided, the Class 1  
11 differential should be increased according to --  
12 accordingly to fund the assembly credit.

13           We are aware that Class 1 differential is not  
14 an issue at this hearing. We therefore suggest that  
15 the adoption of an assembly credit be postponed until  
16 such time as the level of the Class 1 differential can  
17 be addressed to fund the assembly credit.

18           That's the end of my statement.

19           JUDGE CLIFTON: Thank you, Mr. Carlson.

20           Cross examination? Mr. Vetne?

21                           CROSS EXAMINATION

22           BY MR. VETNE:

23           Q     Mr. Carlson, you have fairly lengthy  
24 professional experience representing and working for  
25 cooperative associations and others in federal markets

1 outside of the Western Market, correct?

2 A That is correct.

3 Q Okay. How many years have you been doing  
4 that?

5 A Thirty-four.

6 Q Okay. In -- and your primary experience has  
7 been in markets around the Great Lakes states, is that  
8 correct?

9 A That's correct, yes.

10 Q South -- south of the Great Lakes in Ohio and  
11 Chicago?

12 A I worked in the Market Administrator in  
13 Denver for a couple years. So, I -- I was involved a  
14 long time ago with the Great Basin Order at that time.

15 Q Okay. But your private experience has been  
16 in the Great Lakes Region?

17 A That is correct.

18 Q In that region, a lot of milk, particularly  
19 in Wisconsin and Minnesota, is pooled by supply plants,  
20 correct?

21 A Not a lot.

22 Q In Wisconsin?

23 A In Wisconsin, yes.

24 Q Not a lot of milk?

25 A In Wisconsin, yes.

1 Q Wisconsin, yes, a lot of milk is?

2 A A lot of milk, yes.

3 Q Okay. And is it not the case that in that  
4 market, that supply plants serve essentially the same  
5 function as bulk tank handlers do in the Western  
6 Market?

7 A To a large degree, there is -- yes, there's a  
8 lot of similarities.

9 Q Okay. And a difference and maybe the only  
10 significant difference is a supply plant handler must  
11 have a silo of some kind in which to receive and  
12 assemble milk whereas bulk tank handlers do not have to  
13 have a Grade A silo?

14 A I believe that's correct.

15 Q Okay. Are you aware of any other difference?

16 A No. I think that pretty well covers the --  
17 the primary difference.

18 Q And supply plant handlers like bulk tank  
19 handlers, by -- by performing in diversions, enjoy a  
20 multiplier of amount of milk that can be pooled by  
21 reference to how much is delivered to a distributing  
22 plant?

23 A That is correct.

24 Q Okay. In the Eastern Markets that you're  
25 familiar with, is it not the case that a substantial

1 portion of manufacturing capacity, that is Class 3 and  
2 4 manufacturing capacity, is at plants that are pool  
3 plants?

4 A That's true.

5 Q Okay. And in some markets, it may be the  
6 majority of capacity?

7 A I would agree with that.

8 Q Would you also agree that in such markets  
9 where there are pool plants that have manufacturing  
10 capacity, where there are diversion definitions, that  
11 diversions that are allowed include diversions based on  
12 the receipts at manufacturing pool plants as well as  
13 distributing pool plants?

14 A Yes.

15 Q Okay. Would you also --

16 A As long as those manufacturing plants are  
17 pool plants, that is correct.

18 Q Yes. Would you also agree that in a market  
19 in which none of the manufacturing capacity are -- is  
20 at plants that are pool plants, the need for allowable  
21 diversions is greater than in markets in which there  
22 are manufacturing pool plants?

23 A Try me again, Mr. Vetne.

24 Q Okay. Would you agree with me that in a  
25 market, such as the Western Market, --

1           A     Okay.

2           Q     -- where there are no manufacturing plants  
3     that serve also as pool plants, --

4           A     Okay.

5           Q     -- there is a greater need for allowable  
6     diversions than in markets where there are  
7     manufacturing plants that serve them?

8           A     No, I don't. The supply plant definition in  
9     this market also allows supply plants, proprietary  
10    supply plants to qualify based on diversions. There's  
11    no reason that they -- that the plants that are being  
12    used -- that are qualifying as bulk tank handlers at  
13    this time, there's no reason they can't use the supply  
14    plant, proprietary supply plant provisions to qualify  
15    their plants and the milk involved.

16          Q     Okay. Your -- your answer is -- your answer  
17    to my question is that in the Western Market, there can  
18    be created manufacturing plants which are also pool  
19    plants?

20          A     That's correct.

21          Q     Okay. Assume that the current status quo  
22    continues and there are no manufacturing plants that  
23    are pool plants, is it not true that in order to  
24    dispose of the market surplus, there needs to be  
25    greater diversion allowances to non-pool plants than



1       there are in markets where there are manufacturing pool  
2       plants?

3             A       I'm not sure I see that connection, Mr.  
4       Vetne.

5             Q       You don't?  Is it not true that a large  
6       portion of the milk that's surplus to Class 1 in the  
7       Eastern Markets that you're familiar with is disposed  
8       of by delivering to a market pool plant for  
9       manufacturing purposes?  Yes or no?  Is that not the  
10      case, that a large portion of the milk that's surplus  
11      to Class 1 is delivered to manufacturing plants that  
12      are pool plants?

13            A       I am aware of one market where that is --  
14      where that is true.  The rest of the markets, no, I  
15      don't believe that is true.

16            Q       Is that because you -- you don't believe  
17      there are manufacturing plants that are pool plants?

18            A       In most cases, -- in -- in many of the  
19      Federal Orders that I am familiar with, there are very  
20      few supply plants associated and manufacturing plants  
21      that have decided to -- to be pooled as a pool supply  
22      plant.

23                    In most of those cases, they are using the  
24      diversion allowances that are in the market to -- to  
25      supply those -- to dispose of the surplus milk.  So, --

1 Q Does your -- does -- I'm sorry. Continue.

2 A No. I'll stop there.

3 Q Okay. Are -- are there not in the Eastern  
4 Markets, for example, manufacturing plants which are  
5 pool plants by designation of the cooperative  
6 associations?

7 A There are -- there are some of those.

8 Q And manufacturing -- and milk that's surplus  
9 to the Class 1 market is disposed of in manufactured  
10 products and products in those plants?

11 A That is correct.

12 Q And if those plants were not pool plants, the  
13 amount of milk that would have to be on paper shipped  
14 to a non-pool plant would increase?

15 A Yes, on paper.

16 Q Okay. And when you were speaking of the  
17 practice of folks in the East, is this a practice that  
18 is post-January 1, 2000?

19 A Yes, there -- there are practices that have  
20 changed since January 1st, 2000.

21 Q Okay. And prior to January 1, 2000, to  
22 return to my question, is it not true that there were -  
23 - that there were a substantial number of manufacturing  
24 pool plants that received a substantial portion of the  
25 pool's milk supply?

1           A     Again, in at least one market, not all  
2     markets.

3           Q     What market are you referring to, that at  
4     least one?

5           A     Federal Order 30 is the -- prior to January  
6     1st of 2000, was very much a supply plant market.  
7     That's probably the only market I'm aware of that is so  
8     heavily a supply plant market. That is true of the  
9     Upper Midwest after Federal Order Reform.

10          Q     And you're intimately familiar with the Ohio  
11     Market, correct?

12          A     Yes, sir.

13          Q     Okay. And in the Ohio Market, prior to  
14     January 1, 2000, was there not at least one, maybe  
15     more, manufacturing plant that was a pool plant  
16     receiving a substantial portion of the market's surplus  
17     milk?

18          A     That is true.

19          Q     Brewster Cheese?

20          A     Brewster Cheese was not a supply plant on the  
21     market, no.

22          Q     Ever?

23          A     Not -- not in recent times.

24          Q     All right.

25          A     Not in -- not prior to January -- immediately

1 prior to January 1st.

2 Q Okay. I -- maybe I should not have used -- I  
3 didn't use the word "immediately", but when was the  
4 last time Brewster Cheese was?

5 A It has been a large number of years since  
6 Brewster Cheese --

7 Q Okay.

8 A -- was qualified as a supply plant in the --  
9 in the Ohio Market. The plant I was referring to was  
10 now a DFA-owned plant at Farmer's Cheese.

11 Q Okay. And is that plant now a pool plant?

12 A Yes.

13 Q And it was a pool plant prior to January 1?

14 A Yes.

15 Q And it receives a substantial portion of the  
16 market surplus milk for manufacturing into Class 3 and  
17 4 products?

18 A That is correct.

19 Q And that milk is pooled?

20 A Yes.

21 Q And diversions, in addition, can be made from  
22 that plant to non-pool plants?

23 A They can be but are not.

24 Q Do you currently work for DFA?

25 A No, I do not.

1 Q How do you know what they currently do?

2 A I was employed by DFA just immediately --  
3 shortly after Federal Order Reform for a short period  
4 of time.

5 Q Okay. So, you're referring in your personal  
6 knowledge to some period in early 19 -- in early 2001?

7 A Yes.

8 MR. VETNE: Thank you. That's all I have.

9 JUDGE CLIFTON: Thank you, Mr. Vetne.

10 Other cross examination? Mr. Marshall?

11 MR. MARSHALL: Thank you, Your Honor.

12 CROSS EXAMINATION

13 BY MR. MARSHALL:

14 Q Mr. Carlson, let me begin with a few  
15 questions regarding the proposed change in Section  
16 13(d)(1). You'll be leaving, and I understand later  
17 the Market Administrator will have a witness to discuss  
18 their proposal, which opens up that same section, and I  
19 promise to inquire at that time whether that isn't  
20 already the interpretation under this Order.

21 But for purposes of these discussions --  
22 these questions, I want you to assume that this would  
23 be a substantive change in the Order language, and what  
24 I would like to ask you is how you -- particularly how  
25 you see being able to use the equivalent of at least

1 one day's production as being helpful to River Valley?

2 A I -- at this point, it is not necessarily a  
3 -- anything that would be helpful to River Valley.  
4 However, it could be. They have producers that produce  
5 more than a load of milk a day. If their milk -- if  
6 half of their milk produced during the day is sent to a  
7 bottling plant and the other half is diverted to a non-  
8 pool plant, they have technically not qualified.

9 If later in the month, the same thing occurs,  
10 now they have shipped the equivalent of a day's  
11 production to a distributing pool plant but not one  
12 day's production per se has been delivered to a  
13 distributing pool plant.

14 Q And why might it not be possible for all of  
15 the milk produced within a 24-hour period to be  
16 delivered to a distributing plant at some point during  
17 the month?

18 A Oh, there's -- there's a number of reasons.  
19 There might not be trucking available. The  
20 distributing pool plant may not need that additional  
21 volume of milk. There's a number of reasons why that  
22 might not occur.

23 Q Okay. Let me turn to Proposal Number --  
24 well, your testimony on Proposal Number 8, you make the  
25 statement that you prefer the recovery of costs be

1 handled outside the auspices of the Federal Order  
2 Program in lieu of, for example, the assembly credit  
3 being proposed, and you understand that competitive  
4 conditions can make this difficult.

5 Can you expand upon what the competitive  
6 conditions are that might make that difficult to charge  
7 receiving distributing plants for some of those  
8 services?

9 A Well, we have heard today that at least two  
10 of the -- the distributing pool plants are paying  
11 something less than class price already. That  
12 obviously gives them a competitive advantage over  
13 processors that are paying Class 1 price, a minimum  
14 Class 1 price. So, it's pretty hard to ask those --  
15 those processors to pay something in addition to the  
16 Class 1 price when their competition is paying  
17 something less than Class 1 price.

18 Q Isn't it true that when River Valley was  
19 formed, you would have -- your cooperative would have  
20 welcomed a chance to serve the competitive market  
21 without any up charge above the Federal Order Minimum  
22 Price?

23 A They would have been very pleased to sell at  
24 minimum class prices.

25 Q With respect -- well, why don't you spend a

1 moment here? Let's talk about River Valley.

2 Relatively new cooperative?

3 A That is correct.

4 Q Formed perhaps last Summer?

5 A Last Fall, they were.

6 Q And are you qualified as a 9-C cooperative on  
7 this Order? I think we established earlier that you're  
8 not. How does River Valley operate and pool its milk?

9 A River Valley ships milk to the Sorrento-  
10 Lactalis plant. They are in effect patrons of  
11 Sorrento-Lactalis. Sorrento-Lactalis and the  
12 individual dairy producers servicing Sorrento-Lactalis  
13 have an agreement that they have signed with Dairy  
14 Farmers of America to service the market and work  
15 together to keep the milk pooled and service the Class  
16 1 market.

17 Q I'm sorry. Did you say that Sorrento had  
18 such an agreement with DFA or that River Valley did?

19 A Sorrento does, not River Valley as an entity  
20 does not have that -- that agreement, no.

21 Q Prior to that formation, were the producers  
22 who shipped to Sorrento pooled on a regular basis in  
23 the Western Order after Federal Order Reform went into  
24 effect January 1 of 2000?

25 A No. They -- that's part of -- part of what



1 brought this whole thing about. They were not -- they  
2 were not pooled after Federal Order Reform and until,  
3 I believe, June of 2001.

4 Q When you say that's part of what broke --  
5 brought this whole thing about, you refer to the  
6 formation of --

7 A The formation.

8 Q -- River Valley and the contract with  
9 Sorrento and DFA?

10 A Yes.

11 Q Are you aware whether River Valley prior to  
12 reaching that agreement with -- with Sorrento and DFA  
13 ever considered opening up its own bottling plant?

14 A There were some discussions, as I understand  
15 it. I was not involved in those discussions.

16 Q Are you aware whether Sorrento itself  
17 considered putting up its own bottling facility in  
18 order to allow its producer milk to be pooled?

19 A I am not aware of that.

20 Q What does it cost the producers of River  
21 Valley to have their milk pooled under this  
22 arrangement?

23 A Yeah. I guess I'll answer that. I was  
24 wondering if I should provide proprietary information.  
25 It -- it costs a dime.

1 Q It costs a dime?

2 A A dime.

3 Q And are you aware what amount Sorrento  
4 contributes for the same arrangement?

5 A No, I am not.

6 Q Is it a fair statement -- well, so, would it  
7 be fair to conclude then from your comments that the  
8 arrangement was worked out between DFA and Sorrento and  
9 River Valley group of producers was its final solution  
10 to the question of how do we get our milk pooled on  
11 this Western Order Market?

12 A That was -- yes, that was the result.

13 Q Okay. It wasn't -- wasn't necessarily the  
14 only thing considered, was it?

15 A No, it was not the only thing considered.

16 Q In your statement on Page 4, the page  
17 numbered 4 at the bottom, with respect to Proposal  
18 Number 6, you say, "We believe that the smaller change  
19 in existing rule, the 80-percent diversion number, is  
20 more appropriate and will allow smoother transition for  
21 regulated handlers and will not result in inefficient  
22 movements of milk."

23 In your opinion, is one of the purposes of  
24 the Federal Order historically to -- one of the  
25 purposes has historically been that Federal Orders

1 should not cause inefficient movements of milk?

2 A That is my understanding, yes.

3 Q And in your years of watching these things,  
4 has that been one of the rationales cited by the  
5 Department for making either suspension orders or -- or  
6 formal changes in diversion limitations of Federal  
7 Orders?

8 A Yes, that has been.

9 Q Now, -- well, while we're talking about that,  
10 as you have watched those decisions materialize and  
11 perhaps sought them yourself in your various roles, has  
12 the Department not also cited the fact that unload and  
13 reload situations were occurring and that that could  
14 jeopardize the quality of milk?

15 A Yes, that has been cited as well, and it is  
16 obviously a concern to the industry when that happens.

17 Q And in your opinion, that quality issue is in  
18 fact a real concern?

19 A It is a very real concern, certainly.

20 Q You know, Mr. Carlson, it seems to have been  
21 a great oversight of this hearing in that nobody has  
22 taken the obvious step of qualifying you as an expert  
23 in milk marketing.

24 MR. MARSHALL: Your Honor, I would appreciate  
25 the opportunity to ask you at this point to accept my

1 friend Rod Carlson as an expert for purposes of this  
2 hearing.

3 JUDGE CLIFTON: Mr. Marshall, I also felt  
4 amiss when I let him step down the first time and  
5 failed to ask if he would like to be qualified as an  
6 expert in the field of agricultural economics and milk  
7 marketing. I have found him so qualified in other  
8 hearings.

9 Mr. Carlson, what is your expertise? By  
10 that, I mean in what fields do you regard yourself as  
11 an expert?

12 MR. CARLSON: In the field of milk marketing.

13 JUDGE CLIFTON: Is there any objection to Mr.  
14 Carlson being accepted as an expert in the field of  
15 milk marketing?

16 (No response)

17 JUDGE CLIFTON: There being none, Mr.  
18 Carlson, I do accept you as an expert in the field of  
19 milk marketing.

20 MR. CARLSON: Why, thank you, and thank you,  
21 Mr. Marshall.

22 MR. MARSHALL: My pleasure, Rod.

23 BY MR. MARSHALL:

24 Q And I want just to build on that just a tad  
25 and ask if you have an opinion as to the appropriate

1 considerations that the Department should utilize in  
2 establishing percentage numbers for the diversion  
3 limitation and other similar pool qualification  
4 standards.

5 How would the Department go about determining  
6 whether 90 is too high or 80 is too low or those kinds  
7 of -- of considerations?

8 MR. STEVENS: Your Honor? I have to object  
9 to that. How does the Secretary go about determining  
10 that? I'm sure -- or how would he?

11 MR. MARSHALL: I'm sorry. Is that an  
12 objection? Let me withdraw the question.

13 JUDGE CLIFTON: Mr. Stevens?

14 MR. STEVENS: Let me finish. Let me just  
15 understand it. Could you repeat the question? Then I  
16 may not have an objection.

17 MR. MARSHALL: My intent --

18 JUDGE CLIFTON: Let's do this to move more  
19 quickly. Thank you for your objection, Mr. Stevens,  
20 and Mr. Marshall, you may reword your question.

21 MR. MARSHALL: Thank you.

22 BY MR. MARSHALL:

23 Q As an expert in milk marketing, Mr. Carlson,  
24 do you have an opinion as to what the appropriate  
25 considerations ought to be in the Secretary's

1 determination of numbers like diversion limitation  
2 percentages?

3 A Okay. The first criteria should obviously be  
4 is the Class 1 market going to be serviced? That needs  
5 to be done. Then the criteria has to be how can the  
6 reserve supply of milk be efficiently disposed of as --  
7 as -- as it occurs? And those -- those are the primary  
8 considerations that must be considered in deciding the  
9 appropriate diversion allowance.

10 Q And would an underlying consideration be to  
11 avoid the creation of disorderly marketing conditions  
12 or to prevent disorderly marketing conditions?

13 A That's certainly part of the criteria, yes.

14 Q Great.

15 MR. MARSHALL: Thank you very much. No  
16 further questions at this time, Your Honor.

17 JUDGE CLIFTON: Thank you, Mr. Marshall.

18 Mr. Beshore?

19 MR. BESHORE: Yes, thank you.

20 CROSS EXAMINATION

21 BY MR. BESHORE:

22 Q Good morning, Rod. I want to ask you a  
23 couple questions about your -- your testimony on  
24 Proposal Number 8.

25 A Yes, sir.

1           Q     Okay.  Now, your -- your thesis, as I -- as I  
2     read it, is that the costs involved in supplying the  
3     fluid market should be paid by the fluid handlers and  
4     not borne by the pool?

5           A     That's -- yes, that is my testimony.

6           Q     Now, isn't -- isn't there an inequity -- oh,  
7     before I get to that.  You acknowledge, and there's no  
8     question, that there are costs involved in supplying --  
9     tailoring a milk supply to the needs of -- of fluid  
10    handlers that are incurred by the supply organization,  
11    whoever it might be?

12          A     That's correct.

13          Q     Okay.  Now, when you've got a marketwide pool  
14    where all producers share equally in the Class 1 value  
15    in that pool, whether their milk goes, you know, to  
16    cheese production every day of the month or whether it  
17    goes to fluid, they all share -- share equally in the  
18    higher-value utilization, correct?

19          A     That's correct.

20          Q     Okay.  Now, isn't there an inequity if the  
21    producers -- if the costs involved in servicing that  
22    fluid market are borne solely by those producers or  
23    organizations supplying that market and incurring those  
24    costs while sharing equally the Class 1 revenue with  
25    everyone?

1           A     There is an inequity only when that supply  
2 organization cannot recover those costs in some other  
3 manner.

4           Q     Okay.  And --

5           A     In most markets, there are over-order charges  
6 that are expected to cover those costs.

7           Q     Well, there are over-order charges that -- or  
8 over-order charges or payments that are being -- being  
9 paid in most markets to producers regardless of the  
10 location to which or the use to which their milk is  
11 being put?

12          A     That is true, also.

13          Q     Okay.  So, you know, I mean, one over-order  
14 charge, you might call it a cost when it's Class 1, you  
15 might call it a premium when it's Class 3, but the  
16 producers are getting over-order payments regardless of  
17 that, --

18          A     That is correct.

19          Q     -- correct?  Okay.  To call it an -- to call  
20 it a handling charge when it goes to Class 1 doesn't  
21 really address the equity issue, does it?

22          A     It may or may not.  It depends on, you know,  
23 what -- what's obtainable, what's negotiable.

24          Q     Okay.  In any event, to the extent that if  
25 you assume that in a market, there's very limited over-



1 order charges at the Class 1 level, knowing that there  
2 are costs of servicing the Class 1 market, there's at  
3 least the possibility that there's an inequity in that  
4 pool when all producers share the value and only a few  
5 of them share the costs?

6 A I agree with that statement.

7 MR. BESHORE: Thank you.

8 MR. CARLSON: Thank you.

9 JUDGE CLIFTON: Thank you, Mr. Beshore.

10 Any other cross examination of Mr. Carlson?  
11 Mr. Vetne?

12 CROSS EXAMINATION

13 BY MR. VETNE:

14 Q Mr. Carlson, the only distributing plant that  
15 River Valley Milk Producers or Sorrento-Lactalis serve  
16 is the Meadow Gold plant in Boise?

17 A To my knowledge, that is true.

18 Q Okay. To your knowledge, none of that milk  
19 supply has ever been used to supply the needs of Salt  
20 Lake City?

21 A To my knowledge, that is an accurate  
22 statement.

23 Q Okay.

24 A Yes.

25 Q What portion, first, of these River Valley

1 Milk Producers' milk supply ends up in Class 1 use?

2 A I don't think I -- I -- I haven't the  
3 information to answer that question.

4 Q Okay. Do you have any information to answer  
5 the question, if applied to the entire Sorrento-  
6 Lactalis milk supply that's pooled?

7 A No, I don't, Mr. Vetne, because it -- it will  
8 vary from month to month and will vary from -- from  
9 week to week. Because the Meadow Gold facility in  
10 Boise has a lack of -- of storage capacity, raw milk  
11 storage capacity, and they do not process or receive  
12 milk seven days a week, that means Sorrento ends up  
13 being the storage tank.

14 So, the -- the amount of shipment to -- to  
15 Meadow Gold will vary tremendously from day to day, and  
16 they will receive some milk back in return.

17 Q Okay. On a monthly average basis, within a  
18 reasonable range, would you agree that the amount going  
19 to Class 1 of that supply that's combined Sorrento and  
20 River Valley Co-Op is less than 10 percent?

21 A Less than 20 percent. I'm not sure if it's  
22 less than 10 percent.

23 Q It could be less than 10, but you don't know?

24 A It could be.

25 MR. VETNE: Okay. Thanks.

1 JUDGE CLIFTON: Thank you, Mr. Vetne.  
2 Mr. Tosi?

3 CROSS EXAMINATION

4 BY MR. TOSI:

5 Q Mr. Carlson, we may have covered this already  
6 earlier in your previous appearance, but just for the  
7 record and in going over your previous witness  
8 statements, River Valley, where are they located?

9 A The producers are located in -- in  
10 Southwestern Idaho, in -- in what is called the  
11 Treasure Valley, close to Boise.

12 MR. TOSI: Okay. Thank you very much.  
13 That's all I have.

14 MR. CARLSON: Okay. Within the marketing  
15 area.

16 JUDGE CLIFTON: Any further cross examination  
17 of Mr. Carlson?

18 (No response)

19 JUDGE CLIFTON: There being none, I hereby  
20 admit into evidence Exhibit 41, subject to my previous  
21 ruling, in which I indicated that the modification of  
22 Proposal 8 was beyond the scope of the hearing.

23

24

25

1 (The document referred to,  
2 having been previously marked  
3 for identification as  
4 Exhibit Number 41, was  
5 received in evidence.)

6 JUDGE CLIFTON: Anything further, Mr.  
7 Carlson?

8 MR. CARLSON: No. Thank you very much for  
9 your tolerance.

10 JUDGE CLIFTON: You're welcome. You may step  
11 down.

12 (Whereupon, the witness was excused.)

13 JUDGE CLIFTON: Mr. English?

14 MR. ENGLISH: Just trying to establish the  
15 order and recognizing, of course, that they were on the  
16 stand a moment ago, I have consulted further with Mr.  
17 Hallquist, who unfortunately because he had to change  
18 his ticket from last night to today needs to leave a  
19 little earlier than I thought. Otherwise, he cannot  
20 catch a flight till 9 p.m. tonight.

21 Either with the indulgence of going on next  
22 or in the alternative, if I might suggest this, since  
23 there seem to be a fair number of people who are trying  
24 to get out by mid-afternoon, if we took a late lunch,  
25 that maybe we could get some of that done. I'm just

1 trying to figure out how we can get those done and --  
2 and accommodate.

3 Again, Mr. Hallquist has been here since  
4 Tuesday morning, been here the whole time, and I did  
5 need to get him on yesterday and I didn't to  
6 accommodate other people. So, I'd appreciate -- and I  
7 have two witnesses, one who does not need to go until  
8 whenever. So, just one accommodation for one witness  
9 is what I'm looking for.

10 JUDGE CLIFTON: All right. When does Mr.  
11 Hallquist need to leave?

12 MR. ENGLISH: 1:45 at the latest.

13 JUDGE CLIFTON: Okay. I also propose that we  
14 do a late lunch. I know yesterday, I broke at the most  
15 crowded time, and so to get as many people finished  
16 before we break as possible, I would like to do it  
17 late, which means I think at least 1 or perhaps later.

18 MR. ENGLISH: I was thinking 1:30 but yeah.

19 JUDGE CLIFTON: All right. Does anyone have  
20 any dramatic objection to my deferring lunch until at  
21 least 1:30?

22 (No response)

23 JUDGE CLIFTON: All right.

24 MR. ENGLISH: And if we're going to do that,  
25 I would say we can go ahead and --

1 JUDGE CLIFTON: All right. I need a 10-  
2 minute break before we take the next witness. So,  
3 please come back --

4 MR. ENGLISH: Okay.

5 JUDGE CLIFTON: -- at 11:45.

6 (Whereupon, a recess was taken.)

7 JUDGE CLIFTON: Back on record at 11:46.

8 Mr. Larsen has returned to the witness stand.  
9 Whereupon,

10 DAVID LARSEN

11 having been previously duly sworn, was recalled as a  
12 witness herein and was examined and testified as  
13 follows:

14 JUDGE CLIFTON: But I wanted Mr. Beshore to  
15 make a quick announcement before we resume. I think he  
16 just stepped out. The announcement concerns the two  
17 additional statements of Mr. Hollon that he's going to  
18 put on the back table so that people can begin to read  
19 through them, and in that way, Mr. Hollon can  
20 abbreviate his remarks once he comes to testify about  
21 those, and we can move more quickly.

22 So, at a convenient time, I'll ask Mr.  
23 Beshore to relay that, but that's the essence of what I  
24 wanted people to know, so that they could look for  
25 those statements on the back table.

1 All right. Mr. Larsen, again I apologize for  
2 interrupting. I don't know whether we succeeded in  
3 getting Mr. Carlson to his plane or not, but we tried.

4 All right. Do you remember where you were?

5 MR. LARSEN: I do.

6 JUDGE CLIFTON: All right. You may resume.

7 MR. LARSEN: I believe Mr. Marshall had  
8 just finished asking me questions.

9 JUDGE CLIFTON: All right. Let's see if he's  
10 actually finished. I think I interrupted him. Let me  
11 ask. Does anyone else have questions at this time for  
12 Mr. Larsen? Yes, sir?

13 MR. ROWLEY: Greg Rowley, Gossner Foods.

14 CROSS EXAMINATION

15 BY MR. ROWLEY:

16 Q Just a couple points of clarification, Dave.  
17 You testified that the Government was a substantial  
18 customer of Gossner. Are there any other governmental  
19 entities that you might want to --

20 A Other than military?

21 Q Yes.

22 A The WIC Program is someone who we supply a  
23 lot of milk to. The WIC stands for Women, Infants and  
24 Children. We do supply a substantial amount of milk to  
25 that governmental agency.

1           Q     And do you see large variations in the  
2 contractual amount they want to take?

3           A     At times, there are large differences in the  
4 amount of milk that they take.

5           Q     You also mentioned that the bulk of the milk  
6 comes out of the Cache Valley area and Franklin County.  
7 Any other counties that are involved in --

8           A     Yes, I did forget to include Box Elder  
9 County. We do have a substantial amount of milk coming  
10 from Box Elder County. Those three counties make up  
11 the majority of our milk.

12          Q     Thank you.

13                 Are you familiar with the contract with  
14 Proctor and Gamble some years ago to supply milk into  
15 Mexico?

16          A     Yes, I am.

17          Q     And do you recall what the circumstances were  
18 with that contract?

19          A     To the best of my knowledge, I'll try to make  
20 this as short as possible, we had a contract with  
21 Proctor and Gamble to supply milk to Mexico. It was a  
22 substantial contract. We had put on a lot of  
23 producers. We had put on a lot of milk to be able to  
24 supply this contract.

25                 It wasn't very long into the contract when we



1 found out that there were a number of truckloads of  
2 milk sitting on the border. They could not get through  
3 to Mexico. Shortly after that time, Proctor and Gamble  
4 could not continue that business and that contract went  
5 away and left us with a whole bunch of -- of milk that  
6 we thought we had a home for.

7 Q Do you think that experience has -- has some  
8 impact on Gossner's opposition to changes in diversion  
9 limits and the net transfer proposal?

10 A As a result of that, it has a direct effect  
11 on our position on those proposals, on both the net  
12 shipping proposal and the diversion percentages. There  
13 were times that we did have to transfer milk after we  
14 did lose that contract.

15 Q Thank you.

16 And the effect to Gossner's, was it -- there  
17 was a substantial amount of milk that was actually sold  
18 below cost in order to continue to keep the producers  
19 whole, is that true?

20 A That is true. We were shipping milk to  
21 various parts of our Orders, some to Idaho, some other  
22 places, and we were paying the freight on that milk.  
23 We were also in the meantime paying the producer the  
24 full price, and we were losing money on every pound of  
25 milk we were selling at that time.

1 Q Thank you.

2 You mentioned that transfers were used during  
3 that point to continue to pool as much milk as we  
4 could.

5 A Yes.

6 Q Are transfers -- milk transfers a regular  
7 part of the routine at Gossner Foods?

8 A No, they are not. We have not transferred  
9 since Order Reform. Prior to that, it wasn't a regular  
10 part of our business, but after we did lose the Proctor  
11 and Gamble business, there was a time period there that  
12 we did do quite a few transfers.

13 Q But currently no transfers are currently  
14 being done at Gossner's?

15 A Currently, no transfers are being done at  
16 Gossner's --

17 Q And any --

18 A -- or plans to transfer.

19 MR. ROWLEY: Thank you. I think that's all I  
20 have.

21 MR. LARSEN: Thank you.

22 JUDGE CLIFTON: Mr. Rowley, could you spell  
23 your last name for me?

24 MR. ROWLEY: R-O-W-L-E-Y.

25 JUDGE CLIFTON: That's what I had. Thank

1       you.

2                   Mr. Marshall, I interrupted your examination  
3 of Mr. Larsen. Would you like to resume?

4                   MR. MARSHALL: Your Honor, I had finished.  
5 Thank you so much.

6                   JUDGE CLIFTON: All right. You're welcome.  
7 Mr. Beshore?

8                                   CROSS EXAMINATION

9                   BY MR. BESHORE:

10           Q       Good morning, Mr. Larsen.

11           A       Good morning.

12           Q       Can you -- maybe you -- maybe you testified  
13 to this, and I missed it, but can you tell us what --  
14 Gossner's non-pool plant. What do you manufacture  
15 there?

16           A       We manufacture Swiss cheese and Muenster  
17 cheese.

18           Q       Okay. And is that located near to your --  
19 your UHT plant?

20           A       Yes, it is. Within 2 or 300 feet.

21           Q       Okay. And they're connected by pipe, piping,  
22 or are they not?

23           A       The only connection of piping would be steam  
24 lines and air lines run between the two plants.

25           Q       Okay. There's no milk piping between the

1 facilities?

2 A No milk piping or no milk transfers between  
3 the two plants through lines.

4 Q Okay. Do you -- at your UHT plant, do you  
5 process other than Class 1 products?

6 A Yes, we do.

7 Q Okay. What? Class 2 products? Class 3  
8 products? Class 4 products?

9 A We -- we do package some whipping cream. We  
10 package a lot of products that are not fluid milk  
11 products. We package a drink for Hershey's that is  
12 classified as Class 3 which has just begun in the last  
13 few weeks. So, we do have some other products, but the  
14 majority of our milk is Class 1 and goes through our  
15 UHT plant.

16 Q Okay.

17 A The majority of our milk that goes through  
18 our UHT plant is Class 1.

19 Q So, by a majority, your Class 1 utilization  
20 at that plant is in excess of 50 percent?

21 A Well in excess.

22 Q Well in excess. Okay. Is it in excess of 80  
23 percent, let's say?

24 A Yes, it is.

25 Q Okay. What is at present time and post-

1 reform, could you tell us the ratio of use of milk in  
2 your Class 1 facility and your Class -- and your cheese  
3 plant? Your UHT plant and your cheese plant?

4 A Prior to Order Reform and after Order Reform?

5 Q No. I'm -- I was only -- I was limiting that  
6 inquiry to after Order Reform.

7 A Are you asking the percentage of our producer  
8 milk that goes into each plant?

9 A Okay. I'll take that.

10 A Is that what you're asking?

11 Q Well, that wasn't specifically what I was  
12 asking. We can start there.

13 A Okay. Not only do we have our own producer  
14 patrons but we do purchase milk from outside sources.  
15 Currently, we have two outside sources and occasionally  
16 when there is excess milk on the market, we do have  
17 other suppliers who supply us with milk for our  
18 manufacturing plant. Most of the time, our producers  
19 are taken to our UHT plant and any needs that are not  
20 needed at our UHT plant is then diverted over to our  
21 manufacturing plant.

22 Q Okay. Now, with respect to your producer  
23 milk, what portion of it is utilized in your -- at your  
24 UHT facility and what portion at your cheese plant?

25 A That varies greatly each month. It can be

1 anywhere from a low percentage to a very high  
2 percentage and that's one reason that we support not  
3 changing the diversion limits, is because those numbers  
4 change so dramatically because of the needs from the  
5 military or -- or the supply -- the other people we  
6 supply milk to.

7 Q Other Class -- other UHT customers, you're  
8 talking about there?

9 A Yes, other customers.

10 Q Okay. So, your UHT volumes fluctuate from  
11 month to month?

12 A They do greatly.

13 Q Okay. And -- but since Order Reform, you --  
14 I think I heard your testimony to be that you have not  
15 transferred milk from Class 1 to the cheese plant for  
16 qualification purposes?

17 A That is correct.

18 Q But you seek to preserve your ability to do  
19 that if you need to for purposes of qualifying your  
20 producer supply only?

21 A That is correct.

22 Q The milk you buy from other sources for your  
23 cheese plant, is that part of the regular supply of --  
24 of your cheese plant?

25 A It is.

1 Q Now, one of the -- strike that.

2 When you -- when you have a surge in -- in  
3 Class 1 -- Class 1 needs, do you supply them all from  
4 your own milk supply?

5 A No, we do not.

6 Q So, you acquire outside milk to meet your  
7 Class 1 needs as well as your Class 3 needs for cheese  
8 manufacturing needs?

9 A That is correct. We do procure milk from  
10 other sources to fill both plants.

11 Q Okay. Now, you do understand, do you not,  
12 that the DFA proposals to change the diversion limits,  
13 for instance, would increase in all likelihood,  
14 increase the blend price under the Order to which your  
15 producers would be entitled?

16 A We understand that there may be a potential  
17 increase in producer blend price.

18 Q But you're opposed to that?

19 A We don't feel it's a long-term benefit to our  
20 producers.

21 Q Okay. You realize that to the extent it  
22 would be increased for any period of time, it would be  
23 a benefit to your producers?

24 A It would be a short-term benefit to our  
25 producers but not a long-term.

1           Q     Why do you assume it would not be -- that the  
2     blend price would not continue to be higher if DFA's  
3     proposals concerning changing the diversion limits were  
4     adopted?

5           A     I believe that if diversion limits were  
6     changed, competitiveness would not be as great as it is  
7     now, and more producers would become members of DFA,  
8     therefore not receive necessarily the minimum blend  
9     price but whatever price DFA paid, and there would not  
10    be as much competition in the market. I believe that  
11    would hurt the producers.

12          Q     Well, that would only benefit your producers,  
13    would it not?

14          A     How so?

15          Q     They'd have a higher blend price.

16          A     Short term. But we may -- but in turn, we  
17    may lose some producers to -- to DFA.

18          Q     If you had a higher blend price, you'd lose  
19    producers to DFA when it was paying -- I think you're  
20    hypothesizing that it's going to pay less than the  
21    blend?

22          A     It -- it could.

23          Q     And you'd lose producers to DFA, even though  
24    you had a higher blend price?

25          A     That may not necessarily be the case. Our --



1 our position is if the diversion limits change, our  
2 ability to put on new producers to meet the needs of  
3 the Class 1 market that we have will be reduced.

4 Q Okay. Now, for what use is the new producers  
5 that you're adding today, what -- what needs of your  
6 company are they being added for?

7 A They are being added for the extra needs that  
8 we have at our UHT plant.

9 Q Okay. So, today, is all your producer milk  
10 going into the UHT plant and in fact you're short, so  
11 that you need to add producer milk for your UHT needs?

12 A No, that is not the case.

13 Q Then why would you be adding -- adding --

14 A Our --

15 Q -- for your UHT needs?

16 A Our needs are increasing at our UHT plant.  
17 Our needs for our cheese plant are pretty much stable.  
18 So, as we need more milk for our UHT plant, we need to  
19 put on new producers to meet those needs.

20 Q Okay. Alternatively, you could move your  
21 producer milk at the cheese plant over to the UHT plant  
22 and buy milk from other sources for your cheese  
23 production, could you not?

24 A We have chosen to have a certain percentage  
25 of our producers be our own patrons, and in order to do

1 that, we need to put on patrons to meet those  
2 percentages that we've determined that we're  
3 comfortable with.

4 Q Okay. So, you've got a fix -- your company  
5 has a policy of acquiring a fixed percentage of its  
6 needs from your own patrons?

7 A That is correct.

8 Q Okay. What percentage is that?

9 A I do not wish to disclose it.

10 Q Okay. You understand the position that --  
11 that Gossner's taking with respect to pooling  
12 provisions on the Order is in conflict with that  
13 presented in this hearing by the Utah Commissioner of  
14 Agriculture?

15 A I realize that some of the positions that we  
16 have taken are in conflict with what has been  
17 determined by the Commissioner of Agriculture.

18 Q And by Senator Hatch as well?

19 A Yes, I do.

20 Q Okay.

21 A Just a quick statement. We do not believe  
22 that they were fully informed of all the implications  
23 of these proposals.

24 Q Well, you were participants in the meeting,  
25 for instance, with the Commissioner of Agriculture and

1 discussion of the proposals, were you not?

2 A No, I was not.

3 Q Well, your company was, was it not?

4 A Our company was. I was not.

5 Q Okay.

6 A And just for the record, our -- our opinion  
7 in that meeting did not carry any weight.

8 Q Okay. The Commissioner listened to the  
9 positions presented by -- by all sides and then made --  
10 made his determination with respect to what he felt  
11 would be best for Utah dairy farmers?

12 A Correct.

13 MR. BESHORE: Thank you, Mr. Larsen.

14 MR. LARSEN: Thank you.

15 JUDGE CLIFTON: Thank you, Mr. Beshore.

16 Mr. Beshore, I want you to interrupt Mr.  
17 Larsen's testimony for just a moment to make the  
18 announcement with regard to the statements of Mr.  
19 Hollon.

20 MR. BESHORE: Yes. Mr. Hollon has two  
21 further statements which he will present this afternoon  
22 when it comes to his time to testify. They either have  
23 been or will be made available in the back of the room,  
24 so that anyone -- everyone interested may have the  
25 statements and review them ahead of time. We do not

1 intend that he will read the statements in full, but we  
2 would offer them for the record, and he will give some  
3 direct testimony but not read the statements in full in  
4 the interests of time and moving things forward. So,  
5 they're available now, the statements and the exhibits.

6 JUDGE CLIFTON: Thank you, Mr. Beshore.

7 Other questions for Mr. Larsen? Yes? Mr.  
8 Vetne?

9 CROSS EXAMINATION

10 BY MR. VETNE:

11 Q Mr. Larsen, apart from your Gossner  
12 independent producer patrons, what organizations  
13 regularly supply milk to Gossner?

14 A We regularly receive milk from the company  
15 KDK and also from a co-op Magic Valley.

16 Q Is the proportion of Gossner patron milk that  
17 goes into your UHT plant the same proportion that goes  
18 into the cheese plant?

19 A No, it is not.

20 Q Okay. In which plant is the independent  
21 patron supply greater?

22 A That changes from month to month, depending  
23 on, as I stated earlier, the supplies that we need to  
24 supply to our customers.

25 Q Okay. As a general rule, does one plant

1 receive more patron supply than the other?

2 A As a general rule, our UHT plant would  
3 receive somewhat less.

4 Q Okay. The milk that's delivered by KDK and  
5 Magic Valley to your cheese plant, you don't pool that  
6 milk, correct?

7 A We do not.

8 Q That -- that is pooled, if at all, by  
9 diversion by KDK or Magic Valley?

10 A Correct.

11 Q For the year 2000, a couple of years ago  
12 here, what was the average Class 1 volume of Gossner  
13 Foods?

14 A I don't recall. I don't have that number  
15 with me.

16 Q Okay. Would it have been, if you can come  
17 close, more than five million pounds?

18 A In what time frame?

19 Q During average monthly for the year 2000.

20 A It could be.

21 Q Okay. How about 2001? Do you have a better  
22 memory of that year?

23 A I know the numbers have increased in 2001.

24 Q Okay. And you say they're variable?

25 A Yes.

1           Q     Okay. Do you have a recollection within a  
2 ball park range of the average Class 1 utilization per  
3 month?

4           A     It is substantially higher than the Order's  
5 Class 1 utilization.

6           Q     That's 17 percent?

7           A     Correct.

8           Q     Okay. Is it on average higher than 50  
9 percent?

10          A     Not in all months.

11          Q     Okay. So, it can go up to 50 percent.  
12 What -- what -- what is for last year, 2001, what's the  
13 low to high range on a monthly basis of milk in Class  
14 1?

15          A     Low to high range?

16          Q     Yes.

17          A     I'll give you a range. I could be -- I don't  
18 have those numbers with me, but I'm going to say the  
19 low of 20.

20          Q     Percent of your --

21          A     Twenty percent high -- I don't know. I know  
22 there's a month it was quite high, but I wouldn't dare  
23 guess exactly what it was.

24          Q     Higher than 50?

25          A     Could be, yes.

1 Q Okay. And that percentage is a percentage of  
2 your total receipts from all sources?

3 A That would be percentage of our producer  
4 milk.

5 Q Okay. You've indicated that you supply UHT  
6 package milk to Puerto Rico and --

7 A Correct.

8 Q And you at least at one time supplied Mexico?

9 A Yes.

10 Q But you don't know?

11 A Not to my knowledge.

12 Q Okay. Do you supply any other market, either  
13 directly or through a distributor, outside of the  
14 Continental United States?

15 A I know there is milk that goes outside the  
16 Continental U.S. Where it ends up, I -- I really can't  
17 tell you, but I know it does go outside the Continental  
18 U.S., besides Puerto Rico.

19 Q Okay. And that is through a -- a middle man  
20 to whom you sell milk?

21 A Yes.

22 Q Do you know if it goes in the direction of  
23 the Far East?

24 A I believe it does.

25 Q Okay. Do you know if any Gossner UHT milk

1 goes to any other Caribbean island, other than Puerto  
2 Rico?

3 A I don't know.

4 Q Okay. You -- it could happen, but that's not  
5 in your control?

6 A Yes, it could happen. Our milk sometimes,  
7 you know, goes virtually all over the world.

8 Q Okay. UHT milk is somewhat like cheese in  
9 that it's a national and international product --

10 A Yes.

11 Q -- and competes with folks that make UHT milk  
12 on the East Coast as well as in other countries, --

13 A That is correct.

14 Q -- correct? And in fact, in Puerto Rico, you  
15 compete with a UHT processor in the Province of Quebec,  
16 correct?

17 A Yes, we do.

18 Q On occasion, do you -- do you find that some  
19 other UHT manufacturers elsewhere in the country or in  
20 North America have competitive advantages over you in  
21 terms of price?

22 A I -- I'm not aware. That's not my area of  
23 expertise.

24 Q All right. You're not aware, for example,  
25 that UHT milk coming from California is priced at the



1 lowest Class 4 price while yours is priced at Class 1  
2 when it's shipped to Puerto Rico? You're not aware of  
3 that?

4 A I'm not aware of that.

5 Q And you're also not aware that California UHT  
6 milk, when shipped elsewhere in the Continental United  
7 States, is priced at Class 2 in the California scheme  
8 while yours is priced at Class 1? You're not aware of  
9 that?

10 A I'm not aware of that but not surprising.

11 Q Yeah. Well, duh. You indicated you have a  
12 Grade B supply going to the cheese plant?

13 A Excuse me?

14 Q You indicated that you had a Grade B supply  
15 going to the cheese plant, is that correct?

16 A Yes, we do. Manufacturing milk. Yes, we do.

17 Q Okay. Are -- are those all Gossner patrons  
18 or are some of those other companies' patrons?

19 A To my knowledge, all milk that we purchase is  
20 Grade A milk. So, those would be all our patrons.

21 Q Okay. With respect to the Grade B supply,  
22 where are those producers predominantly located?

23 A In the same counties that I mentioned before,  
24 Box Elder, Franklin and Cache County.

25 Q All in the state of Nevada? State of Utah?

1           A     And Idaho.

2           Q     And Idaho. With respect to that -- that  
3 supply, where is the predominant portion of Grade B  
4 milk? In Idaho or in Utah?

5           A     Utah.

6           Q     Have you, with respect to your producers'  
7 supply, experienced conversion of Grade B to Grade A?

8           A     Yes, we have.

9           Q     And is that continuing?

10          A     That is continuing.

11          Q     And are you aware of whether the existing  
12 Grade B producers that supply you are considering or  
13 planning to convert to Grade A?

14          A     For the most part, they are not planning on  
15 converting. Some are, but for the most part, they are  
16 not.

17          Q     With respect to the milk that you receive for  
18 Class 1 use from sources other than your own patrons,  
19 do you pay a premium above Class 1 for that milk?

20          A     No, we do not.

21          Q     Do you know the general location of the  
22 producers that produce that milk that comes to you from  
23 those other organizations?

24          A     I -- I don't know. I know it comes from  
25 various locations, depending on where the milk that

1 they have is committed to other plants. I don't know.  
2 It comes from different places, all within our Order.

3 MR. VETNE: All right. That's all I have.  
4 Thank you.

5 MR. LARSEN: Thank you.

6 JUDGE CLIFTON: Thank you, Mr. Vetne.

7 Mr. Beshore?

8 MR. BESHORE: Thank you.

9 CROSS EXAMINATION

10 BY MR. BESHORE:

11 Q Mr. Larsen, I just want to explore some of  
12 the information that you provided in response to  
13 questions from Mr. Vetne.

14 When you said your -- the range of use of  
15 your producer milk was 20 percent at the low, did you  
16 mean 20 percent delivered to your UHT plant at the --  
17 at the low point in the last year?

18 A Yes, and that may be even a little low.

19 Q So, it might be closer to 25 percent?

20 A It could be.

21 Q Okay. But that's -- those are deliveries to  
22 your UHT plant, which would include uses -- uses there  
23 for both your Class 1 and Class 2 products, whatever  
24 you were making at that plant, or Class 3 price?

25 A Right. Now, as I mentioned earlier, by far,

1 most of our products through that plant are Class 1 --

2 Q Right.

3 A -- as far as milk.

4 Q Right. I understand. Okay. So, in order  
5 for you to need the -- what you've called the transfer  
6 option to pool all your -- all your milk, you would  
7 have to lose volume -- you'd have to have less than  
8 half the volume that you had in your lowest month --

9 A That's correct.

10 Q -- at that plant? Okay.

11 MR. BESHORE: Thank you.

12 JUDGE CLIFTON: Mr. Marshall?

13 CROSS EXAMINATION

14 BY MR. MARSHALL:

15 Q First of all, I noted, Mr. Larsen, that when  
16 you described the entities from whom you buy milk, you  
17 did not include Northwest Dairy Association, did you?

18 A We did not include Northwest Dairy  
19 Association.

20 Q So, we have no business relationship which  
21 would cause you to slant your testimony in the same  
22 direction as our own, do we?

23 A No, we do not.

24 Q Your testimony reflects your own concerns  
25 about your own competitive situation, does it not?

1           A     That is correct.

2           Q     I continue to be impressed by the job that  
3     Gossner Foods has done in developing this new and  
4     unique market for aseptically-packaged milk. I would  
5     imagine that that's involved a substantial capital  
6     expenditure on the part of the owners of the company.

7                     Could you tell us how many employees are  
8     employed there at the plant?

9           A     There are approximately 325 employees between  
10    the two plants.

11          Q     And are there other employees elsewhere?

12          A     We do have --

13          Q     Well, what -- what -- as between plant  
14    employees and other employees, sales or whatever, is  
15    the total number of employees under 500?

16          A     Yes, it is.

17          Q     Mr. Beshore asked you a series of questions  
18    regarding competitive environment. I'd just like to go  
19    back and make sure we've got that clear for the record.  
20    I believe I heard you express a concern regarding DFA  
21    obtaining a competitive advantage in procuring milk,  
22    that is to say, soliciting business from producers as a  
23    result of this hearing. Did I hear that correctly?

24          A     Yes.

25          Q     And then, I think your concern was that they

1 would then be able to attract more milk perhaps away  
2 from you, is that correct?

3 A That is possible.

4 Q And then, your concern was at that point,  
5 they would be paying less than the blend price in a  
6 less-competitive market. Is that what I heard you say?

7 A Yes, that could happen. We've seen it happen  
8 in the past. We know of markets where there's a  
9 monopoly and only one supplier, one place to ship your  
10 milk as a dairy farmer.

11 Q Now, you say you've seen that happen in your  
12 marketplace, where DFA or its predecessors have paid  
13 less than the blend?

14 A Not directly in our marketplace but in  
15 talking to producers outside of our general marketing  
16 area, which I am including as Box Elder, Cache and  
17 Franklin Counties, outside of that marketing area.

18 Q But elsewhere in the immediate vicinity?

19 A Yes.

20 Q When that has happened, have you received  
21 calls from producers inquiring as to whether you have  
22 the ability to market their milk?

23 A Many calls.

24 Q If Proposals 3, 6 and 7 were adopted, would  
25 you be in a position to offer those producers an

1 alternative market?

2 A We would not.

3 MR. MARSHALL: And I thank you very much.

4 MR. LARSEN: Thank you.

5 JUDGE CLIFTON: Thank you, Mr. Marshall.

6 Mr. Tosi?

7 CROSS EXAMINATION

8 BY MR. TOSI:

9 Q Thank you, Mr. Larsen, for appearing. I have  
10 a few questions.

11 Is your Class 1 operation more important to  
12 Gossner Foods than your cheese facility?

13 A I wouldn't say that either one is more  
14 important. They're both an important part of the  
15 company as a whole.

16 Q And your cheese facility is a non-pooled?

17 A Yes, it is.

18 Q Okay. If I could refer to a portion of your  
19 testimony regarding Proposal 6?

20 A Okay.

21 Q You seem to be drawing an importance to the  
22 way your UHT milk is sold or your -- your Class 1 milk  
23 is being sold outside of Order 135 and outside the  
24 United States, and you seem to be drawing a parallel  
25 that that somehow has -- that somehow changing some of

1 the pooling standards would impact your ability to, for  
2 example, compete for contracts or cause you to  
3 experience some sort of negative market conditions.

4 Can you elaborate on that a little more? I'm  
5 not sure that I see the connection between those two.

6 A If I understand the question correctly,  
7 you're wondering how the diversion percentage changing  
8 could affect our market?

9 Q Well, how -- you -- you're saying -- it seems  
10 to me that what you're saying is that it's going to  
11 affect your business because of where your product is  
12 -- is distributed.

13 A Okay. Just a general question or general  
14 answer there. Because of where our markets are, most  
15 of them are outside the United States or outside the  
16 Order, we are moving milk out of the Order. Our -- our  
17 business is building, and we are needing to find new  
18 producers from time to time. If these diversion  
19 percentages were changed, our ability to put on new  
20 producers would be restricted, thus maybe limiting the  
21 amount of milk that we could move from the Order.

22 Does that answer your question?

23 Q Yes. The way I understood some of your other  
24 answers on cross examination was that this flexibility  
25 is important to you in that you want the flexibility to



1 add producers when you need to, but then at the same  
2 time, your testimony also suggests that when you have  
3 those additional needs for milk, that primarily that  
4 milk is coming from other suppliers which you've  
5 identified as another proprietary handler or a co-op?

6 A Right. To answer a question -- that question  
7 a little better, a lot of producers are under  
8 contracts, and those contracts are renewable once a  
9 year. There may be times that we need more milk back  
10 but cannot put on a producer because of his contract  
11 terms. In those situations, in order to procure more  
12 milk, we are forced to buy milk from outside sources,  
13 even if we wanted our own patrons. So, there are many  
14 time frames there where we are waiting for producers to  
15 come on because of contract terms.

16 Q Okay. Thank you. I understand that much  
17 better now.

18 Could you please explain in your capacity as  
19 a regulated distributing plant and -- by the way, are  
20 you regulated under 7-D of the Order, where you're  
21 locked into -- you're locked into -- you're locked into  
22 this marketing area, you're regulated here regardless  
23 of where your --

24 A Yes.

25 Q -- processors are?

1           A     Yes.

2           Q     And to the extent that DFA's proposals would  
3     limit diversion to 17 percent, in your capacity as a  
4     fluid handler, doesn't that make it easier for you to  
5     secure a supply of milk?

6           A     It may, but where would that supply come  
7     from?

8           Q     Well, in order for milk to be pooled, more  
9     milk would be made available to you in your capacity as  
10    a fluid handler --

11          A     There could be --

12          Q     -- not more -- and you would have less  
13    trouble acquiring the milk supply?

14          A     But we would be requiring -- acquiring milk  
15    from outside sources, not from our own patrons, which  
16    we like to have a certain percentage of our milk from  
17    our own patrons.

18          Q     All right. Also, regarding your competing  
19    for supply of milk in Class 1, do you compete for a  
20    supply of milk with other distributing plants at the  
21    same minimum order price?

22          A     In our Order?

23          Q     Yes.

24          A     No, we do not.

25          Q     Does the Order charge you a Class 1 price for

1 you to come up to the pool in a different Class 1 price  
2 than --

3 A We are charged the Class -- we are charged  
4 the Class 1 price for our Order.

5 Q Okay. And -- and -- and to the extent that  
6 the Order establishes a minimum price, you are  
7 competing at the same price, at the same minimum price,  
8 whether you're small or whether you're large?

9 A That is correct.

10 MR. TOSI: Okay. Thank you. That's all I  
11 wanted to ask.

12 JUDGE CLIFTON: Thank you, Mr. Tosi.

13 Any other questions for Mr. Larsen? Yes?  
14 Mr. Radmall?

15 MR. RADMALL: Thank you. Just briefly.

16 CROSS EXAMINATION

17 BY MR. RADMALL:

18 Q Mr. Larsen, when you received the information  
19 back from the Market Administrator on the estimate of  
20 the 80-percent diversion limit, what was your  
21 evaluation of that information?

22 A I requested several things from the Market  
23 Administrator's Office. Some of those were requests  
24 that had already been requested by other individuals.  
25 So, they show up in some of the other documents.

1           One of the additional requests that I had was  
2 the 80-percent diversion limit just to get a general  
3 feel for how much the blend would change in -- in that  
4 instance.

5           Q     And -- and so, after you received that, did  
6 it increase the -- the amount to be -- the amount that  
7 the uniform price would be or did it decrease it?

8           A     It increased it.

9           Q     And have you got a feel for how much?

10          A     I have those numbers. I want to say 15  
11 cents.

12          Q     That's the way I read it. About an average  
13 of 15 cents.

14                 MR. RADMALL: Okay. Thank you.

15                 JUDGE CLIFTON: Thank you, Mr. Radmall.

16                 Additional questions for Mr. Larsen?

17                 (No response)

18                 JUDGE CLIFTON: In summary, Mr. Larsen, is  
19 there anything else you'd like to add?

20                 MR. LARSEN: No.

21                 JUDGE CLIFTON: All right. Thank you.

22                 MR. LARSEN: Thank you.

23                 JUDGE CLIFTON: You may step down.

24                 (Whereupon, the witness was excused.)

25                 JUDGE CLIFTON: I'd like the first of the

1 patron producers of Gossner Foods to come forward to  
2 testify. Producer patrons. Whatever is the correct  
3 phrase. Please be seated.

4 Would you tell us your full name and spell  
5 your names for the record, please?

6 MR. MUNK: My name is Sid Munk, M-U-N-K.

7 JUDGE CLIFTON: That's M-U-N-K?

8 MR. MUNK: M-U-N-K.

9 JUDGE CLIFTON: Unusual. All right. Would  
10 you raise your right hand, please?

11 Whereupon,

12 SID MUNK

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

15 JUDGE CLIFTON: Thank you.

16 Mr. Munk, you may proceed.

17 DIRECT TESTIMONY

18 MR. MUNK: As I mentioned, my name is Sid  
19 Munk. We farm in the little town of Amalga in Northern  
20 Utah, next to Cache Valley Dairy Cheese Factory. We're  
21 a family operation. My brother and I run about 800  
22 head of dairy cattle. We have seven of our youth  
23 working on the farm. The farm's been in the family for  
24 four generations, and we love farming.

25 I have some concerns here relating to, I

1 guess, some of the statements that I've heard  
2 concerning Gossner Foods and the way that we're treated  
3 as Gossner Food producers.

4 The processing plant at Gossner Foods is  
5 extremely productive, probably an envy of several  
6 processing plants. I had opportunity to tour the  
7 processing plant on several occasions, both the Grade A  
8 and cheese plant there, just extremely productive, very  
9 impressed with the -- with the work and the  
10 individualism of CEO Officer Delores Wheeler. She  
11 knows each employee by name. She also knows each  
12 producer by name and is very -- has a strong  
13 relationship with all those that are associated with  
14 her processing plant. They demonstrate great integrity  
15 and respect for their producers and their employees.

16 The good people at Gossner Foods have  
17 probably done more to strengthen the family dairy than  
18 any other milk processor in the boundaries of this  
19 Federal Order.

20 In the past seven years, since transferring  
21 from a local co-op to Gossner Foods, we have received a  
22 premium price for our milk product concerning --  
23 concerning the fluctuating milk market. I'm here today  
24 because since being with Gossner Foods, I've come to  
25 understand that what is good for the processor is good

1 for the family farmer.

2 Gossner Foods has also served as a big asset  
3 for their neighboring cooperatives in the fact that  
4 they've been able to ship a high percentage of their  
5 dairy products out of this Federal Order area as well  
6 as into supplying the military and into the  
7 international market. They have also set a higher  
8 standard for the blend milk price which has challenged  
9 other local processors to pay the American dairy farmer  
10 a fair price for his commodity.

11 Gossner Foods has been very unselfish with  
12 their excess funds, providing large semi-annual bonuses  
13 directly to their producers which have been very  
14 rewarding with the unstable milk prices that we've been  
15 experiencing in the last few years.

16 As a dairy farmer, I would be opposed to  
17 Proposition 3 as well as 7 for the simple fact having  
18 the ability to transfer the milk in the event of a  
19 faulty contract or a crisis is very good insurance for  
20 the family farm. I think Gossner Foods do not promote  
21 transfers. They're a very unique-type operation there,  
22 one that's very uncommon in the United States, but I  
23 think it's very important to the producers that produce  
24 to Gossner Foods that that window of opportunity of  
25 transfers be left open due to their situation.

1           Personally, I'm grateful for the opportunity  
2 to ship my product to a processor rather than a  
3 monopoly, a local processor rather than a big monopoly.  
4 I think the American farmer still needs a processor  
5 that is personal and concerned with their individual  
6 needs, not just one company that can monopolize our  
7 entire Federal Milk Marketing Area.

8           We do support as farmers, those that I've  
9 talked to in the surrounding area, do support Proposal  
10 10, eliminating double-dipping. It is for that  
11 strongly and immediately. Our Federal Order needs  
12 small processing plants that provide choice and  
13 opportunity for the small family farm for these smaller  
14 processors are now a minority. They need to be able to  
15 function without harsh restrictions on milk transfers.

16           We as milk producers don't see a need to  
17 modify diversion limits that would disrupt the current  
18 business operations. I therefore as a producer  
19 considering the unique situation of this processing  
20 plant, and it is very unique for those who've had  
21 opportunity to tour it or be associated with it, would  
22 be opposed to Proposition 3, 6, 7 and 8.

23           Gossner Foods, in closing, have always been  
24 opposed to large milk processing monopolization. On  
25 the other hand, they have always invited good



1 competition.

2 Thank you.

3 JUDGE CLIFTON: Thank you, Mr. Munk.

4 Cross examination of Mr. Munk? Mr. Beshore?

5 CROSS EXAMINATION

6 BY MR. BESHORE:

7 Q Good afternoon, Mr. Munk. I have just a  
8 couple questions.

9 I want to make sure I understand or we're all  
10 clear when you're making statements that there's a  
11 monopoly in the dairy business in some way here in  
12 Utah.

13 In the Cache Valley, there are at least four  
14 options for dairy farmers to market their milk, are  
15 there not? Gossner, your supplier, DFA, correct?

16 A Right.

17 Q Right? Magic Valley, correct?

18 A Right.

19 Q Quality Milk Producers, correct?

20 A I guess the point I'm trying to put forth is  
21 that we would like to keep prices -- small processing  
22 plants so that the larger monopoly does not take over  
23 the area.

24 Q Okay. So, your -- you're concerned that  
25 there could be --

1           A     Correct.

2           Q     -- a monopoly some time in the future if  
3 parties who are now in business would go out of  
4 business?

5           A     Correct.

6           Q     Okay.  And you're not saying and you don't  
7 want anybody to read this record saying that you think  
8 anybody has a monopoly now?

9           A     You're right.

10          Q     Okay.  Thank you.

11                     Now, with respect to the diversion  
12 limitations in the Order, you -- you understand, I take  
13 it, that, as Mr. Larsen just testified, that if they  
14 were 80 percent in the Order, your blend price would go  
15 up about 15 cents or so?

16          A     Right.

17          Q     And if it was 70 percent, your blend price  
18 would go up even more?

19          A     Correct.

20          Q     Okay.  But you're opposed to those changes,  
21 and, of course, every other Gossner producer would get  
22 -- would have their blend price enhanced the same way,  
23 correct?  Yes?

24          A     I would assume.  I can't speak for other  
25 producers.

1           Q     Okay.  Assuming you all get paid the same by  
2     Gossner?

3           A     Right.

4           Q     Okay.  You're opposed to those changes  
5     because you feel that the potential ability -- the  
6     ability to divert more milk at 90 percent and to pump  
7     it in and pump it out or transfer it is an insurance  
8     policy for Gossner, in essence.  It's like catastrophe  
9     insurance.  If they had a disaster in their -- in their  
10    Class 1 milk sales, they might need to use those  
11    options which they don't want to use now and aren't  
12    using, is that correct?

13          A     That's correct.

14          Q     Okay.

15          A     To my knowledge.

16          Q     Well, that's your understanding, that you --  
17    you want that insurance blanket there?

18          A     My understanding is that they haven't had the  
19    need to -- to transfer milk since the -- Mexico, I  
20    believe.  They don't promote transfers, but  
21    considering, like I said, the unique situation at the  
22    plant, where they have the two plants side-by-side,  
23    yes, it's definitely an insurance to the farmer that  
24    produces for them.

25          Q     Okay.  And your position is that all

1 producers in the Order should pay in essence at least  
2 15 cents a hundredweight in a reduced blend price in  
3 order for Gossner to have that insurance policy against  
4 a calamity with respect to lost sales?

5 A That's a tough question because you've got --  
6 I see your point of view. It's very clear. I still  
7 have to go back to the fact that for our -- for the  
8 particular needs of the Gossner processing plant, I  
9 think it is yes, very important to them and that might  
10 be somewhat of a sacrifice on the part of others.

11 I do know for a fact that -- I guess I'm a  
12 very loyal Gossner producer due to the fact that I have  
13 compared mailbox prices on a regular basis and have  
14 great trust in the -- in the management of Gossner  
15 Foods because they have been able to put the -- put  
16 funds on the check.

17 Q Okay. A good -- a good monthly pay price and  
18 nice semi-annual bonuses as well?

19 A Makes a big difference.

20 Q Yeah. Okay. You wouldn't be aware, I'm  
21 sure, since you're not aware of the technicalities of  
22 the Orders, that handlers like Gossner, there are other  
23 ways -- if emergencies occur in terms of changes in the  
24 marketing conditions in the Order, changes in their --  
25 in their sales or whatever, that there are

1 possibilities for things like suspending provisions of  
2 the Order and matters of that sort that can be  
3 addressed just at that time by the Secretary of  
4 Agriculture to meet emergency conditions? You wouldn't  
5 be aware of that?

6 A I'm not very familiar with that. Like I say,  
7 I'm not in management. I'm a -- I'm a dairy producer.  
8 But I do see an advantage of the larger cooperatives  
9 able to -- being able to move milk a lot -- a lot more  
10 easily than the Gossner Foods, where they're a  
11 privately-owned processing plant.

12 MR. BESHORE: Thank you very much.

13 MR. MUNK: Thank you.

14 JUDGE CLIFTON: Thank you, Mr. Beshore.

15 Additional questions for Mr. Munk? Yes? Mr.  
16 Radmall?

17 CROSS EXAMINATION

18 BY MR. RADMALL:

19 Q Thank you for taking your time to come. We  
20 appreciate it very much.

21 A My pleasure.

22 Q How long have you been producing and shipping  
23 to Gossner's?

24 A Well, I've always considered myself the last  
25 few years being a mid-life farmer. I'm in it too far

1 to go back, and I've not been in it long enough to  
2 retire. So, I've been producing for Gossner Foods for  
3 approximately seven years. I've been in the dairy  
4 business for 25 years.

5 Q And who did you ship to before?

6 A WDCI.

7 Q WDCI. Okay.

8 A And they were -- they were a good processing  
9 outfit. I had nothing bad to say about them.

10 Q One of Mr. Larsen's concerns in his  
11 testimony, excuse me, is that if -- let's use the  
12 example of the 15 cents and everybody got a higher  
13 blend price, and your blend price was increased by the  
14 15 percent and -- 15 cents, excuse me, and DFA  
15 producers continued to receive something under blend,  
16 that you as a Gossner producer would be enticed to  
17 leave Gossner's and go to DFA.

18 Would -- would that be something that would  
19 entice you, if that scenario developed?

20 A I was afraid you'd ask that.

21 Q Well, --

22 A In my association with Gossner over the past  
23 seven years, I guess the reason I'm a loyal producer is  
24 due to the fact that in those seven years, I have seen  
25 demonstrated great integrity, great trust and that's

1 something that we didn't see prior to that time.

2 Q Okay. Thank you.

3 And you know, Gossner's is well known for  
4 their taking care of their customers or their producers  
5 and their bonuses, and we as the Utah Dairymens  
6 Association, we're interested in every dairyman in the  
7 state of Utah to see some kind of an improvement in  
8 their financial situation.

9 A That's correct.

10 Q So, I know that you can really only speak for  
11 yourself, but your general feeling, how many other  
12 fellow producers, Gossner producers would be enticed to  
13 go to DFA under that scenario?

14 A That's tough to answer. Mr. Larsen put --  
15 kind of made a good statement there when he said that  
16 Gossner producers have never left once they've gotten  
17 there.

18 MR. RADMALL: Okay. Thank you. Appreciate  
19 it very much.

20 JUDGE CLIFTON: Thank you, Mr. Radmall.

21 Other questions for Mr. Munk? Mr. Vetne?

22 CROSS EXAMINATION

23 BY MR. VETNE:

24 Q Mr. Munk, if the Order provisions are  
25 changed, such as DFA requests, --

1 JUDGE CLIFTON: I'm sorry. Did you say are  
2 changed?

3 BY MR. VETNE:

4 Q If -- if the Order provisions are changed,  
5 such that -- as DFA requests, and in the future,  
6 Gossner's somewhat volatile requirement for Class 1 in  
7 relation to its manufacturing use changed substantially  
8 -- do you follow me so far?

9 A Hm-hmm.

10 Q If Gossner is unable to pool your milk  
11 because the performance rules have become more  
12 restrictive and they come to you with a choice, Mr.  
13 Munk, you can continue to ship to us but all we can pay  
14 you is the Class 3 price because we can't pool  
15 everybody, okay, is that the kind of potential scenario  
16 which might cause you to reconsider whether you would  
17 want to market your milk to DFA if it pays more than  
18 the Class 3 price?

19 A I probably wouldn't want to answer that  
20 question till I was put in the situation.

21 Q Yes. Okay. Do you understand --

22 A It's a -- dairy farming has always been about  
23 survival.

24 Q Okay.

25 A Sometimes you do what you have to do to



1 survive, but --

2 Q Did you -- did you understand when Gossner  
3 was testifying that its concern about producers like  
4 you not having a choice was directed not at -- not at  
5 the fact that Gossner might be paying more than DFA at  
6 the current time or even in the future, but that  
7 Gossner might not be able to pool all of the producers  
8 it's now pooling? Did you understand that?

9 A Possibility.

10 Q And if -- if they're not able to, it does  
11 provide a Hobson's choice about whether to continue to  
12 market to Gossner and receive something less than blend  
13 or market to somebody that at least has access to a  
14 lion's share of the Class 1 market? That -- that  
15 difficult choice would be there in the future for you?

16 A Well, you know, you're throwing these  
17 scenarios at me. I'm not one to make advance  
18 judgments. It's kind of difficult for me to tell you  
19 what I would do five years down the road if I'm faced  
20 with the situation. I would just go back to the fact  
21 that I have a family to feed. I want to stay in the  
22 dairy business, and sometimes you -- you cross these  
23 bridges when you come to them.

24 Q Yeah. Okay.

25 MR. VETNE: Thank you.

1 JUDGE CLIFTON: Thank you, Mr. Vetne.

2 Any other questions for Mr. Munk?

3 (No response)

4 JUDGE CLIFTON: If not, thank you, Mr. Munk.  
5 You may step down.

6 (Whereupon, the witness was excused.)

7 JUDGE CLIFTON: Mr. English?

8 MR. ENGLISH: Yeah. I'm -- I'm noticing that  
9 -- that notwithstanding that things are supposed to be  
10 short, we're now at 12:45. I really have to get Mr.  
11 Hallquist on in order for him to catch that flight at  
12 1:45. I think that if at all possible, if -- if  
13 Gossner could accommodate me, I'd appreciate it. If  
14 not, I'll just note that, you know, it seems to take 20  
15 minutes for almost anything to happen around here. So.  
16 But, you know, if I could get Mr. Hallquist on, I've  
17 been very patient. He really needed to be on  
18 yesterday, and he does have to catch a -- a plane to  
19 catch, but if -- if the next witness can get on and  
20 off. I don't think it's the witness that's causing  
21 this thing to take so long.

22 JUDGE CLIFTON: Thank you, Mr. English.

23 Let me -- let me ask an estimation of the  
24 amount of direct exam -- you have no control over how  
25 long you can cross examine, but the amount of direct

1 testimony of the next producer.

2 MR. HARDY: Five minutes.

3 JUDGE CLIFTON: We're going to put you on and  
4 even Mr. English says go ahead.

5 MR. HARDY: I'm Jay Hardy, H-A-R-D-Y.

6 JUDGE CLIFTON: All right. And Jay is J-A-Y?

7 MR. HARDY: J-A-Y.

8 JUDGE CLIFTON: All right, sir. Would you  
9 raise your right hand, please?

10 Whereupon,

11 JAY HARDY

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

14 JUDGE CLIFTON: Thank you.

15 You may proceed.

16 DIRECT TESTIMONY

17 MR. HARDY: As I see the proposals, I'm  
18 against 3 --

19 JUDGE CLIFTON: Pull that microphone closer  
20 to you, please.

21 MR. HARDY: I'm against 3 --

22 JUDGE CLIFTON: Raise it a little.

23 MR. HARDY: How's that? Is that better?

24 JUDGE CLIFTON: Talk some more.

25 MR. HARDY: I'm against the Proposals 3, 6, 7

1 and 8. Some of these proposals will -- will hurt the  
2 independent processors in the state of Utah as well as  
3 their dairymen that they deliver to.

4 Gossner alone has 95 dairymen in the state of  
5 Utah. That represents a rough figure of around 20  
6 percent of dairymen in the state of Utah. Right now,  
7 fluid use at the Gossner plant is well over the pool  
8 usage, and they would like -- they would -- at this  
9 time, they would be okay if this type of a situation,  
10 but if they lose a government contract or something and  
11 it put them in a position where they would need the  
12 pooling right of being able to transfer milk. By  
13 hurting them, they would hurt the producers that they  
14 now have.

15 The transfer part of the proposals would also  
16 hurt the Gossner Food industry and also the producers  
17 there. Also, I'm against double-dipping that's been  
18 taking place in our pooling area, and I'd like to see  
19 that -- I don't know if that could be addressed in this  
20 part. It should be.

21 We need the competition. Competition's  
22 what's made this country what it is today, and some of  
23 these proposals at this time, I think, will take some  
24 of the competition out of this marketing area. These  
25 proposals do -- do some elimination of that

1 competition.

2 I've been a dairy farmer for over 40 years,  
3 and during that period of time, I've sent milk to  
4 Gossner's when I first started with my brother in the  
5 dairy industry because I couldn't get a market for my  
6 milk anywhere else as a Grade A producer, and later on,  
7 Highland Milk came to me and offered to sell me which I  
8 bought a market for Grade A milk. At that time, it  
9 cost me \$50,000. That -- directly after that, that  
10 base was changed from Highland to Western General  
11 Dairy, and then after that, it -- Western General Dairy  
12 merged and became part of WDCI which today is DFA in  
13 this area.

14 A year and a half ago, I was given the  
15 opportunity to come back to Gossner's as a producer,  
16 and I've been with them for the year and a half, and  
17 the Gossners has treated me very well. During that  
18 period of time, I received three bonuses, and we have  
19 no contract with the Gossner family. We could leave at  
20 any time and that's probably one of the concerns maybe  
21 the Gossner family has, is if the market was to change,  
22 and they weren't able to meet or pool their market.

23 I think that's all I want to talk about at  
24 this time.

25 JUDGE CLIFTON: Mr. Hardy, could you tell us

1 just a little bit about your operation, where it is,  
2 and so forth?

3 MR. HARDY: I'm in Box Elder County, the one  
4 they forgot. We milk 250 cows and ship about -- I  
5 think we're shipping 17,000 pounds of milk to Gossner's  
6 every day. My brother and I have been in the business  
7 there since 1971. It's one of the first put together  
8 that couldn't find a market, and sometimes, if you go  
9 out there in the marketplace, if I was go out there  
10 tomorrow in the marketplace, I don't know if there's a  
11 market.

12 Whether Gossner -- whether DFA would state in  
13 fact and if they don't, where does my milk go, but as  
14 long as we've got an independent like Gossner, and I  
15 think there's a dairy here in Salt Lake that is  
16 independent, we do still have a few other options that  
17 -- other than a co-op.

18 JUDGE CLIFTON: Thank you, Mr. Hardy.

19 Questions for Mr. Hardy?

20 (No response)

21 JUDGE CLIFTON: You are one of the blessed  
22 witnesses.

23 (Whereupon, the witness was excused.)

24 JUDGE CLIFTON: Before Mr. English calls his  
25 witness, Mr. Hallquist, I wanted to check with Alan

1 Stutzman. I didn't get from him what his departure  
2 plans are.

3 MR. STUTZMAN: Just this afternoon.

4 JUDGE CLIFTON: Oh, great. Thank you.

5 Mr. English, you may proceed.

6 MR. ENGLISH: Your Honor, I call Ralph  
7 Hallquist.

8 JUDGE CLIFTON: Mr. Hallquist, I'm sorry we  
9 couldn't reach you yesterday.

10 MR. HALLQUIST: Thanks, anyway. I  
11 understand.

12 JUDGE CLIFTON: Please state your full name  
13 and spell your names, please.

14 MR. HALLQUIST: Okay. My name is Ralph  
15 Hallquist, R-A-L-P-H H-A-L-L-Q-U-I-S-T.

16 JUDGE CLIFTON: Would you raise your right  
17 hand, please?

18 Whereupon,

19 RALPH HALLQUIST

20 having been first duly sworn, was called as a witness  
21 herein and was examined and testified as follows:

22 JUDGE CLIFTON: Thank you.

23 Mr. English?

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DIRECT EXAMINATION

BY MR. ENGLISH:

Q Mr. Hallquist, could you please state your position with Meadow Gold Dairies?

A I'm the general manager of Meadow Gold Dairies in Boise, Idaho.

Q And how many years have you been involved in the dairy industry?

A Eighteen.

Q And what kinds of positions have you held in those 18 years in the dairy industry?

A I served at one time as the vice president of Marketing for the Dairy Division of Beatrice Foods Companies when we were part of the Beatrice Companies. I served as the Western Region Marketing Director, based here in Salt Lake City, for Utah, Montana, Idaho, Nevada and California, and served as the vice president of Sales Marketing Distribution of Meadow Gold Dairies in Honolulu, Hawaii.

Q And did you for a period of time also work outside the dairy industry?

A Yes, I did.

Q What years were those?

A From 1991 to 1997.

Q And what kind of -- generally, what -- what's



1 your business?

2 A In the wine and spirits industry, vice  
3 president of Marketing for Jim Beam Brands Company, and  
4 in the seafood industry for Nichewa Foods America,  
5 based out of Seattle.

6 Q Would it be fair to say that your job is --  
7 is in the selling of products in this instance,  
8 certainly selling of dairy products?

9 A That would be fair.

10 Q And would it be fair to say that your -- your  
11 business is not the expertise on the mechanics of  
12 Federal Milk Marketing Orders?

13 A Let's just say I'm thankful that I'm not in  
14 your shoes.

15 Q Okay. And is there a witness here to testify  
16 for Meadow Gold Dairies later today or tomorrow, God  
17 forbid, with respect to the Federal Order mechanics  
18 that are at issue today?

19 A Yes, there is.

20 Q Would you please explain briefly why Meadow  
21 Gold has proposed Proposals 11, 13 and 12?

22 A Well, it's because we believe that the  
23 proprietary bulk tank handler provision as it currently  
24 exists provides an artificial and in fact a current  
25 competitive advantage to a certain class of our

1 competitors and that class being the pooled  
2 distributing plants who buy their raw milk from a  
3 proprietary bulk tank handler, and the advantage  
4 accrues when they have the opportunity to buy that raw  
5 milk at less than minimum Class 1 prices.

6 Q Before today, when you heard testimony on  
7 this issue, did you know that pool distributing plants  
8 buying from proprietary bulk tank handlers are in fact  
9 paying less than Class 1 prices?

10 A Prior to this hearing, my answer would have  
11 been no but that really was part of our point of coming  
12 to this -- this junction in the road, in that we had no  
13 way of knowing since the Market Administrator's not  
14 required to provide or verify proof that those minimum  
15 prices are in fact being paid.

16 Q And why does this cause you concern?

17 A Well, because it can create a very  
18 significant competitive gap in the customer marketplace  
19 at wholesale and retail if a processor is able to buy  
20 raw milk at less than minimum Class 1 prices.

21 Q Now, as opposed to, you know, what you knew  
22 before today, did you before today have reason to  
23 believe that pool distributing plants buying from  
24 proprietary bulk tank handlers are paying less than  
25 Class 1 prices?

1           A     Yes, we did, and the testimony today and  
2     yesterday has, I think, established on the record that  
3     in fact is happening.

4           Q     Has anything been going on in the marketplace  
5     that leads you to conclude that this -- that this was  
6     happening?

7           A     Yes. One thought that would come to mind,  
8     one example that comes to mind really is the prevalence  
9     of what I would call fixed pricing on long-term stable  
10    non-changed wholesale and retail prices in the  
11    marketplace.

12          Q     And is that -- those kind of fixed-term  
13    contracts coming from one particular element of the  
14    industry here in this marketing area?

15          A     Yes. Those would be wholesale prices that  
16    are in place for long periods of time, many months,  
17    over the past year, particularly, and they have been  
18    offered by pool distributing plants who have been  
19    buying from the proprietary bulk tank handlers.

20          Q     Are those kinds of fixed pricing arrangements  
21    unusual in your experience in the dairy industry?

22          A     Absolutely, and really for two reasons.  
23    Number 1, if we just look back at the past calendar  
24    year when there were pretty significant shifts in the  
25    cost of Class 1 raw milk to see that those wholesale

1 and retail prices were unchanged, and then to look  
2 further and see that those prices in some instances  
3 reach as much as 80 percent for the raw milk alone when  
4 you net out the premiums, represent 80 percent of that  
5 wholesale price on the street and that's far in excess  
6 of industry norms.

7 Q What is the industry norm?

8 A They tend to run in the 50- to 60-percent  
9 range.

10 Q Are you aware of any other store pricing  
11 policies in your marketing area that are unusual?

12 A Well, one that would come to mind would be  
13 convenience stores. Convenience stores as a class of  
14 trade kind of goes back to that old adage about you pay  
15 for convenience, and they tend to have a higher retail  
16 pricing profile than supermarkets, but in this  
17 particular area, to see convenience stores with prices  
18 on their shelves running between 16 and 25 percent  
19 under what a supermarket is charging is a dramatic  
20 difference and it's very counterintuitive to the  
21 market.

22 Q And is it your experience that those  
23 convenience stores with those prices are purchasing  
24 from pool distributing plants that purchase their milk  
25 from proprietary bulk tank handlers?

1           A     It is our experience that that is the case.

2           Q     Are you aware of any other unusual pricing  
3 policies in this marketing area by -- with respect to  
4 those kinds of pool distributing plants or perhaps  
5 other purchasing finished products in those pool  
6 distributing plants?

7           A     Well, one that comes to mind is that we  
8 compete with a distributor who actually buys finished  
9 milk products from a -- one of these plants who is  
10 purchasing from a bulk tank handler and that  
11 distributor is purchasing these products, taking his  
12 margin on them and reselling them on the street at  
13 prices significantly below what we would reasonably  
14 price products at. So, there is even room for a second  
15 tier of pricing and margins, and it, I think,  
16 demonstrates the gap.

17          Q     Has Meadow Gold lost any business to pool  
18 distributing plants to purchase milk from proprietary  
19 bulk tank handlers?

20          A     Yes, we have. We lost some before calendar  
21 year 2001, but in the past calendar year, that really  
22 accelerated, and we lost a total of eight retail  
23 accounts for that very reason.

24          Q     And how do you know that you lost those  
25 accounts to those particular entities?

1           A     Well, first of all, when our customers  
2 themselves indicated to us who they were giving the  
3 business to and they indicated that they were. These  
4 pool distributing plants were buying from proprietary  
5 bulk tank handlers. In other cases, in addition to  
6 that, showed us the invoices. It was pretty clear and  
7 that is our job to know these things. In my position,  
8 I'm not allowed to lose business and not know why, who  
9 to, and all the details therein.

10           Q     What about shared accounts? Did you have any  
11 of your volume reduced to make room for milk from  
12 plants that is being purchased from pool -- pool -- I'm  
13 sorry -- from proprietary bulk tank handlers?

14           A     Yes. During the past year, we had our volume  
15 reduced by 50 percent in three additional accounts  
16 where our shelf space was literally cut in half to make  
17 room for that competitive entity.

18           Q     And again, were you told that that was --

19           A     Yes.

20           Q     That the reason --

21           A     Yes, it was made very clear to us.

22           Q     Has Meadow Gold ever responded to requests to  
23 meet the prices of plants that buy milk from  
24 proprietary bulk tank handlers?

25           A     Yes, we have. During this same time period,

1 we ended up reducing our prices to eight additional  
2 retail accounts to those levels in order to retain our  
3 distribution and placement on their shelves.

4 Q Based upon your sales person's experiences,  
5 is there anything unusual about the sales area in which  
6 these handlers, you know, sell their milk? The very  
7 handlers we're talking about who purchase their milk  
8 from proprietary bulk tank handlers?

9 A Well, one of the unique consumer  
10 characteristics is that that territory index is very  
11 high in the pool of milk consumption, and in any given  
12 retail account, whole milk can account for between 45  
13 and 50 percent of the total sales volume going out  
14 their door.

15 Q Does this mean that such an operation with a  
16 higher-than-average whole milk sales would have a  
17 smaller percentage of cream to dispose of in other than  
18 Class 1 products?

19 A Yes, I would assume so.

20 Q To your knowledge, other than that necessary  
21 Class 2, 3 or 4 for cream or for shrinkage, are these  
22 Class 1 operations that we're speaking of in terms of  
23 purchasing milk from proprietary bulk tank handlers?

24 A Yes, they are. They're known in the industry  
25 and trade as "juggers".

1 Q And what does that term mean for the record?

2 A It really means a business whose core focus  
3 is overwhelmingly on low-priced plastic gallon jugs of  
4 fluid milk.

5 Q Have you also lost in this time period full  
6 retail accounts to any other processors; that is,  
7 processors other than those operating plants where they  
8 purchase milk from proprietary bulk tank handlers?  
9 Lost any other accounts?

10 A Interestingly enough, during this period of  
11 time, we lost only one and that was in a retail  
12 situation in which there were issues of just overall  
13 inefficiencies at the very tail end of the territory  
14 where we felt that we could not profitably serve that  
15 account. It was for reasons unrelated to competitive  
16 pricing.

17 Q And have you lost volume on shared accounts  
18 to other competitors that were not buying milk from  
19 proprietary bulk tank handlers?

20 A Yes, but again, only one and that was a case  
21 of a customer who is doing business over a multiple  
22 state territory and preferred not to have all their  
23 eggs in one supplier's basket and so redivided the  
24 territory, but again, it was unrelated to that issue.

25 MR. ENGLISH: Thank you, Mr. Hallquist.



1                   The witness is available for cross  
2 examination.

3                   JUDGE CLIFTON: Thank you, Mr. English.  
4                   Mr. Vetne?

5                                   CROSS EXAMINATION

6                   BY MR. VETNE:

7                   Q    Mr. Hallquist, I'm John Vetne. I represent  
8 Glanbia and Davisco.

9                   A    Good morning.

10                  Q    Who are the only two bulk tank handlers in  
11 this market.

12                  A    Correct.

13                  Q    Are you familiar with those organizations?

14                  A    Yes, I am.

15                  Q    Are you familiar with any markets other than  
16 the Western Market in terms of milk?

17                  A    That's a very general question.

18                  Q    All right. Have -- have you ever -- well,  
19 Hawaii is not a Federal Market, although at one time  
20 somebody wanted one out there.

21                                Is there any other Meadow Gold plant that you  
22 have worked in that's in a market different than this  
23 one?

24                  A    Well, as I stated earlier in response to some  
25 of the first questions, my national responsibilities

1 had me involved in territories around the United  
2 States, and then in the course of our management  
3 operations, we meet regularly, the managers from  
4 operations throughout the West, and review business  
5 situations and so forth. So, somewhat familiar.

6 Q Okay. Meadow Gold is part of a -- Meadow  
7 Gold Boise is part of a company that operates plants  
8 nationally, correct?

9 A That is correct.

10 Q Okay. In other parts of the country, let's  
11 say, for example, in Order 30, where a substantial  
12 volume of milk is marketed by supply plants, is it not  
13 true that supply plant handlers can charge less than  
14 the Class 1 price when they sell to a distributing  
15 plant customer?

16 A You know, I think I need to just be very  
17 clear that that is not my area of responsibility, and  
18 I'm really here today to testify in a factual case  
19 relating to the market that I'm employed in currently,  
20 and I would like to add, too, that we have expert  
21 testimony that's going to be submitted later from Mr.  
22 Carl Conover that can really address other Market  
23 Orders and some of those particulars.

24 Q All right. Have you been here the entire  
25 time to listen to the testimony?

1           A     I have been in and out.  As Mr. English  
2     pointed out, I've had some other business issues, where  
3     as we've rescheduled, I've had to step out of the  
4     meetings periodically but tried to be here for as much  
5     of it as I could.

6           Q     You're aware of a proposal to eliminate bulk  
7     tank handlers all together?

8           A     I'm aware that that is on the table.

9           Q     Okay.  And have you heard or are you aware of  
10    the suggestion by some that those who are now bulk tank  
11    handlers ought to market their milk as supply plant  
12    handlers?

13          A     I could say that I have heard that  
14    discussion, and again my focus and my attention has  
15    been really to the specific issue that I addressed here  
16    this morning.

17          Q     Okay.  Let's assume for a moment that supply  
18    plants start operating in the Western Marketing Area,  
19    and let's assume further that supply plants in the  
20    Western Marketing Area or any place in the country are  
21    able to sell milk in a handler-to-handler transaction  
22    at any price above or below the classified price.

23                   Do you agree with me that the Secretary  
24    should look at that kind of transaction, also, in  
25    considering whether handler-to-handler sales ought to

1 be regulated?

2 A I just have to tell you that I'm baffled.  
3 That's clearly outside of my area of expertise and what  
4 I have tried to say in my current capacity as the  
5 general manager at Boise.

6 Q Does Meadow Gold Boise receive bulk packaged  
7 milk -- not bulk packaged, packaged milk from any other  
8 handler?

9 A To my knowledge, that has occurred in the  
10 past.

11 Q And has Meadow Gold Boise supplied packaged  
12 milk to any other handler?

13 A Could you define "handler" for me when you  
14 talk about supplying packaged milk?

15 Q I'm sorry. Any entity that is regulated and  
16 redistributes that packaged product.

17 A So, it could be just any distributor is what  
18 you're describing?

19 Q Correct.

20 A A jobber of sorts.

21 Q Jobbers are not regulated entities. Let's  
22 limit this to regulated entities.

23 A And by regulated entities, you're talking  
24 about --

25 Q Distributing plants.

1           A     No.

2           Q     Okay.  When Meadow Gold sells milk to -- does  
3 Meadow Gold sell milk through jobbers?

4           A     Yes.

5           Q     Okay.  And when Meadow Gold sells milk to  
6 jobbers, Meadow Gold may sell milk for less than the  
7 Class 1 price, correct?

8           A     Not that I'm aware of.

9           Q     No.  You have the option to?

10          A     You would have the option to?

11          Q     Yes.

12          A     It's a free market.

13          Q     Okay.

14          A     We choose not to do it that way.

15          Q     Before coming to this hearing, were you aware  
16 that the combined sales in Class 1 products of the two  
17 distributors that receive milk from bulk tank handlers  
18 is only about 1.5 million pounds per month?

19          A     I would have been speculating.  I had my own  
20 estimates, but we don't believe that it is a function  
21 of size.  It is a function of law.

22          Q     Okay.  Are you aware that the pounds marketed  
23 in the Western Market by producer handlers and exempt  
24 plants is far greater than 1.5 million pounds?

25          A     I do not track that.  As I said earlier, in

1 my capacity, that is really not a germane aspect of my  
2 job description.

3 Q Is that right? Do -- do not producer  
4 handlers and exempt handlers sell to convenience stores  
5 and customers that are also in your marketing area?

6 A If you're defining producer handlers -- and  
7 maybe you could give me some examples of what it is  
8 you're describing.

9 Q Producer handlers are handlers that operate a  
10 plant and a farm and don't have to account for the  
11 minimum price. Exempt plants are small plants that  
12 don't account for minimum price. Okay?

13 You indicated it's your job to know what  
14 others are paying, what -- what retailers are paying on  
15 the wholesale basis for milk.

16 A Right.

17 Q Are you telling me that you have no knowledge  
18 of what retailers are paying wholesalers when those  
19 wholesalers are exempt or producer handlers?

20 A If that's your question, if you're asking  
21 what a retailer's paying a wholesaler, to the extent  
22 we're able to find that out, we do.

23 Q And you do compete with producer handlers and  
24 exempt plants, correct?

25 A Could you give me an example?

1 Q Okay. This is where --

2 MR. ENGLISH: I said he's not a Federal Order  
3 expert. You've used the term throughout almost every  
4 question that's Federal Order terms. Why don't you  
5 start being a little more basic for someone who  
6 actually sells milk? Maybe name the entities and  
7 recognize the fact that the total --

8 MR. VETNE: I'm about --

9 MR. ENGLISH: The total number of those  
10 entities sells only the approximate number of these --  
11 of these entities as opposed to the pounds that they  
12 sell, Mr. Vetne.

13 MR. VETNE: Okay.

14 BY MR. VETNE:

15 Q All right. So, you're not familiar with the  
16 term "producer handler", is that correct?

17 A We don't have to. When we run our business,  
18 we compete in the marketplace. We use different  
19 terminology. They could be one and the same, but we  
20 use other terms.

21 Q There's a company called Reid's Dairy in  
22 Idaho Falls.

23 A I'm sorry?

24 Q Reid's Dairy in Idaho Falls.

25 A Familiar with them.

1           Q     Do they distribute milk in competition with  
2     you?

3           A     Yes, they do.

4           Q     Are you aware that they don't account to  
5     anybody for the Class 1 price?

6           A     That has not been an area that I've had to  
7     focus on as to whether they account for the Class 1  
8     price. The subject that came up and that we're here to  
9     address today was in a different area.

10          Q     In a different area in what sense? What a  
11     distributor has to pay for the Class 1 price or how  
12     much a distributor's charging to --

13          A     The prevalence of the practice.

14          Q     Okay. The prevalence of the practice of  
15     charging a wholesale price at less than you charge?

16          A     And the depth of the practice.

17          Q     Pardon?

18          A     And the depth of the practice.

19          Q     But the practice is the wholesale price  
20     that's less than you offer, is that correct?

21          A     Yes.

22          Q     And the practice is not then whether these  
23     other handlers have to pay the Class 1 price when they  
24     buy milk?

25          A     Well, we believe the issue is one again of



1 laws, and I guess for the regulations to be enforced,  
2 everyone should be paying the minimum price for the  
3 milk.

4 Q Everyone that distributes Class 1 milk?

5 A Correct.

6 Q Okay. So, would you agree with me that to  
7 the extent that exempt plants have a volume of  
8 distribution even larger than Stoker and Falconhurst,  
9 that the principle you want to espouse is they should  
10 pay the same Class 1 price, also?

11 A I think we've been talking about equality  
12 through this entire process.

13 Q Is it --

14 A We pay minimum Class 1 prices.

15 Q And everybody should regardless of size?

16 A We believe our competitors should as well.

17 Q Regardless of size?

18 A Exactly.

19 Q Thank you.

20 Do -- do the competitors that you're talking  
21 about here, Stoker and Falconhurst, right?

22 A Correct.

23 Q To which you've lost business, do they have  
24 sales to customers, to your knowledge, that -- that you  
25 don't -- don't serve and have never served?

1           A     Could you repeat that question?

2           Q     Do Stoker and Falconhurst have sales to  
3 customers that Meadow Gold doesn't serve and has never  
4 served?

5           A     I can't rule that out. There might be a few,  
6 but they would be very minor, if that was the case.

7           Q     Okay. Are there some kinds of accounts that  
8 Meadow Gold does not pursue?

9           A     As a general rule, no. That's very tough to  
10 make a categorical statement about.

11          Q     Are there some accounts -- how much of your  
12 milk is jobber milk?

13          A     That would be proprietary. I wouldn't  
14 disclose that.

15          Q     Is it a large percentage or a small  
16 percentage?

17          A     Again, that would be really proprietary  
18 company information.

19          Q     Okay. Are there accounts that Meadow Gold  
20 sells through jobbers that Meadow Gold does not pursue  
21 on its own?

22          A     In a global sense, that may be why the jobber  
23 exists in the first place and that would apply for any  
24 processor.

25          Q     All right. Is there a kind of business that

1 you prefer to have jobbers serve that Meadow Gold does  
2 not serve directly by its own sales staff?

3 A Everything is evaluated on a case-by-case  
4 basis.

5 Q For example, a, you know, single general  
6 store in some little town in Central Idaho?

7 A That really gets into our business practices  
8 and our business decision-making about which is the  
9 best for our company.

10 Q And you'd prefer not to answer that?

11 A I'd prefer not to.

12 Q You indicated that you lost 50 percent of  
13 shelf space to some account?

14 A That's correct.

15 Q Or actually to three accounts total?

16 A That's correct.

17 Q Okay. What volume of milk was represented in  
18 those three accounts that was Meadow Gold milk?

19 A Again, that's proprietary information.

20 Q Okay. I -- I'm just asking the questions, --

21 A Sure.

22 Q -- and you're free to answer that. Would  
23 that be your answer to how much milk was actually  
24 involved in any of the accounts that you have referred  
25 to?

1           A     Yes, it would be.

2           Q     Okay. Save some time there. How much Class  
3 1 milk does Meadow Gold process at its Boise plant on  
4 average?

5           A     Again, that's not information that we would  
6 share publicly and on the record. That's proprietary  
7 information.

8           Q     Okay. Are you able to share stale  
9 information, such as year 2000 or year 1999?

10          A     No. There are federal -- you know, there are  
11 obviously federal reporting receipts and everything  
12 that are available for you to check if you wanted to  
13 find that answer.

14          Q     I'm not going to find it from checking your  
15 reports with these people.

16                    Do you -- do you know whether -- does Meadow  
17 Gold in Boise have any long-term -- let's put it this  
18 way -- any multiple month fixed price contracts to  
19 retailers?

20          A     I wouldn't be in a position to disclose that.  
21 I couldn't confirm it or deny it because that would be  
22 proprietary business information. We don't disclose  
23 that.

24          Q     All right. Is it not true that Meadow Gold  
25 or any other processor may use the Chicago Mercantile

1 Exchange various programs to hedge against raw milk  
2 price volatility to support a fixed price contract in  
3 sales to wholesalers, to retailers?

4 A I am not aware of it at my level.

5 Q Okay. You're not aware of whether it can be  
6 done or how it might be done?

7 A No.

8 Q Okay.

9 A Not at all.

10 Q Can you answer this question? Without  
11 revealing the amount of Class 1 milk you have, what  
12 portion of the Boise plant distribution is sold within  
13 Idaho as opposed to Utah or other states?

14 A The vast majority is Idaho business.

15 Q Okay. How far east do you go from that  
16 plant? Does it go east to the Eastern Idaho border?

17 A Yes, it does. A short distance.

18 Q A short distance. And how far north is  
19 distribution from the plant? Does it go all the way to  
20 the counties that are part of the Pacific Northwest  
21 Order?

22 A No, we do not.

23 Q Okay. Does Meadow Gold Boise serve as the  
24 reporting handler for purposes of counting to the milk  
25 pool on any milk that it receives?

1           A     I'm not sure I'm following your question.  
2     Maybe you could restate that a different way and what  
3     that report or that term would reflect on a piece of  
4     paper.

5           Q     All right.  You receive milk from Dairy  
6     Farmers of America, --

7           A     Correct.

8           Q     -- correct?  And you tell Dairy Farmers of  
9     America how you use your milk, correct?

10          A     Correct.

11          Q     And they file a report with the Market  
12     Administrator and either send or receive money where  
13     they account for the classified uses of the milk?

14          A     Correct.

15          Q     Okay.  Is there any -- any milk that you  
16     serve that function, you being Meadow Gold, on any  
17     portion of your milk supply?

18          A     Not that I'm aware of.

19                   MR. VETNE:  Okay.  Thank you.

20                   JUDGE CLIFTON:  Thank you, Mr. Vetne.

21                   Mr. Beshore?

22                                   CROSS EXAMINATION

23                   BY MR. BESHORE:

24          Q     Mr. Hallquist, when Meadow Gold is required  
25     to reduce its product prices to meet competition from

1 the -- of the type that you testified to today, thereby  
2 reducing its margins, does it not have the option to  
3 and in fact exercise the option to bring the situation  
4 to the attention of its raw milk suppliers and suggest  
5 that it may need some adjustments on its raw milk price  
6 in order to continue to operate as a profitable  
7 business enterprise?

8 A If we saw a long-term trend in that  
9 direction, yes.

10 MR. BESHORE: Thank you.

11 JUDGE CLIFTON: Thank you, Mr. Beshore.

12 Additional questions for Mr. Hallquist?

13 CROSS EXAMINATION

14 BY MR. STOKER:

15 Q Mr. Hallquist, Mark Stoker from Stoker  
16 Wholesale.

17 A Good afternoon.

18 Q Just a couple of questions. Does Meadow Gold  
19 have a tiered pricing structure?

20 A I wouldn't be at liberty to disclose that  
21 because that's proprietary information.

22 Q So, you couldn't tell us whether the grocery  
23 store chain is paying more or less than a convenience  
24 store?

25 A And again, Mr. Stoker, you're my competitor,

1 and I sure couldn't have that discussion with you based  
2 on anything I've ever been taught.

3 Q Well, the question's based on the statement  
4 you made by convenience stores being able to sell their  
5 milk at such a low level, and we as a small dairy would  
6 like to see everybody -- everybody to be able to  
7 compete fairly with one another, including convenience  
8 stores and grocery stores, and of course, they've got  
9 to find a way to -- if the consumer's already pushing  
10 her cart down the aisle, the -- the milk is right  
11 there, there's got to be a way for -- to get the  
12 consumer to come to the convenience store.

13 And one more question. Do you think that  
14 Meadow Gold and Stoker Wholesale play on a level  
15 playing field all but the milk price?

16 A That's a really subjective question. I could  
17 go on for hours talking about all the facets of the  
18 dairy business. So, I just don't think that's  
19 something I'd answer.

20 MR. STOKER: Okay. Thanks for your time.

21 MR. HALLQUIST: Sure.

22 JUDGE CLIFTON: Thank you, Mr. Stoker.

23 Additional cross examination of Mr.

24 Hallquist?

25 (No response)



1 JUDGE CLIFTON: There is none. Mr. English,  
2 redirect?

3 MR. ENGLISH: I have no redirect. I thank  
4 the witness. I thank Your Honor. I thank the parties'  
5 indulgence.

6 JUDGE CLIFTON: Thank you, Mr. English.  
7 You may step down, Mr. Hallquist.

8 MR. HALLQUIST: Thank you.

9 JUDGE CLIFTON: Thank you.

10 (Whereupon, the witness was excused.)

11 JUDGE CLIFTON: I'd like to get back to a  
12 housekeeping item and that's Exhibit 40. Mr. Radmall,  
13 would you come forward so that I can get that into  
14 evidence?

15 (Pause)

16 JUDGE CLIFTON: Mr. Radmall, you remain under  
17 oath.

18 Whereupon,

19 GREGORY J. RADMALL

20 having been previously duly sworn, was recalled as a  
21 witness herein and was examined and testified as  
22 follows:

23 JUDGE CLIFTON: Would you please tell us your  
24 full name again?

25 MR. RADMALL: Gregory J. Radmall,

1 G-R-E-G-O-R-Y J. R-A-D-M-A-L-L.

2 JUDGE CLIFTON: Thank you.

3 I previously had the court reporter mark the  
4 Utah Farmers Union letterhead letter, dated April 12th,  
5 2002, as Exhibit 40. Do you have a copy of that?

6 MR. RADMALL: Yes, I do.

7 JUDGE CLIFTON: Would you tell me how you  
8 came to have the copy that you then duplicated for us?

9 MR. RADMALL: Mr. Arthur Douglas, who is the  
10 Utah Farmers Union president, requested that we have  
11 access to have a statement placed in -- in this  
12 hearing. He faxed this letter to me.

13 JUDGE CLIFTON: All right. Are you willing  
14 to forego reading it into the record?

15 MR. RADMALL: I am.

16 JUDGE CLIFTON: For those of you who didn't  
17 get a copy of it, does any of you -- there were limited  
18 copies. Is there anyone that would like it read so  
19 that you know the contents of it while you're still  
20 here at the hearing?

21 (No response)

22 JUDGE CLIFTON: There is no one. Is there  
23 any objection to Exhibit 40 being admitted into  
24 evidence?

25 Mr. Marshall, you almost got up. Do you want

1 to ask this witness any questions?

2 MR. MARSHALL: I was not going to after  
3 second thought, but now that you invite me to, I'll  
4 just ask a very brief question.

5 CROSS EXAMINATION

6 BY MR. MARSHALL:

7 Q That is, do you know if Utah Farmers Union  
8 considered Proposal Number 10 regarding double-dipping,  
9 and if so, whether they had any position on that?

10 A I do not know.

11 MR. MARSHALL: Thank you.

12 JUDGE CLIFTON: Thank you, Mr. Marshall.

13 Is there any objection to Exhibit 40 being  
14 admitted into evidence?

15 (No response)

16 JUDGE CLIFTON: There being none, Exhibit 40  
17 is hereby admitted into evidence.

18 (The document referred to,  
19 having been previously marked  
20 for identification as  
21 Exhibit Number 40, was  
22 received in evidence.)

23 JUDGE CLIFTON: Thank you, Mr. Radmall. You  
24 may step down.

25 (Whereupon, the witness was excused.)

1                   JUDGE CLIFTON: We're going to have trouble  
2 getting everything done. We have Mr. Hollon. We have  
3 Mr. Mykrantz. We have Mr. Stutzman. We have Ms.  
4 Barrow, and I don't know who else. Oh, Mr. Conover.  
5 So, these are -- these are some pretty heavy hitters.

6                   I propose we do without lunch. I think  
7 that's the only way we can finish today. It's hard on  
8 everybody, particularly the court reporter who needs  
9 fuel, but does anybody have any other suggestion or --

10                  MR. MARSHALL: Your Honor, I'm just a little  
11 bit confused. There are other witnesses as well. Are  
12 you suggesting that it would be difficult to get those  
13 done today who have indicated a desire to get done  
14 today? Is that your question or are you trying to end  
15 the entire hearing today?

16                  JUDGE CLIFTON: I was trying to -- to get it  
17 done today. Now, that maybe impossible. If it's  
18 impossible, then perhaps we should have lunch.

19                  MR. MARSHALL: It's impossible -- I believe  
20 it is impossible for the entire hearing to be done  
21 today. Mr. McBride also has a substantial amount of  
22 testimony at the appropriate time.

23                  JUDGE CLIFTON: All right. Who else wants to  
24 be heard before I find out how many want lunch?

25                  Mr. Vetne?

1           MR. VETNE: I would just as soon work through  
2 lunch. I know what a difficult time it is for this  
3 hotel to actually serve and feed people. However, you  
4 know, for my part, there's a nice little deli on the  
5 other side of LaQuinta, and they have sandwiches to  
6 carry out. A 15-minute break or so would -- would  
7 permit -- if we could eat here at the tables while the  
8 proceeding is going on, that would be fine with me.

9           JUDGE CLIFTON: So, Mr. Vetne proposes a 15-  
10 minute break. That would also let people who might  
11 have something in their rooms to get it, if they've got  
12 something.

13           Mr. Beshore?

14           MR. BESHORE: I would be interested in  
15 knowing if, other than the witnesses you've mentioned  
16 and Mr. McBride, are there any -- are there any other  
17 witnesses? That would help -- help us decide.

18           JUDGE CLIFTON: Who else would have a witness  
19 or will be a witness before we conclude? Mr. Vetne?

20           MR. VETNE: Yes.

21           JUDGE CLIFTON: You have one more?

22           MR. VETNE: Yes.

23           MR. ENGLISH: Who? Who is that?

24           MR. VETNE: Me. I have -- I have some  
25 exhibits that I've just reserved because there hasn't

1       been time. Mostly -- mostly they're of the officially-  
2       noticeable kind, but I put them in exhibit form and I  
3       wanted to explain, and then I have a brief statement in  
4       the form of an argument.

5               JUDGE CLIFTON: All right. Yes, Mr. Stevens?

6               MR. STEVENS: I'm reluctant to do this. I --  
7       I -- we -- we are here to serve the hearing, as Your  
8       Honor is, and the reporter, and we want you all to know  
9       that we're willing to do whatever the -- the -- the  
10      desires of the group are, and we are here to help you  
11      in any way we can.

12              Having said that, if it looks that we are not  
13      -- that we have substantial work to do and that we are  
14      not going to finish today, to go on, to break for 15  
15      minutes, to run out and get food, to come back, to  
16      start in. The only concern I would raise is I think we  
17      all want the record to be the best record it can be,  
18      and if we are going to be here tomorrow, I -- I think  
19      we at least ought to consider the fact that the quality  
20      of the record is -- is dependent on the ability of the  
21      parties to -- to go forward and -- and how they -- how  
22      they proceed and -- and we all have been down this  
23      road.

24              The suggestion being that if the -- if the --  
25      if the -- if the -- if there is the possibility, maybe

1 not the probability, that the -- that the quality of  
2 the record will be affected by a -- a 15-minute recess  
3 or so to go get lunch, to come back, to do whatever,  
4 and then to continue in every way to get as much done  
5 today, knowing that we're going to have to come back  
6 tomorrow, if -- if -- if it's a question of getting it  
7 all done in that regard with the possibility that the  
8 record is not as good as it might otherwise be, I would  
9 say that we should take a break for lunch, but I -- I  
10 would say we have talked, and we have agreed, the  
11 government people, that that would at least be  
12 something to consider.

13 Having said that, we are at the -- at the  
14 beck and call of the group. If you -- if you want to  
15 go ahead, we are perfectly willing to do so.

16 Thank you, Your Honor.

17 JUDGE CLIFTON: All right. Thank you, Mr.  
18 Stevens.

19 I know I'm going to lose two witnesses today.  
20 I lose Mr. Mykrantz. So, I want to get him on. And I  
21 also lose Mr. Hollon. So, I know I want to get those  
22 folks in addition to Mr. Stutzman and Ms. Barrow. I  
23 know I want to get that much done today.

24 Ms. Barrow?

25 MR. BESHORE: I'm fine today, tomorrow,

1 whenever.

2 JUDGE CLIFTON: Okay. Good. So, I don't  
3 know whether there's time to get that much done and eat  
4 lunch is my concern.

5 MR. ENGLISH: I think that's probably not a  
6 problem. I think once we face up to the reality that  
7 Mr. Stevens has posed for us, as reluctantly as we may,  
8 you know, not because, you know, we're reluctant to  
9 agree with Mr. Stevens, but because we'd like to get  
10 home, I think that frankly -- and Mr. Conover can stay  
11 tomorrow.

12 So, as much as I would like once in my life  
13 to get back to the East Coast, I think that -- that it  
14 poses a better record and is better if we, having gone  
15 12 hours yesterday, own up to the fact that it's not  
16 fair to the court reporter, it's not fair to Your  
17 Honor, and it's not fair to anyone in the room just to  
18 beat ourselves up that way, and I -- I think that we  
19 should be realistic.

20 JUDGE CLIFTON: All right. Thank you.

21 Let me have a show of hands. It's 1:30. How  
22 many of you are in favor of taking lunch and coming  
23 back at 2:45? That's an hour and 15 minutes.

24 (Show of hands)

25 JUDGE CLIFTON: Okay. How many of you would



1 prefer to forego lunch and just take a 15-minute break  
2 now?

3 (Show of hands)

4 MR. ENGLISH: How about one hour?

5 JUDGE CLIFTON: Okay. How many of you would  
6 rather, even if you voted before, how many of you would  
7 rather just have one hour for lunch?

8 (Show of hands)

9 JUDGE CLIFTON: That's a majority. All  
10 right. Please be back at 2:30.

11 (Whereupon, at 1:30 p.m., the hearing was  
12 recessed, to reconvene this same day, Thursday, April  
13 18th, 2002, at 2:30 p.m.)

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1 Whereupon,

2 ALAN STUTZMAN

3 having been first duly sworn, was called as a witness  
4 herein and was examined and testified as follows:

5 JUDGE CLIFTON: Thank you.

6 Would anyone like to Voir Dire Mr. Stutzman  
7 with regard to the Exhibit 42?

8 (No response)

9 JUDGE CLIFTON: Is there any objection to  
10 Exhibit 42 being admitted into evidence?

11 (No response)

12 JUDGE CLIFTON: There is none. Exhibit 42 is  
13 hereby admitted into evidence.

14 (The document referred to,  
15 having been previously marked  
16 for identification as  
17 Exhibit Number 42, was  
18 received in evidence.)

19 JUDGE CLIFTON: Mr. Stutzman, if you'd tell  
20 us a little bit about yourself and then you may  
21 continue with your statement and any other comments  
22 that you have.

23 DIRECT TESTIMONY

24 MR. STUTZMAN: Okay. My name is Alan  
25 Stutzman. I'm the Manager for Magic Valley Quality

1 Milk Producers in Jerome, Idaho.

2 Magic Valley Quality Milk Producers is a milk  
3 marketing cooperative that does not own any plant, has  
4 been in existence since 1987, I believe. I've been  
5 working for the company since 1996, and currently we  
6 have producers in both Idaho and Utah.

7 My name is Alan Stutzman. I am testifying on  
8 behalf of Magic Valley Quality Milk Producers  
9 Association, Incorporated, which is usually referred to  
10 as MVQMP or Magic Valley. Magic Valley is very much  
11 opposed to Proposals Numbers 6 and Number 7 which, if  
12 adopted, could significantly reduce the amount of milk  
13 eligible to be diverted and pooled on Order 135.

14 First, speaking to Proposal Number 6, which  
15 would change the diversion limits from a 90/10 ratio to  
16 a 30/70 ratio, for every tanker load of milk that Magic  
17 Valley presently delivers to a pooled distributing  
18 plant, an additional nine loads can be diverted to a  
19 manufacturing plant.

20 This provision allows the nine loads  
21 associated with the Class 1 market to receive the pool  
22 blend price. If, for example, Magic Valley normally  
23 delivered three loads of milk to a pooled distributing  
24 plant, then 27 loads of milk associated with the market  
25 could be diverted to manufacturing plants within the

1 Order and be pooled.

2 Under the proposal to change the diversion  
3 limits to 30/70, Magic Valley could then only divert  
4 seven loads to a manufacturing plant and receive the  
5 pool blend price. The other 20 loads would be priced  
6 outside of the minimum class and component prices  
7 established monthly by USDA.

8 The difference in the Federal Order 135 blend  
9 price and Class 3 price for the past 15 months has  
10 averaged 85 cents. For the past 15 months, the amount  
11 of milk reported as being utilized as Class 1 on Order  
12 135 has averaged 85,623,184 pounds or 22.98 percent of  
13 the total milk pooled during the same time period.  
14 Total milk pooled has averaged 396,900,356 pounds. The  
15 amount of milk that could have been pooled under the  
16 90/10 ratio would have been 856,231,840 pounds.

17 However, if the proposal as presented were to  
18 be adopted, only 285,410,615 average monthly pounds  
19 could be pooled, eliminating some of the 111,489,741  
20 average monthly pounds that is normally associated with  
21 the market.

22 Proposal --

23 JUDGE CLIFTON: Let me make sure I got that  
24 last number right.

25 MR. STUTZMAN: Okay.

1 JUDGE CLIFTON: That was a 111 million?

2 MR. STUTZMAN: Yeah. A 111 million. Did I  
3 say 111,000?

4 JUDGE CLIFTON: I'm not sure.

5 MR. STUTZMAN: Okay. Proposal Number 6 could  
6 severely hinder Magic Valley Quality Milk Producers'  
7 ability to service its Class 1 market, although small,  
8 that it now has. That would place Magic Valley at a  
9 distinct disadvantage in their ability to market their  
10 members' milk at competitive prices.

11 Proposal Number 7, which seeks to change the  
12 diversion limits based on a net basis, would further  
13 restrict Magic Valley's ability to pool milk on the  
14 Order by changing the basis for calculating the amount  
15 of milk that could be diverted without changing the  
16 diversion limits from their present 90/10 ratio.

17 With regard to Proposal Number 10, Magic  
18 Valley supports Proposal Number 10. Evidence and  
19 testimony has or will be entered into the record which  
20 is consistent with Magic Valley's position in support  
21 of the proposal. Magic Valley requests that Proposal  
22 Number 10 be adopted on an emergency basis.

23 JUDGE CLIFTON: Thank you, Mr. Stutzman.

24 I would invite cross examination of Mr.  
25 Stutzman. Mr. Beshore?

1 MR. BESHORE: Thank you.

2 CROSS EXAMINATION

3 BY MR. BESHORE:

4 Q Mr. Stutzman, how many producer members does  
5 Magic Valley have?

6 A Forty-one.

7 Q Okay. And approximately what's your monthly  
8 milk volume, if you care to provide it?

9 A I don't want to provide that.

10 Q What percentage of your milk is sold to  
11 distributing plants on a monthly basis?

12 A I think that's -- that's proprietary.

13 Q Okay. Are you pooling any of your milk  
14 through deliveries and transfers such that the net  
15 shipment provision of Proposal 7 would affect your  
16 ability to pool milk?

17 A Not currently.

18 Q Okay. Have you in the past?

19 A Yes, we have.

20 Q Now, you make the statement in your testimony  
21 that Proposal Number 6, which is the proposal that  
22 would change the diversion limitations from 90/10 to  
23 70/30, "could severely hinder Magic Valley Quality Milk  
24 Producers' ability to service its Class 1 market,  
25 although small, that it now has."

1           My question is, are you -- how -- how would  
2           that be the case? You have obviously much more milk  
3           available than you need for your Class 1 sales,  
4           correct?

5           A     Yes.

6           Q     And you would still have the same amount of  
7           milk, regardless of what the diversion limits are in  
8           the Order, to supply that Class 1 customer, isn't that  
9           correct?

10          A     Our current Class 1 sales under 70/30 would  
11          not be enough Class 1 sales in order for us to divert  
12          all the pounds that we currently have on a monthly  
13          basis.

14          Q     Well, how would that affect your ability to  
15          service the Class -- to make the Class 1 sales, though?

16          A     It would not --

17          Q     You're saying --

18          A     -- affect our current sales. I would think  
19          the intent of the statement is to -- it would affect  
20          our ability to pay our producers on a competitive  
21          level.

22          Q     Okay. To the extent --

23          A     We wouldn't be able to pool all our milk.

24          Q     Okay. But it wouldn't affect -- it would  
25          affect the -- the total price you're getting for your



1 full milk sales if you couldn't -- if you couldn't pool  
2 them all, but it wouldn't affect your ability to make  
3 the Class 1 sales you have, correct?

4 A It would change -- it has been on record that  
5 our customers -- one of our customers in particular,  
6 the diversion limits are changed, would then have to  
7 change the orders that they have from us for a Class 1  
8 basis. So, it would probably lower our Class 1 sales  
9 because the customers would no longer order from us.  
10 Current customers that we have.

11 Q Okay. So, you -- you're concerned you'd lose  
12 some Class 1 sales?

13 A Yes.

14 Q But whatever Class 1 sales you'd have, you  
15 would be able to service?

16 A Yes.

17 Q And in fact, you would be able to service the  
18 same sales you have now if you were able to retain  
19 them?

20 A Yes.

21 Q Or -- or obtain sales of the same volume to  
22 another customer?

23 A Right.

24 Q What is the average -- average size of a  
25 Magic Valley member? Approximately how many head of

1 cows would they be milking?

2 A I -- our -- we have dairymen that have 10  
3 cows to 4,000 cows, and the 4,000-cow dairy is moving  
4 to 6,500 tomorrow. So, --

5 Q Okay.

6 A -- I mean, it varies greatly.

7 Q How many -- how many of your members have  
8 less than a hundred cows?

9 A I don't know that right now.

10 Q And you have what? 41 members, did you say?

11 A Yes.

12 MR. BESHORE: Okay. Thank you.

13 JUDGE CLIFTON: Thank you, Mr. Beshore.

14 Mr. Marshall?

15 MR. MARSHALL: Thank you, Your Honor.

16 CROSS EXAMINATION

17 BY MR. MARSHALL:

18 Q Alan, Mr. Beshore just talked about your  
19 ability to service the Class 1 market if Proposal 6  
20 were -- or something like it were to occur and be  
21 implemented, and you talked about the fact that you  
22 would probably lose some of your current sales volume  
23 because the customer would have to alter its behavior.

24 I'd also like to ask you about whether you  
25 would fear greater competition for the available Class

1       1 market if the ability to pool were even more  
2       dependent on those few Class 1 sales that exist in the  
3       marketplace?

4             A       You need to help me out with that question.

5             Q       Sure.  Would others be elbowing you out of  
6       your current customer base because of the importance of  
7       finding Class 1 customers to pool their milk?

8             A       Would they be moving us out?

9             Q       Would they be attempting to, yes.

10            A       That is feared, that the change in the  
11       diversion limits and the restrictions that are proposed  
12       in the proposal would then -- not only would it go to  
13       our current customers, it's already been stated that  
14       they would probably have to change their practices  
15       internally with their direct shipment, their direct  
16       shippers, to accommodate their business.  That in turn  
17       would put us at a disadvantage because we would  
18       probably no longer have the sales that we currently  
19       have with them.

20            The second issue as far as the  
21       competitiveness, I think I'm a little confused on what  
22       you're getting at.

23            Q       Well, I was going to simply refer to the fact  
24       that your statement was talking about hindering Magic  
25       Valley's ability to provide a quantity of milk to the

1 Class 1 market, and the fact that you would be, as you  
2 say, at a distinct disadvantage in marketing milk at  
3 competitive prices and --

4 A Okay.

5 Q -- part of that competition would include  
6 competition for --

7 A Yes.

8 Q Would include competition for Class 1 sales  
9 that might be available for those of us that need them  
10 to qualify our milk.

11 A Yeah. Currently, we service three customers  
12 in the Class 1 market. That volume itself is not  
13 enough if the diversion limits were changed. The other  
14 customers that are available for Class 1 sales are  
15 currently under, my understanding, contract with the  
16 supply contract with DFA. That would in turn make it  
17 to where it would be hard for us, unless we gained an  
18 arrangement with them, in order to obtain any Class 1  
19 sales. We would just be eliminated in essence from the  
20 market to try and do things the way we're doing them  
21 currently.

22 Q Thank you.

23 Now, you indicated you have some producers in  
24 Utah. Do they believe or do you believe on their  
25 behalf as their manager that these proposals, if

1       adopted, would actually increase their milkshed?

2           A     No.

3           Q     Please feel free to elaborate on that answer,  
4       if you wish.

5           A     If adopted, currently in our membership, it  
6       would reduce their blend price if they remain members  
7       with us because we would eliminate some of our pooling  
8       ability with the Class 3 price, which would not obtain  
9       the blend price.

10           Also, in turn, with the restrictions in the  
11       percentages, and I heard it mentioned earlier today  
12       that it -- even at 80/20, they could potentially raise  
13       the price to the producers in the Utah market.  
14       Mathematically, I contest that in that, if you notice,  
15       last year, 22 percent of the milk was pooled anyway.

16           The only thing an 80/20 does is restrict --  
17       put a restriction on those who don't have the vast  
18       amount of Class 1 sales from getting access to the  
19       Class 1 market. If that happens, the availability for  
20       people to, I'll call it paper pooling or what have you,  
21       pool milk from other states into this Order at 80/20  
22       still allows a 20-percent utilization. Probably I said  
23       that right.

24           So, in essence, whoever controls the Class 1,  
25       if they have producers in other areas and the producers

1 in this area that could still pool their milk, there  
2 still would be 20 percent of the milk pooled which  
3 would be the same PPD that averaged last year.

4 Q Okay. So, I think you're telling us two  
5 things. The first, if I understand you correctly, is  
6 that the amount of milk pooled may not change but whose  
7 milk gets pooled may change. Is that your testimony?

8 A Yes.

9 Q And the other thing you're saying is that if  
10 the PPD were to increase because some of our milk was  
11 not pooled, that might make it attractive for long-  
12 distance milk to be pooled on this market. Is that  
13 your testimony?

14 A Yes.

15 MR. MARSHALL: All right. Thank you. No  
16 further questions.

17 JUDGE CLIFTON: Thank you, Mr. Marshall.

18 Additional examination of Mr. Stutzman? Mr.  
19 Tosi?

20 CROSS EXAMINATION

21 BY MR. TOSI:

22 Q Thanks for appearing today, Mr. Stutzman. I  
23 just would like a clarification.

24 In your written statement, when you're  
25 talking about -- when you're presenting the statistics

1 for the last 15 months, would that be from the time  
2 period -- this is just for clarity of the record --  
3 from January 1st, 2001, until March of 2002?

4 A Yes.

5 MR. TOSI: Okay. Thank you very much.

6 JUDGE CLIFTON: Are there any other questions  
7 for Mr. Stutzman?

8 (No response)

9 JUDGE CLIFTON: Mr. Stutzman, is there  
10 anything else you wanted to add?

11 MR. STUTZMAN: Thank you, Mr. English.

12 JUDGE CLIFTON: Last chance. Thank you very  
13 much.

14 (Whereupon, the witness was excused.)

15 JUDGE CLIFTON: I need the help of those  
16 present to determine which witness to call next. Mr.  
17 Beshore, tell me a little bit about Mr. Hollon's  
18 testimony and his -- and his needed departure time.

19 MR. BESHORE: Mr. Hollon's needed departure  
20 time is 7 p.m. His testimony is in two statements and  
21 a set of exhibits, both of which have been available  
22 and are available, and they cover in aggregate the  
23 remainder of the proposals in the hearing.

24 I would suggest that Mr. Mykrantz should be  
25 next. He's got an earlier departure time and certainly

1 needs to be -- you know, we need to hear him, and it'd  
2 be a good -- good time as far as I'm concerned.

3 JUDGE CLIFTON: Mr. Beshore, I thank you for  
4 that. I know that if we're just going in numerical  
5 order, he'd go last, but I think there is a good reason  
6 to have him come on now. I think he'll not be as  
7 lengthy a witness and that will ensure that he can make  
8 his flight.

9 Mr. Marshall?

10 MR. MARSHALL: Your Honor, I have no  
11 objection to calling Mr. Mykrantz next, but I do recall  
12 one important question that I failed to ask Mr.  
13 Stutzman. Would it be possible to recall him before he  
14 sneaks --

15 JUDGE CLIFTON: Certainly.

16 MR. MARSHALL: -- out the door?

17 JUDGE CLIFTON: Certainly. Mr. Stutzman?

18 Whereupon,

19 ALAN STUTZMAN

20 having been previously duly sworn, was recalled as a  
21 witness herein and was examined and testified as  
22 follows:

23 CROSS EXAMINATION

24 BY MR. MARSHALL:

25 Q I promise to be brief. Mr. Stutzman, your



1 cooperative is in the business of buying and selling  
2 milk in effect, is it not?

3 A Yes.

4 Q And how many employees do you have?

5 A Three. Oh, we have four. One part-time  
6 consultant.

7 Q And as you look at the regulatory structure  
8 today, are you able as a small business cooperative to  
9 compete on the same level with large national  
10 cooperatives or even large regional cooperatives like  
11 our own?

12 A Under the current system, yes.

13 Q If these rules were changed, would it  
14 disadvantage you in your ability to compete with large  
15 national cooperatives or large regional cooperatives  
16 like our own?

17 A We feel that it would put us at a competitive  
18 disadvantage.

19 MR. MARSHALL: All right. Thank you very  
20 much.

21 JUDGE CLIFTON: Thank you, Mr. Marshall.

22 Does that prompt any other questions?

23 (No response)

24 JUDGE CLIFTON: You may step down, Mr.  
25 Stutzman.

1 (Whereupon, the witness was excused.)

2 JUDGE CLIFTON: Mr. Mykrantz? Mr. Mykrantz,  
3 you remain under oath.

4 Whereupon,

5 JOHN MYKRANTZ

6 having been previously duly sworn, was recalled as a  
7 witness herein and was examined and testified as  
8 follows:

9 JUDGE CLIFTON: Would you again state your  
10 full name?

11 MR. MYKRANTZ: My name is John Mykrantz,  
12 spelled M-Y-K-R-A-N-T-Z.

13 JUDGE CLIFTON: Thank you.

14 Were there any leftover points of information  
15 that you wanted to present?

16 MR. MYKRANTZ: I don't believe so.

17 JUDGE CLIFTON: All right. You may proceed  
18 in any manner you wish.

19 DIRECT TESTIMONY

20 MR. MYKRANTZ: The Market Administrator has  
21 four proposals. They are Proposals 14, 15 and 16. The  
22 first proposal deals with Section --

23 JUDGE CLIFTON: Did you say -- how many  
24 proposals did you say?

25 MR. MYKRANTZ: Three. The first proposal,

1 Proposal 14, deals with Section 1135.11, which is the  
2 Proprietary Bulk Tank Handler Section under the Order.  
3 Proposal 14 rewords the last part of the first sentence  
4 of Section 1135.11 to read as follows: "For the  
5 account of such person to a pool plant described in  
6 Section 1135.7(a) or Section 1135.7(b) of another  
7 handler", instead of the current language, which reads:  
8 "For the account of such person to the pool plant of  
9 another handler."

10 The purpose of this proposed change is to  
11 clarify that the Section 1135.11 Handler should be  
12 associated with the pool through a pool distributing  
13 plant as described in 7(a) and 7(b), not just any pool  
14 plant.

15 The old Southwestern Idaho/Eastern Oregon  
16 Order language was not changed when the Great Basin,  
17 the old Federal Order 139, Pool Manufacturing Plant,  
18 language was added to it.

19 Proposal 15 deals with Section 1135.12. The  
20 Proposal 15 rewords the part of the first sentence of  
21 Section 1135.12(b)(5) to read as follows: "(except a  
22 non-pool plant that has no utilization of milk products  
23 in any class other than Class 2, Class 3 or Class 4)",  
24 instead of the current language which reads, "(except a  
25 non-pool plant that has no utilization of milk products

1 in any class other than Class 3 or Class 4)".

2 The purpose of this change is to add Class 2  
3 manufacturing uses of milk at non-pool plants to the  
4 types of uses of a producer's milk that a handler can  
5 elect to not pool without that producer losing  
6 qualification under the Western Order.

7 Proposal 16 deals with Section 1135.13.  
8 Proposal 16 rewords the second sentence of Section  
9 1135.13(d)(1) to agree with the phrasing of the first  
10 sentence of the Section 1135.13(d)(1). The second  
11 sentence is changed to read as follows: "If a dairy  
12 farmer loses producer status under the Order in this  
13 part, (except as a result of a temporary loss of Grade  
14 A approval), the dairy farmer's milk shall not be  
15 eligible for a diversion unless one day's milk  
16 production has been physically received as producer  
17 milk at a pool plant during the month;" and that's the  
18 end of the changes.

19 The current language reads, "If a dairy  
20 farmer loses producer status under this Order, (except  
21 as a result of a temporary loss of Grade A approval),  
22 the dairy farmer's milk shall not be eligible for  
23 diversion until one day's milk production has been  
24 physically received as producer milk at a pool plant;".

25 The purpose of this change is to treat a

1 dairy farmer who has lost qualification in the same  
2 manner as a dairy farmer who has never been qualified,  
3 enabling both to have their diversions to non-pool  
4 plants be included for the whole month in which they  
5 become qualified. Changing the modifier from "until"  
6 to "unless" accomplishes this goal.

7 That would be the end of my statement.

8 JUDGE CLIFTON: Thank you, Mr. Mykrantz.

9 I invite questions. Mr. Marshall?

10 CROSS EXAMINATION

11 BY MR. MARSHALL:

12 Q Good afternoon, Mr. Mykrantz.

13 A Good afternoon, Mr. Marshall.

14 Q Were you here earlier this morning when we  
15 talked with Rod Carlson about his proposed change to  
16 Section 13(d)(1)?

17 A I recall that conversation.

18 Q He proposed the addition of a phrase "the  
19 equivalent of" in front of the term "at least one day's  
20 milk production". As you understand the current  
21 interpretation of the Order, would that be consistent  
22 with current interpretation of the Order language?

23 A That would be consistent with the current  
24 interpretation. We look at the deliveries of a  
25 producer across the month. If, on the first day and

1 the last day of the month, the dairy farmer delivers  
2 what is on average a daily -- a day's production to a  
3 pool distributing -- pool plant, we would consider that  
4 producer to be qualified and eligible for diversion.

5 MR. MARSHALL: Great. Thank you very much.

6 JUDGE CLIFTON: Other questions for Mr.  
7 Mykrantz?

8 (No response)

9 JUDGE CLIFTON: Mr. Mykrantz, can you see any  
10 advantage or disadvantage from the suggestion made by  
11 Mr. Carlson? I'm going to hand you Exhibit 41, which  
12 includes his proposal.

13 MR. MYKRANTZ: I guess I could make a  
14 statement that if the Market Administrator objects,  
15 then so be it. I believe that Order language should be  
16 as clear as possible, so that its interpretation is --  
17 is obvious, and it helps us do our job when that is the  
18 case. But adding the word "equivalent", we would not  
19 have any objection to that.

20 JUDGE CLIFTON: Any further questions for Mr.  
21 Mykrantz?

22 (No response)

23 JUDGE CLIFTON: Does the Market Administrator  
24 want to ask any questions?

25 (No response)

1 JUDGE CLIFTON: All right. Anything further,  
2 Mr. Mykrantz?

3 MR. MYKRANTZ: I have nothing further.

4 JUDGE CLIFTON: All right. Thank you.

5 MR. MYKRANTZ: Thank you.

6 (Whereupon, the witness was excused.)

7 JUDGE CLIFTON: Mr. Beshore?

8 MR. BESHORE: We would recall Mr. Hollon at  
9 this time, if it is in order, Your Honor.

10 JUDGE CLIFTON: I believe it is.

11 MR. BESHORE: We have three exhibits that I  
12 would ask be marked for identification and received, if  
13 appropriate, prior to Mr. Hollon's testimony. All of  
14 the -- each of these has been available in the room for  
15 the -- the past several hours.

16 The first document, which I gather would be  
17 marked as Exhibit 43, is the Statement of Elvin Hollon  
18 Regarding Proposal 8, 13 pages.

19 JUDGE CLIFTON: I'm going to ask the court  
20 reporter to mark that as Exhibit 43.

21 (The document referred to was  
22 marked for identification as  
23 Exhibit Number 43.)

24 MR. BESHORE: Exhibit 44 would be the packet  
25 of exhibits regarding Proposal 8, which has a cover

1 page and --

2 JUDGE CLIFTON: Before you describe it, I'm  
3 going to ask the court reporter --

4 MR. BESHORE: It may be stapled together with  
5 the -- with the statement.

6 JUDGE CLIFTON: It is. I see it partway  
7 down.

8 MR. BESHORE: It's -- they're intended to be  
9 bundled separately, and it'll be helpful if they -- if  
10 they were.

11 JUDGE CLIFTON: Thank you. Now, you may  
12 continue to describe it.

13 MR. BESHORE: Okay. Exhibit 44 consists of  
14 seven tables, I believe.

15 JUDGE CLIFTON: And it's entitled Exhibit  
16 Regarding Proposal 8?

17 MR. BESHORE: Yes.

18 JUDGE CLIFTON: All right. I'm going to ask  
19 the court reporter to mark that as Exhibit 44.

20 (The document referred to was  
21 marked for identification as  
22 Exhibit Number 44.)

23 JUDGE CLIFTON: And for our purposes, it's  
24 separated, just so that we can know that we didn't lose  
25 an exhibit.





1 (No response)

2 JUDGE CLIFTON: There being no such requests,  
3 is there any objection at this time to the admission  
4 into evidence of Exhibit 43, Exhibit 44 or Exhibit 45?

5 (No response)

6 JUDGE CLIFTON: There being no objection,  
7 Exhibits 43, 44 and 45 are hereby admitted into  
8 evidence.

9 (The documents referred to,  
10 having been previously marked  
11 for identification as  
12 Exhibit Numbers 43, 44 and 45,  
13 were received in evidence.)

14 JUDGE CLIFTON: All right. Mr. Hollon, you  
15 remain under oath.

16 Whereupon,

17 ELVIN HOLLON

18 having been previously duly sworn, was recalled as a  
19 witness herein and was examined and testified as  
20 follows:

21 JUDGE CLIFTON: If you would begin and state  
22 your full name.

23 MR. HOLLON: Elvin Hollon.

24 JUDGE CLIFTON: Mr. Beshore?

25 MR. BESHORE: Okay. Before Mr. Hollon

1 proceeds with his statement, Exhibit 43, we're going to  
2 -- we're going to go through the exhibits and which are  
3 referred to in the testimony and may be helpful. I  
4 think it will be helpful to -- to review the exhibits  
5 in advance of the testimony in this case and proceed in  
6 that -- in that way.

7 DIRECT EXAMINATION

8 BY MR. BESHORE:

9 Q Let's look at Exhibit 44, the tables and  
10 charts that comprise that exhibit, Mr. Hollon.

11 First of all, Table 1, can you describe that  
12 information and how you prepared it, from what sources?

13 A Table 1, its purpose was to support our  
14 conclusion, our use of the 80-mile limit or distance to  
15 represent the local haul. There was, you know, -- we  
16 chose this method by analyzing the report done by the  
17 Market Administrator's Office that, I think, Chris  
18 Warner was authorized that Mr. Mykrantz put into the  
19 record earlier in the proceeding, and this data is  
20 taken from the most recent -- I think it's the 2001  
21 data and information.

22 Again, our purpose for this table was to  
23 support the use of the 80-mile local haul limit. For  
24 the purpose of doing this, we started out with the  
25 arithmetic equation, that a rate per hundredweight is

1 equal to a rate per mile times the number of miles  
2 divided by the number of hundredweights. So, the  
3 number that we would be -- the piece that we didn't  
4 know then was the number of miles, and we wanted to use  
5 the rate and volume information that was published in  
6 the Market Administrator's report to calculate that.

7 To do that, you need a couple of constants.  
8 The constant that we chose at a rate per mile is a  
9 \$1.90. In our business in this area, we find that to  
10 be a conservative rate. We have invoices anywhere from  
11 2.10, 2.15, 2.20 per mile, and so we chose a lower rate  
12 in part to begin to be conservative and also knowing  
13 that, you know, gas factor is probably the most  
14 volatile, so that we tried to -- we tried to again be  
15 conservative and we wanted to make sure we ended up  
16 with a credit calculation that would not be too  
17 lucrative.

18 In terms of a tank size, we chose the 63,000  
19 tank size volume, again looking at our operations,  
20 which we regularly bring milk from Idaho market into  
21 the Salt Lake City market, and because of various  
22 configurations, that is a very typical size that is  
23 used to make that trip.

24 The box in the middle of the page is -- is  
25 detail that was taken from the Market Administrator

1 report. For example, in that report, if we were to  
2 look, we would find that the rate per hundredweight for  
3 both Orders for the time period was .3685 cents per  
4 hundredweight. If you were to drop .3685 into the  
5 equation, that would compute out to a 122 miles.

6 So, we looked at various geographies and, of  
7 course, the geography that we were most interested in  
8 was the Northwest Utah, the Southwest Idaho and some  
9 combination. So, that report details information by --  
10 on an -- it drills down to a county level. The box on  
11 the bottom of the page takes selected counties in  
12 Northwest Utah and Southwest Idaho, and we picked those  
13 counties off South Central and Southwest. We picked  
14 those counties because they were part of our reserve  
15 milkshed and they had significant volumes of milk, and  
16 we attempted just to see what we would get for a  
17 weighted average across those counties.

18 When we looked at all of the detail and we  
19 looked at the -- did the same analysis for calendar  
20 year 2000, we selected 80 miles as a representative  
21 distance. There was some -- the mileage rate or the  
22 mileage figure dropped from 2000 to 2001 in the study,  
23 and we felt like that 80 was a representative rate and  
24 somewhat close to the biggest part of the milkshed,  
25 that being the Southwest Idaho group.

1           Q     And am I correct that the Market  
2 Administrator's study to which you referred is Exhibit  
3 7?

4           A     That's correct.

5           Q     Okay. Could you turn then to -- to Table 2  
6 of Exhibit 44?

7           A     Table 2 takes much of this -- much of this  
8 same data and is used to compute the credit that we  
9 would propose to use for the transportation credit  
10 portion of our proposal. In the -- in our request to  
11 the Dairy Division, we had posed a potential rate, and  
12 at the time we submitted the Notice, we kept to that  
13 rate.

14                     In doing the analysis, we -- we could --  
15 computed a lower rate and so again to try to make sure  
16 we stay on the conservative side, we have posed a rate  
17 .00302 or .302 cents. If you look at the box in the  
18 upper right-hand section, at using the rate per loaded  
19 mile, if you went one mile, you hauled 630  
20 hundredweights of milk, you would -- that rate would  
21 calculate out.

22                     The other constants that would be needed in  
23 our analysis would be the responsibility for local haul  
24 with 80 miles. Because we proposed that the credit be  
25 paid on Class 1 only, we took a survey of our own

1 experience, asked general questions of the Market  
2 Administrator, talked to our customers and concluded  
3 that most plants using a 90-percent average utilization  
4 -- average Class 1 utilization for a distributing plant  
5 was a reasonable number to use for a credit, and 90  
6 percent of 630 hundredweights is 567 hundredweights.

7 We then took these constants and -- and --  
8 and looked at several possible combinations of hauling  
9 milk from points in the marketplace, and I will go  
10 through the example of the one that was in the  
11 testimony, but they all calculate and compute the same  
12 way, and we have shared this spread sheet with several  
13 parties here at the hearing last week and some this  
14 week at the hearing. So, it's been available to  
15 parties to look at and analyze. Not every single party  
16 but it's been available to parties to look at and  
17 analyze.

18 Using the column for Smithfield, -- no. I  
19 think -- I don't know which one I used now.

20 Q Why don't you use Smithfield or Jerome?

21 A I'll use Jerome. Using the TripMaker  
22 software, it says that between Jerome and Salt Lake  
23 City is 224 miles. So, the first step would be to  
24 deduct the producer haul responsibility of 80 miles  
25 from that, saying that the credit would carry a 144

1 miles or would be paid on the cost representing that.  
2 A 144 miles times .00302 results in .434 cents per  
3 hundredweight.

4 We're assuming that 567 hundredweights would  
5 be available, using the average load or typical load in  
6 the Class 1 utilization. So, that would say that the  
7 total dollars of credits available would be \$246.24.

8 Q So, the credit's only paid on Class 1 milk?

9 A That is correct.

10 Q Milk that is -- volumes that are allocated to  
11 Class 1?

12 A Class 1, right. And the next step then is to  
13 say that the Order does have a difference and  
14 differential and that ought to be recognized in the  
15 computation. So, to the extent that this particular  
16 combination of from and to, the to, it would be a Salt  
17 Lake City destination, the from would be a location, a  
18 farm load in the Jerome, Idaho, area, and those two  
19 differentials result in a 30 cents difference and that  
20 30 cents times our same 567 hundredweights is a  
21 \$170.10.

22 So, the credit should be reduced by that  
23 amount because the load crossed the zones and that  
24 would -- that's designed to accommodate some of the  
25 costs.



1           Q     In essence, the pool already pays that 30  
2 cents?

3           A     That's the -- correct. That's why there's a  
4 difference in price.

5           Q     Okay.

6           A     That remaining then \$246 minus a \$170 leaves  
7 the remaining amount of credit that would be  
8 collectible to whomever might apply of \$76.14.

9                     One of the questions that always arises and  
10 has arisen several times already this week is what's  
11 the relationship of the credit and the cost, so that  
12 you can make, you know, attempt to make sure that the  
13 credit is not overly lucrative and would try to  
14 stimulate some type of economic activity just for the  
15 purpose of getting the credits. That would be not  
16 intuitive, and so I attempted to measure that, and if  
17 you took the credit plus the differential, which the  
18 differential is already in place, that would cover 58  
19 percent of the costs, the costs being defined as 224  
20 miles, full distance of the haul, times the \$1.90 per  
21 mile.

22                     If you backed out the value of the  
23 differential which would be the remaining \$76.14, the  
24 credit would reimburse 18 percent of the total costs,  
25 and that's then the model or the methodology for the

1 calculation for several different locations. These  
2 locations, I picked for analysis because I think they  
3 represent a reasonable idea of what might happen and  
4 where milksheds might come from to supply the Salt Lake  
5 City market.

6 Q Okay. And in this case, the Smithfield  
7 column, the Smithfield being the location of DFA's  
8 primary balancing plant in the market, is that correct?

9 A Yes.

10 Q Returns a zero hauling credit?

11 A That is correct.

12 Q Okay.

13 A Unfortunate but correct.

14 Q Could you turn to Table 3 then?

15 A Table 3 then is an attempt to answer, you  
16 know, what is the next question, is, you know, what  
17 might be the cost to the pool because the credit is --  
18 cost is borne by -- by the pool itself, not by an  
19 additional fee.

20 So, we have gathered our records internally  
21 and again this just represents the DFA experience. It  
22 does not represent the entire market, but we think it  
23 would be, you know, a reasonable representation, and  
24 even if we were half wrong, so that the experience were  
25 twice this, you could make whatever assessments you

1 wanted about that percentage and see how the dollars  
2 apply.

3 This was the entirety of calendar year 2001,  
4 and using the definitions that we set up for the  
5 credit, those being that it's only applicable to direct  
6 ship milk, it does not apply to supply plant milk or  
7 milk pumped out of a plant, that the farm must be in  
8 the marketing area, and the delivery plant must be in  
9 the marketing area, and then it needs to be more than  
10 80 miles because 80 or less would not get a credit  
11 because the local haul would be presumed to carry that.

12 So, we found from our records that in an  
13 entirety, we had 2,299 loads of milk that we  
14 transported to the market from somewhere that met --  
15 that -- that we transported into the market. Of those  
16 2,299, 1,609 over the course of a year met that  
17 definition of being greater than 80 miles, originating  
18 with the marketing area. In all cases, they picked up  
19 off the farm. So, those would be the universe of  
20 possible alternatives, and again they, you know, break  
21 out by month.

22 The row that's labeled "As Proposed to Actual  
23 Destination" would be the cost of the credit for the  
24 month, based on DFA experience, by eligible loads in  
25 the equation that I just went through.

1           I then considered two other possibilities,  
2           and one would be, what if a hundred percent of that  
3           milk were to deliver from the Jerome area? A hundred  
4           percent of the eligible milk would deliver from the  
5           Jerome area instead of the areas that it's delivered  
6           from?

7           So, in -- under that scenario and using, you  
8           know, the same calculation information, that would cost  
9           in January the credit \$10,460. I then went back and  
10          made one more calculation and said what happens if the  
11          entire volume that month, this would be 206 loads,  
12          originated, so that would include those that -- that  
13          weren't eligible, you know, for the computation, that  
14          cost would be \$13,219.

15          I then went in each month and tried to make  
16          at least a reasonable approximation of what the credit  
17          would cost the pool and the way that I did that was --  
18          was took the statistical uniform price multiplied by  
19          the pounds in the pool to get a total dollars. That's  
20          not an exact recomputation of the pool, but for this  
21          purpose, its accurate enough, subtracted out the cost  
22          of the credit and divided again by the pounds and the  
23          column labeled "Impact Per Hundredweight" that measures  
24          that, so the cost as proposed on -- on milk that would  
25          be eligible ranges from about a tenth of a cent to

1 about a quarter of a cent on all milk in the pool under  
2 these conditions.

3 The row that's labeled "Impact Per  
4 Hundredweight" underneath the "All Eligible Milk", that  
5 then ranges from maybe about a fifth of a cent, I think  
6 the highest month is still short a half a cent, and the  
7 impact, if all of the possible loads were to come,  
8 ranges from somewhere around a fifth of a cent to, I  
9 think, a little over half of a cent on a monthly basis.

10 Q Okay. Turn then to Table 4 of Exhibit 44.

11 A Table 4, the computation that refers to the  
12 assembly credit request, and I'll spend more time  
13 developing the thought in the statement, but one of the  
14 discussion points in terms of assessing balancing costs  
15 is whose costs do you use, and many of the -- many of  
16 you in the room were at the Class 3 hearing where  
17 basically a week was spent just discussing that point  
18 alone, and we already spent our week.

19 So, we decided that rather than use our own  
20 costs or any of you use your costs, we would use the  
21 costs we developed there. So, those costs and those  
22 formulas are the basis for the \$2.47 that we assess as  
23 the cost for converting a hundred pounds of milk into  
24 cheese at 3.5 percent test, and it -- the way that you  
25 derive that is each of those product formulas are

1 composed the same way. You take a market price, you  
2 subtract out a make allowance and you multiply by a  
3 yield factor.

4 So, since there are three product streams  
5 that come off of converting a hundred pounds of milk  
6 into cheese, and in our case, the plants that -- that  
7 -- that do the balancing are primarily cheese plants,  
8 the income stream from the cheese component, if you  
9 calculate that out, the income stream from -- I'm sorry  
10 -- the costs, not the income stream, but the costs of  
11 solving that equation for the cheese component, the  
12 whey cream component and the whey component add up to  
13 \$2.47 per hundredweight.

14 Again, all of these constants come out of the  
15 Class 3 formula that's in effect in the Orders today  
16 that was used/devised at the Class 3 hearing, and we  
17 felt like that this way, it should minimize any  
18 dispute, at least on this factor, about the cost that's  
19 assessed for capacity.

20 Q Very good. Turn to the next page of Exhibit  
21 44, which is a chart, identified as Chart 1. In fact,  
22 why don't you -- there are four charts. Why don't you  
23 just go -- go through them in sequence?

24 A Chart 1 is a recap of the daily average  
25 deliveries by month for 2001 to the Salt Lake City

1 Class 1 market.

2 Q DFA customers?

3 A DFA customers. This does not represent the  
4 entire marketplace and nor does it represent all the  
5 customer mix but all the customers or all the Class 1  
6 customers that we have, and it gives some idea that  
7 there is a swing in variation or in -- in average daily  
8 deliveries from a high in October to a low in July.

9 Chart 2 goes back to February of this year  
10 and computes the same thing, only it's on the basis of  
11 a single -- the days of the week. So, for all the days  
12 in February, the high was all the Thursdays in February  
13 and it had a range of slightly over 2,500,000 pounds of  
14 deliveries and a low on Saturday and Sunday, and the  
15 purpose of this chart was to show that within the week,  
16 there is a noticeable variation in demand pattern.

17 Chart 3 is to give some idea of the volume of  
18 milk that's balanced in the Smithfield plant and its  
19 variation, and at the same time on the right axis, the  
20 cost per hundredweight and this is in our costs, all  
21 costs, making that conversion, and the -- the chart  
22 demonstrates there is variation in the milk available  
23 and that is due to the balancing of the market, and  
24 there is a variation in the cost, and as -- as one  
25 would typically expect, the numbers bear out that

1 volumes -- when volumes are higher, costs are lower and  
2 vice versa, when volumes are lower, costs are higher.

3 The other DFA plant in the marketplace that  
4 does some balancing is the plant at Beaver, and there,  
5 it shows the -- it's a smaller plant, shows the volumes  
6 over the course of the year and the costs and again  
7 volumes are higher, costs are lower, and conversely and  
8 these represent, you know, our own internal cost  
9 experience.

10 Q What year's cost and volume --

11 A 2001.

12 Q In both Smithfield and Beaver?

13 A Correct.

14 Q And so, Chart 3 for Smithfield and Chart 4  
15 for Beaver should be noted as -- for the calendar year  
16 2001?

17 A That would be correct.

18 Q Okay.

19 A The next page is a duplicate of the operator  
20 error in terms of putting the exhibit together.

21 Q Only one Table 4?

22 A Only one Table 4, and it's the same.

23 Q Okay. How about Table 5 of Exhibit 4?

24 A Table 5 and 6 are identical in methodology,  
25 but one is a calculation of the cost of balancing, if



1 you will, of the Smithfield plant, and I take the  
2 average day in the year -- I'm sorry -- the average --  
3 well, the daily average for the year, the daily average  
4 for the highest month, which was May, the daily average  
5 throughput for the plant with the lowest month, which  
6 was December, the difference between the average to  
7 high, that being 22 percent, the make allowance, the  
8 cost allowance that was taken from the Class 3 formulas  
9 of \$2.47 and a cost of 54 cents per hundredweight.

10 If you were to take that 54 cents per  
11 hundredweight per day, it would be \$5,600 a day, a  
12 little over two million in a year, 4.4 cents if you  
13 spread that across over all milk in the pool, or just  
14 under 20 cents if you spread that cost -- cost across  
15 the Class 1 portion of the pool.

16 Q And how's 54 cents calculated?

17 A The 54 cents is 22 percent. That's the  
18 capacity that's -- that's available but not used  
19 between the average day and the high day, and 22  
20 percent times \$2.47 full costs is 54 cents.

21 Q Okay. And is Table 6 the same calculation  
22 for the actual usage at the Beaver plant?

23 A That is correct, and the methodology is the  
24 same, and the cost overall milk, 1.2 cents, and the  
25 cost over Class 1 alone, 5.3 cents.

1           Q     Okay.  Now, the final page of Exhibit 44, is  
2     that Table 7?

3           A     Yes.

4           Q     Okay.  And could you explain Table 7?

5           A     Table 7 was an attempt to recap the costs of  
6     maintaining a supply for the Class 1 market, and in  
7     that cost structure, and again these would be DFA  
8     experience and just for the portion of our operating  
9     unit that deals with the Western Order.  So, for  
10    example, any costs that we might have in the Mountain  
11    Area Council, which is this part of our operation out  
12    of the Pacific Northwest Area, or the Central Order  
13    Area were not included in these numbers.

14                    So, they represent costs for procurement and  
15    field service.  So, that would be salaries,  
16    supervision, day-to-day expenses, things that go with  
17    having employees whose -- whose responsibilities they  
18    are to contact members, make sure that members meet  
19    quality standards, make sure members understand the  
20    demands and needs of the marketplace, as well as  
21    information about Dairy Farmers of America.

22                    Also includes costs of maintaining a lab in  
23    order to maintain milk supply.  We face some of the  
24    same concerns that Mr. Williams talked about this  
25    morning in his milk shed, and a laboratory is one of

1 the costs of keeping track of those, maintaining a milk  
2 receiving location, and this has nothing to do with the  
3 transport costs but is just the cost of maintaining  
4 trucks, washing them, sealing them, tagging them, to  
5 service our customer -- our fluid customers.

6 And then, finally, the accounting and general  
7 administrative costs that's associated with this. This  
8 would be providing a payroll, the computer and  
9 associated costs with that, and in this -- in this cost  
10 figure, there are no corporate numbers, no interest  
11 costs, costs for me is not included in these numbers.  
12 It is only the local costs in this area.

13 Q Whatever benefit you're providing to the  
14 marketplace?

15 A That is correct.

16 Q Okay.

17 A So, that total for the course of a year under  
18 those considerations was 2.5 million. The Market Class  
19 1 percentage for that year was -- for 2001 was 22.09.  
20 So, you could say that the portion of this cost that  
21 was directly attributable to maintaining and keeping  
22 this milk supply for the Class 1 market was 2.5 million  
23 times 22 percent or 555,000. If you were to spread  
24 that cost over all milk in the pool, it would be 1.2  
25 cents, and over the Class 1 portion only 5.4 cents.

1           Q     Okay. With that preview of the exhibits,  
2     data on the exhibits, supporting your statement  
3     regarding Proposal 8, would you proceed then to present  
4     the -- the portions of your prepared written statement  
5     in Proposal 8 that you choose to now in support of the  
6     proposals for marketwide service payments relating to  
7     transportation and assembly costs for the Class 1  
8     market?

9           A     Okay. What I hope to do is to omit the  
10    sections of the statement that the calculations were  
11    detailed having covered that by going through the  
12    charts and exhibits themselves.

13                   In addition to our concerns about the level  
14    of blend price, we're also concerned about the --  
15    concerned about the costs associated with supplying the  
16    Class 1 market. The Class 1 market is where the  
17    additional revenues are generated that Orders are  
18    designed to equalize between producers. Orders are  
19    structured with pricing services and provisions  
20    designed to allow producers to share equitably in the  
21    returns from the market.

22                   Everyone gets the same blend price adjusted  
23    for location regardless of buyer. Our concern in this  
24    area is that it costs more to service the Class 1  
25    market and while all producers share equally in the

1 returns of the market, not all share equally in the  
2 service costs.

3 Areas of additional costs include  
4 transporting milk to the distributing plant locations  
5 from the production areas. The distributing plants are  
6 located in the population centers and away from the  
7 largest supplies of milk. The manufacturing plants are  
8 located in the production pockets. The location of the  
9 distributing plants and the location of the milksheds  
10 were discussed in earlier testimonies and do not need  
11 to be reviewed here.

12 Secondly, there are costs associated with  
13 meeting the varying demands for milk from the fluid  
14 market. Fluid processors reflecting consumer buying  
15 habits do not have a weekly order pattern that matches.  
16 Procuring extra milk and processing the milk that is  
17 not needed during certain parts of the week have costs.  
18 Also, all market participants do not share in the cost  
19 of maintaining a quality milk supply necessary to meet  
20 the demands of the Class 1 market equally.

21 We have a concern that while the cost of  
22 serving the market are not fully shared by all parties,  
23 there is an equal concern that the proposals we are  
24 making be reasonable and reflective of the costs they  
25 are designed to offset.

1           While we do not want DFA members to bear a  
2           disproportionate share of the costs of serving the  
3           Class 1 market, we do not want to set up a  
4           reimbursement structure that causes market participants  
5           to make decisions to get the credit that would be  
6           counter to solid or sound economic principles.

7           Specifics of the transport costs credit. Our  
8           proposal embodies the following principles: the  
9           transport credit should -- should apply to Class 1  
10          pounds only; the credit should apply to -- the credit  
11          should only apply to milk produced within the marketing  
12          area and processed in the area. There is no need to  
13          bring supplemental milk supplies into Order 135 and no  
14          need for the credit to apply to out-of-area sources.

15          In order to strive for the most economic  
16          efficiency, the credit should apply to milk picked up  
17          from the farm only. Most of the milk movements in  
18          Order 135 reflect this mode now. We do not see a cost  
19          to apply the credit to supply plant milk as that mode  
20          has additional costs associated with it.

21          The credit calculations should recognize that  
22          a producer has a responsibility for a portion of the  
23          haul. The credit calculations should recognize a  
24          typical transport volume for the market and a typical  
25          cost per mile of transport operation. Because the rate

1 is sensitive to gas prices and would have the  
2 propensity to be volatile, we think the rate  
3 established should be on the low side of the market  
4 experience.

5 The credit should recognize the location  
6 values already in the Order's price service and thus  
7 reduce the total value of the calculation. The credit  
8 should not apply if milk moves from a higher-price zone  
9 to a lower-price zone. This will require a  
10 modification to our original language as proposed, and  
11 we will submit language later in our testimony.  
12 However, we cannot find any rationale that would  
13 support moving milk out of a \$1.90 zone into a  
14 distributing plant in the \$1.60 zone. So, we would  
15 propose that that movement not receive a credit from  
16 the pool.

17 Skipping over to Page 4 because the -- all of  
18 the pages -- all of the paragraphs from here to there  
19 discuss the computations that we just went through, --

20 JUDGE CLIFTON: Mr. Hollon, --

21 MR. HOLLON: Yes, ma'am?

22 JUDGE CLIFTON: -- fill in the blanks, so  
23 we're --

24 MR. HOLLON: Okay.

25 JUDGE CLIFTON: -- sure, and Page 3, your

1 number references to exhibits, should all of those  
2 refer to Exhibit 44, which is the exhibits regarding  
3 Proposal 8?

4 MR. HOLLON: Not the second one. The second  
5 one is the Market Administrator's --

6 MR. BESHORE: The second blank should refer  
7 to Exhibit 7.

8 JUDGE CLIFTON: Okay.

9 MR. BESHORE: The Market Administrator's  
10 Exhibit on -- report on hauling rates.

11 JUDGE CLIFTON: Okay. And are all the others  
12 Exhibit 44 on Page 3?

13 MR. HOLLON: Yes, ma'am.

14 MR. BESHORE: Yes, they are.

15 JUDGE CLIFTON: Thank you.

16 MR. BESHORE: Thank you, Your Honor.

17 MR. HOLLON: Going to Page 4 and beginning  
18 the third paragraph up from the bottom, from a  
19 logistical standpoint, the handler desiring to claim  
20 the credit must present documentation to the Market  
21 Administrator at pool time. That documentation should  
22 include the last stop on the route and the city closest  
23 to that stop, the volume of milk on the load, the miles  
24 from the city to the distributing plant and the date  
25 and the name of the plant delivered to.



1           This data should allow for the credit to be  
2           computed, the pool calculated and the appropriate  
3           payments made within the time needed. If the route is  
4           composed of more than one farm stop, the stop that  
5           results in the least cost to the pool must be used, and  
6           I would add the words "to make the calculation".

7           Our proposal specifies that payment may be  
8           made to the milk supplier if he is not the pooling  
9           handler. The language to effect our proposal would be  
10          as follows: in Section 1135.30 -- I'm not going to  
11          read again the exact paragraphs but only the notes that  
12          refer to them, but with regard to this section's (a)(5)  
13          and (c)(3), the -- these added sections are needed to  
14          make clear that the reporting handler has the  
15          obligation to make the information known to the Market  
16          Administrator.

17          There would be language inserted in 1135.32  
18          and again from the notes, this language makes clear the  
19          Market Administrator's ability to collect the  
20          information necessary to administer the credit, and (2)  
21          it also makes clear the dates before which the handler  
22          applying for a credit must make any requests for the  
23          adjustments.

24          Section 1135.55. Again down to the notes,  
25          Section (a) provides for the dates that payment should

1 be made to handlers seeking the transportation credit  
2 and the final dates for which adjustments can be  
3 requested. It also makes clear that a payment can be  
4 made directly to the supply-qualified cooperative with  
5 adequate documentation.

6 Next page, Page 7, down to the notes, Section  
7 (b) describes the calculation of the credit as follows:  
8 the credit is only allowed on bulk milk received  
9 directly from farms that are located within the  
10 marketing area. Paragraph D determines the allocation  
11 sequence that arrives on the pounds of Class 1 usage  
12 that the credit is paid on.

13 The hundredweight credit rate is 0.302 cents  
14 in Exhibit 44, Table 2. This is represented by the row  
15 "Credit Rate Per Mile Of".

16 JUDGE CLIFTON: Is that per mile?

17 MR. HOLLON: It should be per mile.

18 MR. BESHORE: 00302.

19 MR. HOLLON: Of 0.0302. Did I put the right  
20 number of zeroes? Let me repeat that. 0.00302. Note  
21 that this does represent a modification of our initial  
22 proposal. The first 80 miles is deducted from the  
23 total miles.

24

25

1 BY MR. BESHORE:

2 Q Mr. Hollon, --

3 A Yes?

4 Q -- if I may interrupt you just a minute, so  
5 that there's no question about Subparagraph 3 or Point  
6 3 under the notes here on Page 7 of Exhibit 43 that you  
7 are reading, the hundredweight credit rate is what?  
8 There should be no dollar sign there, isn't that  
9 correct? It's 0.302 cents?

10 A Yes.

11 Q Get rid of the dollar sign, in other words,  
12 and -- and then, in the third line, milk should be  
13 mile?

14 A Right.

15 Q The number -- the number in that -- in that  
16 case, the credit rate per mile of -- where is the  
17 dollar sign there, if there is one?

18 A Well, there would be a dollar sign there.  
19 So, it would be --

20 Q In this case, there should be a dollar sign?

21 A Yes.

22 MR. STEVENS: Before the first zero?

23 MR. HOLLON: Before the first zero.

24 BY MR. BESHORE:

25 Q So, it's \$0.00302, correct?

1           A     Yes.

2           Q     Okay. Remove the dollar sign on the first  
3 line and insert one on the numbers in the third line.  
4 Okay. Thank you.

5           A     Note 5, an adjustment is made for the  
6 positive difference between the Class 1 differentials  
7 and the operating originating county in the receiving  
8 plant. In the Western Order under the current price  
9 service, this would always represent a \$1.90 less a  
10 \$1.60. The credit is always either a positive number  
11 or zero.

12                     Section (c) describes the assembly credit and  
13 we will deal with that later on in this statement.

14                     Turning the page, the Note Section (d)  
15 details the allocation procedure used to determine the  
16 pounds of Class 1 milk that would be eligible for the  
17 credit at each plant. Note Section (e) details what  
18 procedure the Market Administrator is to use to  
19 establish mileages between two points in the credit  
20 computation.

21                     Furthermore, the mileages may be redetermined  
22 from time to time as conditions warrant. Any change in  
23 mileages may not be retroactively applied to any period  
24 prior to when the redetermination was made.

25           Q     So, if someone's looking at the text of

1 Exhibit 43, on that note, you inserted when you read it  
2 "applied" after retroactively?

3 A Right.

4 Q Correct?

5 A Note Section (f) clarifies how to deal with  
6 deliveries from routes composed of multiple farms. The  
7 opportunity for abuse is minimized by the application  
8 of this section by making clear that no matter how the  
9 route was assembled or alleged to be assembled, the  
10 credit computation must be based on the farm that  
11 results in the lowest possible mileage being applied  
12 for.

13 Finally, Note Section (g) is designed to  
14 prevent any credit from being paid on loads of milk  
15 that originate in higher-priced locations than the  
16 delivery point. In the case of the Western Order and  
17 the existing price surface, no credit would be paid if  
18 the load originated in the \$1.90 zone and delivered to  
19 the \$1.60 zone. We can find no rationale to support  
20 this type of delivery with a credit.

21 The Assembly Credit Proposal. Areas of  
22 additional cost that are separate from the  
23 transportation function include the cost of balancing  
24 the level of milk production with the demand of fluid  
25 use -- with the demand of the fluid use market,

1 maintaining a quality milk supply that meets the  
2 demands of the fluid use market, costs associated with  
3 reloading tankers, washing them and dispatching them  
4 and the overhead associated with tracking these  
5 functions.

6 Additional costs of balancing the fluid  
7 market is the reduction in income caused by diverting  
8 milk away from fluid plants which are mostly in higher  
9 Order price locations to manufacturing plants in the  
10 lower price zones. This cost is difficult to quantify.  
11 For the purpose of this hearing, we've chosen to leave  
12 it out of any calculation.

13 Exhibit 44, Chart 1, details our experience  
14 in servicing the Class 1 Salt Lake City market over the  
15 entire year. It shows that each month has a different  
16 level of demand. The computations are on a daily  
17 average basis to adjust for the different number of  
18 days in the month. The data represents the major Salt  
19 Lake City Class 1 bottlers but not the total market.  
20 The peak month of October had a nine-percent swing on a  
21 daily average basis over the low month of July.

22 The fluctuation in volume between the two  
23 months amounted to a 7.4 million pound swing in demand.  
24 The market must have the capacity to handle these  
25 fluctuations each month efficiently in order to best

1 enhance producer income.

2 Exhibit 44, Chart 2, outlines a similar  
3 comparison for the month of February, the most recent  
4 month we had data available. It shows a similar  
5 variation inside each week with demand peaking on  
6 Thursday and falling noticeably on the weekend. Again  
7 capacity to handle these fluctuations must be available  
8 in the market.

9 DFA's balancing capacity is done primarily  
10 through its plants at Smithfield, Utah, and Beaver,  
11 Utah. The DFA Smithfield plant's in Northeast Utah in  
12 Cache County. It is the cheese plant with an average  
13 daily capacity of 1.2 to 1.8 million pounds of milk per  
14 day. The plant manufacturers cheddar and Swiss cheese.  
15 Whey is processed on site. It is also a primary  
16 reserve and balancing point for the market.

17 Chart 3, labeled "Smithfield", average daily  
18 volume, milk volume and processing costs shows the  
19 average daily volume by month for calendar 2001 plotted  
20 against the average processing cost per hundred pounds  
21 of milk for the DFA Smithfield, Utah, plant. Volume  
22 throughput is noticeably lower in the Fall months. May  
23 is the peak month for volume averaging 1. -- 1,269,379  
24 pounds, and December the low point at 795,941 pounds or  
25 a 37-percent change from peak to base. The daily

1 average throughput is 1,041,875 pounds per day.

2 Costs peaked out in November at a little over  
3 \$3 per hundredweight of milk and a low point in April  
4 or May at slightly over \$2 per hundredweight. Costs  
5 are reflective of direct manufacturing costs only and  
6 reflect all cheese and whey product lines in the plant.

7 Chart 4, labeled "Beaver Average Daily Milk  
8 Volumes and Processing Costs", depict the same type of  
9 data for DFA's Beaver, Utah, plant. The plant is  
10 located in Southwest Utah. It manufacturers several  
11 varieties of cheese and processes condensed milk  
12 products and sells cream. The plant was built in the  
13 1950s. Its processing capacity is about 500,000 pounds  
14 per day. Whey is sold and not further processed at the  
15 plant. Calendar year 2001 average daily milk volume in  
16 the plant peaked in September at just under 300,000  
17 pounds per day. Average throughput was 231,048 pounds  
18 per day. The low point for the plant throughput was  
19 January at just below 200,000 pounds per day. Direct  
20 manufacturing costs range from a low of about a \$1.75  
21 per hundredweight of milk in July to a high of just  
22 under \$3 in January. Again, these costs reflect direct  
23 manufacturing costs only and for all product lines in  
24 the plant.

25 In order to assess the cost of the balancing



1 function, we have chosen to use the make allowance per  
2 hundred pounds of milk in the Class 3 formula rather  
3 than our own experience. It has been developed after  
4 an extensive hearing and is currently in use in the  
5 Federal Order System. Each of its components have been  
6 scrutinized by many of the parties in the room and all  
7 are somewhat familiar with its workings. Use of this  
8 cost factor eliminates any discussion of what costs in  
9 our -- what costs are in our proposal and how they were  
10 derived.

11 Skipping the next two paragraphs and the last  
12 paragraph on the page, Exhibit 44, the paragraph I  
13 skipped, that blank is also Exhibit 44, Table 4. Now,  
14 moving to the last paragraph on the page, Exhibit 44,  
15 Table 5 and 6, utilize this make allowance and the  
16 actual throughput in each plant to arrive at a cost of  
17 unused capacity. The capacity is unused due to the  
18 plant's function in balancing market.

19 In Smithfield's case, the difference between  
20 the average daily throughput and the high month daily  
21 average is 227,504 pounds per day or a 22-percent swing  
22 in plant utilization. Put another way, in order to  
23 have enough capacity to balance when the most capacity  
24 is needed requires 22 percent more capacity than at the  
25 average.

1           When unused, this 22 percent of capacity was  
2 not able to earn a return and yet still incurred costs.  
3 Pegging the cost at \$2.47 per hundredweight of milk,  
4 the 22-percent capacity that was available but unused  
5 cost 54 cents per hundredweight or \$5,619.36 per day.  
6 Extended out to a year and a portion of the costs, all  
7 milk in the pool would cost -- would cost \$0.44 per  
8 hundredweight or \$.1999 per hundredweight on Class 1  
9 volume alone.

10           The same type of calculation applied to the  
11 Beaver volume results in a \$0.012 per hundredweight  
12 cost on all milk or \$0.053 per hundredweight on Class  
13 1. Because balancing milk supplies has a weekly and  
14 seasonal component, the balancing plant operator cannot  
15 always scale his fixed and variable costs exactly to  
16 theory. For example, in the manufacturing plant, some  
17 portion of labor is a variable cost. But workers  
18 cannot be laid off on Thursday only to be hired back on  
19 Saturday. Also, holidays, seasonal fluctuations in  
20 milk supply and changing retail promotions play a role  
21 in the need for balancing capacity.

22           The other component of assembly costs that we  
23 can measure reasonably are the costs associated with  
24 procuring and maintaining a milk supply and tailoring  
25 that supply to the market needs. In order to

1 accomplish this, a laboratory field services staff,  
2 facilities to operate tank fleets and the costs  
3 associated with those facilities themselves, not the  
4 transport function and the overhead associated with  
5 these functions.

6 Exhibit 44, Table 7, outlines these costs  
7 with the DFA milk supply in the Western Order. Costs  
8 include the salaries and employee costs of a field  
9 force, their travel, training, day-to-day operating  
10 experiences. Laboratory costs include employees,  
11 equipment, buildings, supplies and communications.  
12 Milk receiving includes the cost of employees,  
13 buildings, washing equipment, testing facilities and  
14 the testing facilities in the facility and travel and  
15 day-to-day expenses. Accounting and GNA represent only  
16 those direct costs of supporting the above services,  
17 paying producers, the buildings and facilities needed  
18 to do so, and the complying with Federal Order  
19 regulations. They do not include any expenses for  
20 membership meetings, governments or corporate costs.

21 Furthermore, all costs are directly  
22 associated to the Western Order Area of DFA's Mountain  
23 Council only. Those costs total \$2.5 million for  
24 calendar year 2001. Applied only against the 22-  
25 percent Class 1 market results in a pro rated cost of

1       \$555,795. Spread out on the entire pool, this  
2       represents \$0.012 per hundredweight and \$0.054 per  
3       hundredweight on Class 1 pounds.

4               Taken as a whole, these sum to 30.6 cents per  
5       hundredweight on all Class 1 milk in the pool -- I'm  
6       sorry -- all Class 1 milk in the pool or 6.67 cents on  
7       all milk. The language to support our proposal would  
8       provide in Section 1135.55 each handler -- this is  
9       Section (c), each handler operating a pool distributing  
10      plant described in Section 1135.7(a) or (b) that  
11      receives milk from dairy farmers, each handler that  
12      transfers or diverts bulk milk from a pool plant to a  
13      pool distributing plant and each handler described in  
14      Section 1009(c) that diverts producer milk to a pool  
15      distributing plant --

16              JUDGE CLIFTON: Excuse me just a moment.

17              MR. HOLLON: Yes, ma'am.

18              JUDGE CLIFTON: Diverts or delivers?

19              MR. HOLLON: Delivers.

20              JUDGE CLIFTON: Okay.

21              MR. HOLLON: Producer milk to a pool  
22      distributing plant shall receive an assembly credit on  
23      the portion of such milk eligible for the credit  
24      pursuant to Paragraph (d) of this section. The credit  
25      shall be computed by multiplying the hundredweight of

1 milk eligible for the credit by 10 cents.

2 I would note that in our -- again, our  
3 submission for Notice -- Request for Hearing and  
4 Notice, we had asked for five cents, and after doing  
5 the math, we have increased that request to 10 cents.

6 Note. The credit would apply -- would only  
7 apply on deliveries to Class 1 use. The credit would  
8 be paid to anyone making the delivery. In order to  
9 make sure the credit reflects only a portion of the  
10 cost, we have reduced the credit from our calculation  
11 of 31.4 cents to 10 cents. This is a modification of  
12 the original proposal. At this rate, the cost of  
13 credit to all milk would be 2.2 cents per  
14 hundredweight.

15 The reduction represents approximately a  
16 third of the estimated total cost function that we have  
17 outlined in the assembly and balancing function. This  
18 reduction acknowledges that the distinction between  
19 fixed and variable costs in the balancing plan equation  
20 are difficult to disaggregate. The conservative nature  
21 of our proposal should not overcompensate for costs.

22 BY MR. BESHORE:

23 Q Okay. Now, does that complete your direct  
24 testimony with respect to Proposal 8?

25 A Yes.

1           MR. BESHORE: Okay. I would suggest and  
2 propose, Your Honor, Mr. Hollon proceed to give his  
3 direct statement with respect to the other proposal  
4 which has been marked as Exhibit 45. It's not long.  
5 That would complete in full his direct testimony.  
6 Most of those -- all those proposals have already been  
7 discussed by other witnesses, by the way. That would  
8 complete his direct testimony on all proposals in the  
9 hearing and he would then be available for examination  
10 by any party on -- on all of the rest of the proposals  
11 in the hearing.

12           JUDGE CLIFTON: Your proposal is accepted.

13           MR. BESHORE: Okay.

14           BY MR. BESHORE:

15           Q     Can you proceed then with your testimony --

16           A     Sure.

17           Q     -- on the remaining proposals as reflected in  
18 the statement that has been admitted as Exhibit 45?

19           A     Statement of Dairy Farmers of America,  
20 Proposals 5 and 11 through 16, with Regard to Emergency  
21 Conditions -- and with Regard to Emergency Conditions.

22                     Proposals 5 and 11 through 14. Proposal 5  
23 deals with the proprietary bulk tank handler provision  
24 which facilitates pooling arrangements that are causing  
25 handlers in the market to question whether or not all

1 milk purchases are being transacted at minimum prices  
2 or if some handlers are purchasing milk supplies at  
3 below Order prices.

4           Since minimum pricing to handlers is a  
5 cornerstone of Federal Order practice, this is a  
6 serious charge. Our customers have brought this matter  
7 to our attention repeatedly. A reasonable measure of  
8 the concern for this situation is to note that it  
9 garnered the most proposals for change in the Notice of  
10 Hearing.

11           As processors -- as processor concern over  
12 this issue grows, it becomes both a sore point between  
13 buyers and sellers and an opportunity for buyers to  
14 negotiate lower prices. The fact that processor  
15 representatives are here with proposals underscores  
16 their concern since they are more concerned with  
17 correcting or eliminating the problem than they are  
18 about allowing the provisions to remain in place and  
19 using them as a negotiating lever.

20           We suggest following the age-old adage  
21 actions speak louder than words. The concern for  
22 marketing problems demonstrated in the actions of the  
23 handlers speak more eloquently than any testimonial  
24 evidence that should persuade the Secretary to -- and  
25 should persuade the Secretary to eliminate the

1 provision.

2 We support the testimony and evidence given  
3 by the proponents of Proposals 11, 13 and the Market  
4 Administrator Proposal 14. We concur with the opinion  
5 that this provision is not necessary in order for the  
6 proprietary bulk tank handler provision to be able --  
7 I'm sorry -- in order for the proprietary bulk tank  
8 handler to be able to pool milk.

9 Clearly, there are no regulatory obstructions  
10 to the handlers that use these provisions now from  
11 using other order provisions to accomplish pooling.  
12 They would be able to access the pool using the  
13 performance methods that would remain in the Order and  
14 available to all other participants, even if this  
15 provision were eliminated.

16 After considering the testimony and evidence  
17 given here and from our investigation of the facts  
18 surrounding this issue prior to the hearing, we feel  
19 that the Secretary should simply eliminate the  
20 provision rather than make any of the modifications  
21 proposed today.

22 I would interject here that when we planned  
23 this, I was going to follow the Meadow Gold proposals  
24 and so the proposals yet to be made today.

25 With regard to Proposals 15 and 16, we



1 support the changes proposed by Proposals 15 and 16.  
2 We review them as -- we view them as modifications to  
3 the Order that better reflect current and changing  
4 market conditions.

5 Emergency Conditions. We support the  
6 contention that these proposals be considered under the  
7 Emergency Hearing Procedures. Proposals 1 and 2 deal  
8 with the level of producer blend price and are  
9 consistent -- and consistent with our position on  
10 emergency records in other Order hearings. We concur  
11 that this proceeding should be treated on an emergency  
12 basis.

13 Proposals 3 through 16. We would also request  
14 that Proposals 3 through 16 be handled on an emergency  
15 basis. The final intent of these proposals would have  
16 an effect on the blend price and we desire that all  
17 proposals be considered at the same time, so that all  
18 parties be treated equitably.

19 It is possible that the outcome of the  
20 various proposals will have different competitive  
21 effects on each of the parties in the Order. Because  
22 of the turn-around time for a decision, change in some  
23 provisions on an emergency basis versus changes in  
24 other provisions on a regular basis could cause  
25 different parties to have differing revenue streams in

1 order to run their business and pay producers.

2 All face the same set of Order provisions now  
3 and any changes that come as a result of this  
4 proceeding should affect all producers at the same time  
5 and in the same way.

6 Furthermore, because of the interaction  
7 between competitive activities in Orders 124 and 135,  
8 we would request that a decision announced in both  
9 Orders become effective at the same time. DFA members  
10 are a part of both Orders and feel that the timing of  
11 the effective dates is an important matter. This  
12 request is fully and completely under the control of  
13 the Secretary and could be accomplished without any  
14 special dispensation needed.

15 For example, distant milk that now may have  
16 access to both pools but because of the staggered  
17 decision effective dates comes to have access only to  
18 one pool could shift more supplies to the second pool.  
19 If the proposals requested here are adopted, one of the  
20 reasons would be that current conditions are  
21 disorderly. The effects of staggered implementation  
22 would be more so.

23 DFA has requested that decisions be  
24 contemporaneously implemented and the other now pending  
25 Orders for Orders 30, 33 and 32. We'd make the same

1 request here and believe that it is an equitable and  
2 fair request. I would point out that our request is  
3 not that the 124 and 135 and 30 and 33 and 32 all be  
4 announced at the same time but those two groups of  
5 proposals be announced or effective at the same time  
6 and unless something's going to happen in about five  
7 minutes with 32 and 33, I guess that won't come to bear  
8 or at least by May 31st.

9 Q Does that complete -- that then completes  
10 your direct testimony, --

11 A Yes.

12 Q -- does it not, Mr. Hollon?

13 MR. BESHORE: Okay. Your Honor, I would  
14 suggest that this might be a good time for a 10-minute  
15 break or so before, you know, cross examination of Mr.  
16 Hollon, if that's the pleasure of everyone.

17 JUDGE CLIFTON: Does anyone object to a 10-  
18 minute break?

19 (No response)

20 JUDGE CLIFTON: No. Let's -- please be back  
21 ready to go at 4:11.

22 (Whereupon, a recess was taken.)

23 JUDGE CLIFTON: All right. We can go back on  
24 the record. It's 4:15.

25 Mr. Hollon and Mr. Beshore have agreed to

1 yield to Ms. Barrow so that she can testify and then  
2 will not be detained any longer than need be.

3 Ms. Barrow, would you please again identify  
4 yourself, your full name and spell it, please?

5 MS. BARROW: My name is Joyce Barrow,  
6 J-O-Y-C-E B as in Boy A-R-R-O-W.

7 JUDGE CLIFTON: This is the first time you've  
8 actually testified in this hearing, is that correct?

9 MS. BARROW: Yes.

10 JUDGE CLIFTON: All right. Would you raise  
11 your right hand, please?

12 Whereupon,

13 JOYCE BARROW

14 having been first duly sworn, was called as a witness  
15 herein and was examined and testified as follows:

16 JUDGE CLIFTON: Thank you.

17 Ms. Barrow, tell us a little bit about  
18 yourself and your involvement with milk and then you  
19 may proceed in any manner you wish.

20 DIRECT TESTIMONY

21 MS. BARROW: I work for KDK, Inc. It's a  
22 small fluid processing plant.

23 JUDGE CLIFTON: Could you pull that  
24 microphone closer to you?

25 MS. BARROW: Oh, you want me to start over?

1 JUDGE CLIFTON: Yes.

2 MS. BARROW: Okay. I work for KDK, Inc.  
3 We're a small fluid processing plant in Draper, Utah.  
4 It is a family-owned business. I have worked there for  
5 almost 23 years, and I pool the milk. I work with the  
6 producers and handle the general business.

7 I have some concerns on this hearing. One, I  
8 oppose Number 3. One of the reasons I do is we  
9 transfer milk to exempt plants and just on occasions to  
10 some producer handlers. There's no provision that  
11 would allow -- you know, that milk wouldn't count.

12 Also, in the past, we have had to transfer  
13 milk. We have our own supply, have our own producers,  
14 plus we buy milk from Magic Valley. If we lost a major  
15 account, that would force me to either unload some  
16 producers or with the fluctuation until we could  
17 improve ourselves pay less than pool price for that  
18 milk. So, I would like to retain that right to be able  
19 to do that.

20 My greatest opposition is to Proposal Number  
21 8. We have our own supply of milk. We balance our own  
22 supply of milk. I don't feel DFA is paying for that  
23 balancing. Other than KDK, Winder Dairy and Gossner,  
24 they have the supply contract with all the other fluid  
25 plants in the Salt Lake market. If they can't

1 negotiate a high-enough price to cover their costs,  
2 then that's their fault. The other producers shouldn't  
3 pay that cost.

4 That concludes my comments.

5 JUDGE CLIFTON: Ms. Barrow, thank you.

6 Cross examination? Mr. Marshall?

7 MR. MARSHALL: Thank you, Your Honor.

8 CROSS EXAMINATION

9 BY MR. MARSHALL:

10 Q Could quick questions. How many employees do  
11 you have?

12 A Around 27.

13 MR. MARSHALL: All right. Thank you very  
14 much.

15 MS. BARROW: Hm-hmm.

16 JUDGE CLIFTON: Thank you, Mr. Marshall.

17 Mr. Beshore?

18 CROSS EXAMINATION

19 BY MR. BESHORE:

20 Q Ms. Barrow, why would you transfer milk to  
21 exempt plants or -- or producer handlers?

22 A We sell milk to the prisons.

23 Q Okay.

24 A It's right there in Draper, and the volume of  
25 milk that they need wouldn't -- it's not cost effective

1 for them to have a tanker come in there and have to set  
2 and wait for them to unload the amount that they take.  
3 So, we have just always -- you know, when they need the  
4 milk, we have it. We take it over. In fact, we leave  
5 the tanker there. When they finish unloading it, they  
6 call, we go get it.

7 Q Okay. Couldn't -- so, they take milk in  
8 amounts less than -- less than a tanker load?

9 A Yes.

10 Q Do you pick up milk at farms in -- in smaller  
11 than over-the-road tanker volumes? What I'm wondering  
12 -- what I'm getting to is why couldn't you take the  
13 milk direct from the farm over to that plant?

14 A Well, generally, the tankers that are around  
15 60 -- 60 to 70,000 pounds, and they're owned by private  
16 individuals, and for them to go and leave their tanker  
17 there for three or four hours just isn't cost effective  
18 or even overnight.

19 Q Okay. So, you leave your -- your own company  
20 tanker over there?

21 A Yes, we do.

22 Q Okay. Couldn't you -- I guess it doesn't  
23 seem to me that -- the transferring milk is -- you  
24 know, is necessary to supply that plant. If you picked  
25 it up off one of your larger farms into a tanker and

1       took it over to the exempt plant, you could -- you  
2       could supply them that way, could you not?

3             A       Well, we'd still have to transfer it off from  
4       that hauler's tanker on to our tanker and then take it  
5       over.

6             Q       So, the hauler of the equipment isn't  
7       adequate to supply --

8             A       No.

9             Q       -- that --

10            A       They don't want --

11            Q       -- prison?

12            A       I mean, we might take our tanker over there,  
13       like we take it over there generally on a Sunday, and  
14       they don't call and tell us it's unloaded till Monday.  
15       You know, I can't expect a hauler to lay his truck  
16       inactive for, you know, 24 hours.

17            Q       Okay. How about your transfers to producer  
18       handlers?

19            A       That is very rare. It's just where they  
20       maybe need 5,000, 10,000 pounds, that's it.

21            Q       Okay. Are you presently transferring milk --  
22       by transferring, you mean pumping milk in and pumping  
23       it out?

24            A       Into our plant and then out.

25            Q       Okay. Are you presently transferring other



1 milk out, like --

2 A No.

3 Q -- for qualification purposes?

4 A No.

5 Q Okay.

6 JUDGE CLIFTON: Ms. Barrow, be sure and let  
7 him finish his question.

8 MS. BARROW: Okay.

9 BY MR. BESHORE:

10 Q Okay. Now, with respect to Proposal 8, do --  
11 have you analyzed whether KDK would qualify for any of  
12 the -- you balance your own milk supply, correct?

13 A Yes, we do.

14 Q Okay. Do you know whether you'd qualify for  
15 any of those payments if Proposal 8 were -- were  
16 adopted?

17 A Yes. We -- we probably would, but why should  
18 I take from our producers? They're fighting for more  
19 money.

20 Q Okay. Well, if you supported Proposal 3,  
21 they could get more money.

22 A Well, --

23 Q You -- you understand that, of course.

24 A -- I want to preserve the right.

25 Q Pardon?

1 A I want to preserve the right.

2 Q Okay.

3 A You didn't hear me oppose 7, did you?

4 Q No, I didn't. I appreciate that. Are you  
5 supporting Proposal 7?

6 A I'm going to let whatever is wanted here be  
7 -- be the rule.

8 Q Okay, okay.

9 MR. BESHORE: Thank you.

10 JUDGE CLIFTON: Thank you, Mr. Beshore.

11 Any other questions of Ms. Barrow? Mr. Tosi?

12 CROSS EXAMINATION

13 BY MR. TOSI:

14 Q Thank you for appearing today. You said  
15 earlier your company employs about 27 people?

16 A Yes.

17 Q How many producers supply your plant  
18 regularly?

19 A Twelve of our own, and we also buy milk from  
20 Magic Valley.

21 Q You said 12 dedicated producers?

22 A Pardon?

23 Q Twelve dedicated producers?

24 A Yes.

25 MR. TOSI: Okay. Thank you. That's all I

1 have.

2 MS. BARROW: Okay.

3 JUDGE CLIFTON: Thank you, Mr. Tosi.

4 Any other questions for Ms. Barrow?

5 (No response)

6 JUDGE CLIFTON: Ms. Barrow, anything further  
7 you'd like to add?

8 MS. BARROW: No.

9 JUDGE CLIFTON: Thank you for testifying, and  
10 Mr. Beshore, thank you for yielding. You may step  
11 down.

12 MS. BARROW: Thank you.

13 (Whereupon, the witness was excused.)

14 MR. BESHORE: Mr. Hollon is available for  
15 cross examination.

16 JUDGE CLIFTON: Thank you, Mr. Beshore.  
17 Whereupon,

18 ELVIN HOLLON

19 having been previously duly sworn, was recalled as a  
20 witness herein and was examined and testified as  
21 follows:

22 JUDGE CLIFTON: Questions for Mr. Hollon?  
23 Mr. Marshall?

24 MR. MARSHALL: Thank you, Your Honor.

25

## 1 CROSS EXAMINATION

2 BY MR. MARSHALL:

3 Q Mr. Hollon, I'm going to focus, I think,  
4 entirely on Proposal Number 8. No questions occur to  
5 me at this point with respect to the others.

6 A Okay.

7 Q The -- probably the best place to start -- a  
8 number of questions about your exhibits.

9 A Okay.

10 Q Probably the best place to start, though,  
11 would be the 50,000-foot level. Not all markets have  
12 assembly transportation costs. In fact, there are none  
13 quite like this --

14 A None.

15 Q I'm sorry. You're quite correct. None of  
16 them have transportation or assembly credits that are  
17 quite like -- exactly like what we have here. What's  
18 unique about the market conditions in the Western Order  
19 that would justify imposition of some or any assembly  
20 credits or transportation credits, quite apart from the  
21 dollar figures involved?

22 A It's our view in certain of the markets on a  
23 day-to-day basis that not all of those costs are  
24 recovered in the marketplace.

25 Q Does Dairy Farmers of America charge its

1 producers a hauling fee to move their milk to plants?

2 A Yes.

3 Q Does Dairy Farmers of America collect service  
4 charges from the distributing plants to which it  
5 supplies milk?

6 A Yes.

7 Q How much of the cost of transporting milk to  
8 plants, to distributing plants, -- how much of the  
9 hauling costs involved in transporting milk from farms  
10 to distributing plants is not covered by the producer  
11 charges?

12 A I -- I don't have an exact number.

13 Q What's the purpose of the service charges  
14 collected from distributing plants?

15 A To offset some of these costs. I guess the  
16 purpose is to offset them all, but it doesn't always  
17 offset them all.

18 Q If the market were to bear the cost of these  
19 various costs that you've identified, and we'll talk  
20 about the nature of them in a minute, but if the market  
21 were to pay those, would there be a need for assembly  
22 credits or transportation credits?

23 A No.

24 Q So, there's something structural about this  
25 market that allows you to tell me that you cannot

1 recover those from the market?

2 A I don't know that it's unique just to this  
3 market, but in -- in this market, we find that the  
4 service charge level does not carry all of the costs.  
5 While you pointed out that there were other markets  
6 that have -- well, I guess your phrase was no other  
7 market has this exact type, but there are other markets  
8 with marketwide service payment programs in them and  
9 those markets, too, have premium levels and costs and  
10 in those markets, the premiums there do not always  
11 cover all of the costs.

12 There are assembly and transport credits in  
13 Order 30 and Order 30 has premiums in that market, and  
14 there are transportation credits for supplemental milk  
15 in Orders 5 and 7 and both of those markets have  
16 premiums and those premiums do not cover all those  
17 costs, and the only other marketwide service payment  
18 that I'm familiar with that no longer exists but for a  
19 period of time, the Texas Order had a haul-out, if you  
20 will, surplus marketwide service credit, and again in  
21 that case, the market did not carry or cover all of  
22 that cost. But that program did not find its way into  
23 Federal Order Reform.

24 Q Do you have any testimony to offer with  
25 respect to the Western Order, what percentage of these

1 costs of servicing the market are not recovered through  
2 service charge structures?

3 A I do not.

4 Q What factors would preclude DFA or any of the  
5 rest of us from increasing service charges from the  
6 distributing plants to which we supply milk?

7 A I suspect the factors that are present in any  
8 market, just the competitive nature of the marketplace.

9 Q So, the marketplace for, let's say, Salt Lake  
10 City is so competitive that you cannot increase your  
11 service charges to those plants. Is that what your  
12 testimony is?

13 A The factors and -- and that would be the  
14 chief one, the factors that -- under the competitive  
15 label, that would cause that to -- to be the case.

16 Q If we were to see the Department of  
17 Agriculture institute in this Federal Order an assembly  
18 credit or transportation credit to some degree, and if  
19 the amount of money that could be recovered from the  
20 marketplace were to increase, what mechanism would be  
21 available to ensure that that money was returned --  
22 that additional money was returned to the producers in  
23 the pool who would be funding the assembly and  
24 transportation credits?

25 Would you like me to rephrase that? I'm

1       sorry.

2           A     Maybe you might.

3           Q     I see that frown on your brow there, and I  
4       can understand why. I apologize.

5           A     Rephrase. I'm afraid to rephrase it myself,  
6       I might get two questions out of it.

7           Q     We're both tired, and I apologize.

8                     Your justification for asking the marketwide  
9       pool to bear assembly and transportation costs include  
10      the fact that it's not possible to collect those costs  
11      from the marketplace. I think that's your testimony so  
12      far, is it not?

13          A     That -- that is, and that the costs are that  
14      are in there now are not being borne equally across the  
15      market.

16          Q     All right. Let's get to that one in a  
17      minute. The next question comes, suppose the  
18      Department were to institute some transportation credit  
19      or assembly credit and then subsequently there were an  
20      opportunity to extract from the marketplace the costs  
21      of servicing that marketplace. What mechanism would be  
22      available to ensure that the producers were funding  
23      those credits that are provided for in the Order would  
24      in fact have those additional monies returned to them,  
25      the monies that are now being borne -- the monies to



1 represent the additional costs of servicing that the  
2 handlers might some day be persuaded to provide?

3 A In the example that I gave you for existing  
4 credits, if you were to ask that question in those  
5 markets, the answer would be there's not a way to do  
6 that.

7 Q We would have to go back to a hearing  
8 process?

9 A Well, if you chose to go back and affect the  
10 credit structure or with the competitive nature in the  
11 marketplace, it would take some effect.

12 Q Unless DFA were willing to disclose the  
13 amount of its service charge structure, unless we were,  
14 that would not be possible, would it?

15 A That is true. I think that is again true in  
16 any of the markets where those are in place now, that  
17 kind of analogy.

18 Q I can't recall if I've asked you directly.  
19 Is DFA willing to disclose its service charge programs  
20 for various customers in the Western Order Market?

21 A You did ask that.

22 Q And what was the answer?

23 A No.

24 Q All right. Let's turn to the 50,000-foot  
25 level. Let's turn to the --

1           A     No.  That's better.  50,000 miles awhile ago.  
2     That's good.

3           Q     Got a long ways to go, I fear.  You mentioned  
4     the other issue of equity, and I think I understand  
5     that in general.  Let's talk about the effect of  
6     transportation credits or assembly credits on the  
7     concept of uniform pricing for handlers.

8                     Would the assembly credits vary, as you  
9     propose them, to accommodate or to account for the fact  
10    that certain plants are inherently more efficient to  
11    serve than others?

12          A     In any of the markets where there's  
13    marketwide service payments now, those -- those kind of  
14    things don't happen.  So, I don't -- I don't see that  
15    there'd be a way for them to happen here either.

16          Q     You heard -- we had some testimony earlier, I  
17    think, from you regarding the concept called "every-day  
18    receipt credits".

19          A     Hm-hmm.

20          Q     Do you recall that?

21          A     Yes.

22          Q     Can you tell us without getting into  
23    something with which you're uncomfortable to testify  
24    for competitive reasons, can you tell us if all of the  
25    plants that DFA services in this market have some

1 provision to pay a different amount, depending on how  
2 evenly throughout the week their milk receipts are?

3 A I'm not familiar with the exact pricing  
4 structure in the marketplace, other than to say that  
5 it's my understanding that we do have a seven-day  
6 receiving credit that allows each handler to receive  
7 some type of credit, depending on how evenly they  
8 receive their milk. But I don't know nor would I say  
9 the mechanics or the amount of those credits, if I did  
10 know.

11 Q Can you tell me if it applies to all of your  
12 customers?

13 A No, I cannot. I don't know. I do not know  
14 that it applies to all of our customers.

15 Q The reason I ask is that we heard some  
16 earlier testimony about, I think, the Meadow Gold plant  
17 in Boise only receiving certain number of days of the  
18 week and so forth. So, if they're offered such a  
19 credit, I gather they're not taking advantage of it.  
20 Do you know that?

21 A I would have to come to the same conclusion  
22 that you did.

23 Q Well, one of the reasons for an every-day  
24 receipt credit is to induce -- let me ask this as a  
25 question.

1           In your experience, generally, throughout the  
2 country, is the purpose of an every-day receipt credit  
3 to induce a plant to build silo capacity and/or to  
4 adjust its processing schedules so that flow of milk to  
5 the market will occur at a more even rate throughout  
6 the week?

7           A     Yes, those are the purposes for those types  
8 of credits.

9           Q     And would that be one of the cost -- would  
10 the -- would that be because it costs more to service a  
11 plant that processes different amounts on different  
12 days of the week?

13          A     Yes, that would be true.

14          Q     And that's the basis for part of your  
15 approach, is it not, --

16          A     Yes.

17          Q     -- to this proposal?

18          A     Yes.

19          Q     Those credits are successful in providing a  
20 financial incentive to processors to change their  
21 processing schedule and to increase silo capacity,  
22 should not the cost -- should not that efficiency be  
23 shared back with the producers in the market under your  
24 theory that those costs should be paid by the market?

25          A     In a perfect world, you know, and in theory,

1 I would agree with you. I'm sure you've got some of  
2 the same experiences as the programs that have been  
3 successful. They plateau. They get more successful.  
4 They plateau. So, yes, I would agree with you, we  
5 would keep -- with the one caveat that it doesn't  
6 always work perfectly the way you design it.

7 Q We can all agree on that. Similarly then,  
8 would it not be fair to say that a plant which has not  
9 spent the money or has not -- to invest in silo  
10 capacity or which has not adjusted its processing  
11 schedule is costing the market more than a plant which  
12 has made those accommodations?

13 A Yes.

14 Q And should there not be some incentive within  
15 this program that you're proposing the producers pay  
16 for to ensure that economic signals are sent to the  
17 plants --

18 A I would agree --

19 Q -- that will --

20 A -- given your theory, but I'm not -- I'm not  
21 familiar with any proposals or any marketwide service  
22 credit programs that are in existence now that would  
23 match that theory to -- to reality, but I'd be open to  
24 a suggestion or to exploring if there was a  
25 possibility.

1           Q     Wouldn't it be possible to take something  
2     like the every-day receipt credit that you have in your  
3     service charge program and take it out of your service  
4     charge program and put it in the Federal Order, so that  
5     there's an incentive back to the producers who would be  
6     getting the credit from the very same plants?

7           A     I absolutely agree with your theory, and I've  
8     proposed it to several market administrators, but I've  
9     had zero success.

10          Q     Aha. We've found the enemy and he is not us.

11          A     Well, I wouldn't say it quite that way that  
12     you did. But nonetheless, I've had that discussion.  
13     The general answer is that for a Federal Order that's  
14     too variable of a program to institute, there's a  
15     hesitancy to do that. But I think it's a good idea.

16          Q     All right. Let's shift from what I'll call  
17     weekend balancing with every-day receipt credits to  
18     seasonal balancing. I have some conceptual concerns  
19     about your approach here. Putting it in perspective,  
20     though, I do understand that what you're trying to do  
21     is to assess -- to determine in some fashion a fair way  
22     to evaluate the costs of seasonal balancing.

23                     The approach that you seem to have taken, and  
24     I want to make sure I understand this because I don't  
25     want to get in an argument here, I'll do plenty of that

1 later, but just to make sure I understand the approach,  
2 it seems to me you've taken the experience with the  
3 Smithfield and Beaver plants as the indicator of unused  
4 capacity, have you not?

5 A Yes.

6 Q Would it not make -- have you looked at  
7 whether the seasonal pattern of receipts at the two  
8 plants, which I might add appears to be quite  
9 different, has any relationship to factors other than  
10 seasonal balancing?

11 A I haven't given that a tremendous amount of  
12 study. I think perhaps some of that would be covered,  
13 though, in the concept of using an average to base from  
14 rather than a peak to valley.

15 Q I'm sorry. I'm not finding -- maybe you can  
16 point me to where you discuss fixed costs and variable  
17 costs in your computation of the opportunity costs of  
18 not running those two plants.

19 A Yeah.

20 Q Do they exist in your tables or is it in --

21 A I can -- I can give you the general drift, is  
22 that in theory, there is a difference between fixed and  
23 variable costs, and there's -- in programs like these,  
24 there's some thought about at which level you recover  
25 and which costs you recover because the plant that does

1 balancing costs or balancing has such a variation even  
2 down to within the week, it gets pretty difficult to  
3 define, you know, with certainty where all of those  
4 costs are, you know.

5 A classic case, you'd say, well, labor's  
6 fixed cost. To a great extent, if you have idle  
7 capacity, you can lay off workers. But where you have  
8 a -- such a variation within the week, that becomes a  
9 pretty blurred line. So, we have not made any cost  
10 distinction, other than to acknowledge that and to  
11 point out that, you know, our total calculation ranged  
12 pretty high. So, we've cut it by a third down to 10  
13 cents. But the traditional cost accounting, you know,  
14 fixed cost/variable cost, there's no outline of that in  
15 my statement.

16 Q I missed that. Did you say in your testimony  
17 you have assumed that one-third of the costs should be  
18 reimbursed? One-third of the make allowance?

19 A One-third of -- of the Beaver costs was X,  
20 the Smithfield cost was Y, and the lab and procurement  
21 cost was Z, X plus Y plus Z was about 30 cents. We --  
22 we requested a payment of a dime, so it's about a third  
23 of the cost. Those were costs per hundredweight. So,  
24 they would add.

25 Q Is there any assumption built into that about



1 the portion of the make allowances that you've used  
2 which I understand are not cast in stone? Is there an  
3 assumption about what proportion of those manufacturing  
4 costs that might be allowed are attributable to fixed  
5 versus variable costs?

6 A No, there is not.

7 Q Is the assumption that all of it is profit?

8 A All of it is profit? No. The \$2.47  
9 represents the make allowance, and so I guess the  
10 components of that would be what -- I've forgotten some  
11 of those, but whatever the components of that were when  
12 those formulas were derived in the Class 3 hearing.

13 Q Those things like utility costs, was it not?

14 A It was a whole range. I guess it was  
15 considerable debate as to what things were in and out.  
16 There was a whole range of costs, utility costs.

17 Q Packaging?

18 A Labor, packaging, ingredients, management  
19 shrink.

20 Q Some of those are fixed costs, some of those  
21 are variable?

22 A Yes, they are.

23 Q But you didn't -- you didn't reduce it for  
24 the amount --

25 A I did not.

1 Q -- of fixed costs --

2 A I did not.

3 Q -- or variable costs?

4 A No, I did not. Did not attempt to make a  
5 distinction there.

6 Q Would you agree that that would bias your  
7 methodology towards a larger credit?

8 A I would. The -- and, you know, the way that  
9 -- in my -- in my statement, maybe I should have read  
10 the whole thing, but in my statement where we talked  
11 about again reducing by -- down to a third and also the  
12 fact that I would have a hard time distinguishing  
13 because of the nature of the within-the-week balancing,  
14 that some things that you would -- that you would lay  
15 out in terms of theory as a fixed cost becomes harder  
16 to do.

17 Q Assuming we could use theory, would you agree  
18 with me that the variable costs that would not have to  
19 be incurred should be excluded from this calculation?

20 A Yes.

21 Q And you would agree with me, would you not,  
22 that there were cost factors built into the make  
23 allowance discussions during the hearing process from  
24 which you took these numbers that covered any number of  
25 costs, only one of which was returned on capital?

1           A     Yes.  That was a wide range of costs.

2           Q     And the return on capital portion and the  
3 imputed depreciation, what was -- what was allowed for  
4 in that?

5           A     You know, I don't remember.

6           Q     My recollection was very little.

7           A     That would be in the record.  That's probably  
8 true, but it would be in that -- it would be in that  
9 record.

10           MR. MARSHALL:  All right.  For purposes of  
11 briefing, Your Honor, it may be necessary to refer to  
12 exhibits in the hearing that is not -- not the one  
13 we're at today, inasmuch as the proponents have not  
14 chosen to provide here a breakdown of the cost factors  
15 in, for example, a study done by RCBS, the Rural  
16 Cooperative Business Service, of various cost factors  
17 which was relied on heavily by the Department in its  
18 decision-making.

19           JUDGE CLIFTON:  Is that an exhibit that would  
20 still be on the website?

21           MR. MARSHALL:  Well, Your Honor, I hesitate  
22 to say, but I kind of think so.

23           JUDGE CLIFTON:  What you may want to do is  
24 make attachments to your brief.  If what you're  
25 attaching is part of the official record in another

1 case, it should be an acceptable exhibit, even if it  
2 was not introduced while we were still here at the  
3 hearing.

4 MR. MARSHALL: Thank you, Your Honor. That  
5 would refer to anything in general or including, for  
6 example, recent studies of the State of California  
7 Estimate of Manufacturing Costs?

8 JUDGE CLIFTON: I -- I can see it as being  
9 valuable with regard to what Mr. Hollon has presented  
10 here, and you may have some exception to it. I don't  
11 think it's a good idea to say in general because it's  
12 -- it's evidence that no one had an opportunity to  
13 confront, address, cross examine a witness about, and  
14 so forth in this hearing.

15 So, I'm not asking you to do it in general  
16 but with regard to this particular topic, I think it  
17 would be okay.

18 MR. MARSHALL: Maybe there's a better way to  
19 handle it, Your Honor. May I -- I note there's nothing  
20 in this record to cross examine either.

21 JUDGE CLIFTON: Well, you've got a witness  
22 who's-- who's adopted a model, and you're questioning  
23 his adoption of the model, and you may have no other  
24 evidence to offer.

25 Mr. Beshore?

1           MR. BESHORE: Just -- just a suggestion. I  
2 think it's of assistance, and I'm trying to be of  
3 assistance. The exhibits, Chart 4, Chart 3 and 4, of  
4 -- of Exhibit 44 show on the dotted line, not the bars  
5 but the dotted line, actual costs per hundredweight per  
6 month at those plants.

7           Now, those actual costs involve, you know,  
8 actually-incurred fixed and variable expenses. So  
9 that, when volume's down and variable costs are down,  
10 they're not incurred, and we've got a per-hundredweight  
11 number. Now, we don't have a line item breakout of  
12 what the difference in utilities was per month or what  
13 the difference in ingredient costs was per month, but  
14 we have a total cost per hundredweight divided by  
15 product volume, and I think that might be useful to  
16 note.

17           MR. MARSHALL: Could I just ask a question?

18           BY MR. MARSHALL:

19           Q     Mr. Hollon, is that your testimony, that the  
20 dotted lines reflect the actual costs of the two plants  
21 involved and not the make allowance numbers that were  
22 used for your assumption?

23           A     Yes, that's correct. But --

24           Q     Which is correct? I'm sorry.

25           A     The -- on Chart 4, the -- the lines with the

1 boxes across it, the single lines represents the total  
2 operating costs for the month for the plant of all  
3 product lines at the plant.

4 Q Okay. As -- as recorded on the books of the  
5 --

6 A DFA. That's right.

7 Q Now, I understand.

8 A Our recording. But if -- if we were to  
9 attempt to use our actual cost experience, we would be  
10 here for two weeks, and I don't think we would get any  
11 further along. So, I -- I put those costs on the chart  
12 to give some general idea of their range as well as to  
13 show that volumes are up, costs are down. Volumes are  
14 down, costs are up. But for the actual purposes,  
15 that's why I chose to use the \$2.47 that had been  
16 developed in an extensive hearing by USDA and is in use  
17 as we speak in the Federal Order System to be a general  
18 representation of a cheese manufacturing plant.

19 Our costs, I think, are probably higher than  
20 that. Those costs generally represent some level of  
21 efficiency, and I wouldn't pretend to say that these  
22 two plants would hold a candle to Mr. Williams' plant  
23 or the Davis' plant. So, those costs are higher, but  
24 if -- I don't think it would be reasonable to put  
25 higher than average costs into this type of

1 calculation. So, we tried to use something that is  
2 representative, and I think part of the testimony in  
3 the Class 3 hearing said those were representative  
4 costs.

5 Q Does one of the charts give us enough  
6 information with which we can compare the numbers that  
7 went into the dotted line against that \$2.47  
8 assumption?

9 A Are you saying in January, that box looks to  
10 be about \$2.90? Is that what you're asking me?

11 Q That kind of thing, yes.

12 A That's -- it's on the chart.

13 Q All right. It's not on the table?

14 A It's not on the table. Can -- can you tell  
15 me what difference it -- assume they were in a table.  
16 If we were -- if we were going to use the 2.47 versus  
17 those, you know, what -- what difference would it make?  
18 I might be willing to give you the table, but I -- I  
19 can't -- since the numbers are not used in the  
20 calculation and everyone can understand where the 2.47  
21 came from, it seems like that that absolute value is  
22 either I like it or I don't, which is, you know,  
23 everybody's judgment, but the rest of the debate  
24 doesn't seem to have any value, which was exactly why I  
25 didn't try to use these numbers.

1           Q     Elvin, if I were less tired and had had a  
2 chance to look at this in advance, I might well have  
3 come to that conclusion myself, but at this point, --

4           A     I guess you wouldn't trust me, huh?

5           Q     I would trust your honesty, if you were to  
6 have shared this with me ahead of time, as to what was  
7 going on, yes.

8                     But I think the issue I'm getting at is fixed  
9 and variable, and I thought Marvin -- I thought your  
10 counsel was telling me a moment ago that the dots --

11          A     No.

12          Q     -- are -- reflected -- would give you some  
13 indication of the variable since --

14          A     No.

15          Q     -- it apparently reflects actual --

16          A     No.

17          Q     -- processing costs.

18          A     No, it would not.

19          Q     All right. Okay. So, you throw into your  
20 assumptions about an appropriate assembly credit some  
21 factor for weekend or week -- within a week balancing  
22 costs, some factor for seasonal balancing, some factor  
23 for field services and/or --

24          A     Back up. The fact that those -- the first  
25 two, weekend and seasonal balancing costs exist. There



1 is no factor, rather than to acknowledge that they're  
2 there. If it was a factor, it would be in the cost  
3 numbers. So, using the 2.47 in essence rules out the  
4 specific measure to say that those -- that those costs  
5 exist but rather than try to debate whether the high of  
6 \$3 and the low of a \$1.75, there should be some  
7 relationship, chose not to go that route.

8 Q All right.

9 A Now, the third thing that you asked, yes, and  
10 they tried to develop the last field costs, tried to  
11 have an exhibit to give some idea of what that cost  
12 would be.

13 Q All right. So, let's focus on that third  
14 element for a moment.

15 A Okay. The effect -- if I understand your  
16 proposal correctly, the effect of that would be that  
17 the cost of field services, including laboratory costs,  
18 for the Class 1 market would be borne by the Class 1  
19 market and the portion allocated to other markets would  
20 be borne by somebody else, is that correct?

21 A Yes.

22 Q Who would be -- who would be the somebody  
23 else in the case of Classes 2, 3 and 4?

24 A If I sell milk to Class 2, 3 and 4, I would  
25 bear those costs. I wouldn't try to put them in the --

1 in the credit.

2 Q Don't you recover some of that from the  
3 producers?

4 A Some of that from the producers? From the  
5 producers?

6 Q Well, my field staff tell me, Elvin -- let me  
7 just explain why I asked you that question. DFA's  
8 payment programs involve a 10-cent operating cost  
9 deduction out of each milk check as, by the way, does  
10 our own, that what I understood was explained to your  
11 producers as covering some of those kind of costs.

12 A Yes, that's true. We have that in our cost  
13 structure.

14 Q If this proposal is granted, would producers  
15 in the Western Order see a change in that 10-cent  
16 deduction?

17 A I would in general say no. I think isn't the  
18 ultimate measure -- I mean, the mailbox price is the  
19 sum of all of the -- of all of the costs and payments.  
20 So, you know, no matter how you add A plus B plus C or  
21 just A plus B, you know, the -- the -- the -- the  
22 producer is going to say this is what I ended up with.  
23 So, I'm not quite sure that that, you know, makes a  
24 difference how that gets allocated across the line, but  
25 your direct question, would that 10-cent structure

1 change? No.

2 Q So, it's your testimony that the competitive  
3 balance in the marketplace would not change by that  
4 assembly credit? Let me rephrase the question.

5 Is it your testimony that DFA would not use  
6 that 10 cents to compete -- to attract producers away  
7 from other handlers or to attract new producers coming  
8 into the market?

9 A First, anybody who performs who sold to Class  
10 1 would get the credit. That's --

11 Q I'm referring to producers, not the  
12 cooperative.

13 A I guess I view those as the same. But the  
14 second --

15 Q I can accept that assumption, too.

16 A But the second -- second comment I would make  
17 is that I don't know that it would change anything in  
18 the competitive nature of the marketplace. I think  
19 every -- all -- all of the -- everyone in the market  
20 would compete under the same terms that we -- in terms  
21 of the intensity and competitiveness, I don't -- I  
22 don't see where there'd be any change.

23 Q Well, did I see somewhere in here as we were  
24 going through it a cost estimate of the dollars to be  
25 paid out in these two credits?

1 A Cost to the pool?

2 Q Yes.

3 A Yes, there was an estimate made of that in  
4 the exhibit.

5 Q Do I recall in the range of millions of  
6 dollars? Millions of dollars a year?

7 A Again, whatever the number is, the number is,  
8 but --

9 Q How can -- how can that not affect the  
10 competitive balance?

11 A I think that's what I said, that the level of  
12 competition would -- maybe I misunderstood your  
13 question then, but I'm assuming that everybody would  
14 continue to compete for producers, compete for sales  
15 then just like they do now.

16 Q Let's shift gears to the analysis of local  
17 haul mileages in the first table of your exhibit.

18 A Okay.

19 Q We had some dialogue about, I think it was,  
20 Table 2 over the weekend, and I --

21 A Table 1 or Table 2?

22 Q Well, both these tables utilize an assumption  
23 of a \$1.90 rate per mile to haul milk.

24 A Yes, yes.

25 Q And would you agree with me that's an

1 absolutely critical assumption to all of your  
2 subsequent work on these succeeding tables?

3 A That's a constant that's applied to every  
4 table or all the calculations of the transportation  
5 credit.

6 Q Would you agree with me that if it's 10  
7 percent off or all the numbers here are 10 percent off?

8 A Sure.

9 Q Let me see if I understand the concept of the  
10 \$1.90 rate per mile. If a producer had a farm exactly  
11 one mile from a processing plant, it would cost a \$1.90  
12 per hundredweight to move his milk --

13 A \$1.90 per mile?

14 Q No. He's one mile from the plant.

15 A Okay.

16 Q Let's say he's got -- pick a number -- 70,000  
17 pounds or a full tanker load, --

18 A Okay.

19 Q -- whatever that would be, --

20 A So, a \$1.90 divided by 70,000 would be the  
21 per hundredweight payment, if you were one mile away.  
22 That's what the box that's labeled "Rate Assumption"  
23 is. It would be -- if it -- if the 63,000-pound tank  
24 were full, and he went one mile, and the hauler charged  
25 a \$1.90, that would be the cost.

1           Q     A \$1.90 would be the total cost of moving  
2     that milk, 63,000-pound load, from a farm to -- farm  
3     pick-up to the plant?

4           A     Right. And if you -- if you multiply you had  
5     a \$1.90 per mile, and you went one mile, so you divide  
6     a \$1.90 by 63,000 pounds, that would be the rate.

7           Q     I'm having trouble with that. I -- twice --  
8     twice a month, I personally have to sign checks to our  
9     contractor haulers. Are you telling me that a farm  
10    pick-up of a full trailer load delivery to a processing  
11    plant would be charged to the DFA the total cost of  
12    \$1.90?

13          A     That would be per mile, but if you only went  
14    one mile -- that would be unrealistic, but if you went  
15    500 miles, it would be 500 times the \$1.90.

16          Q     Let's stick with easy math for a minute. If  
17    it were a hundred miles, you're saying it would charge  
18    you what?

19          A     A hundred miles, and it was a \$1.90 per mile,  
20    it would be a hundred times a \$1.90, would be \$19.

21          Q     \$1,900?

22          A     Oh, sorry. \$190. I do better with a spread  
23    sheet than I do off the top of the cuff.

24          Q     So, a 190 miles -- excuse me -- a hundred --  
25    a \$190 to move a hundred miles and only a \$1.90 to move

1 one mile. Isn't it a fact that -- I'm relying on you  
2 now for your general experience as an expert. Isn't it  
3 a fact that hauling costs of -- refer you now to pick-  
4 up from farms and delivery to plants are not in fact  
5 based on miles, are they?

6 A There's no -- no assembly costs. This is  
7 designed to handle the transport function, and we  
8 frequently get -- go from -- get bills from haulers or  
9 transporters that say we're charging you \$2 a mile,  
10 here's the number of miles to go, you know, here's your  
11 bill.

12 Q Now, I may be with you. In our rate  
13 structures, we have a rate -- let's say around Jerome,  
14 Idaho. The rate for farm pick-up and delivery to the  
15 Jerome plant.

16 A Okay.

17 Q If the milk does not go to Jerome, there is  
18 an additional cost, say, to take it to Boise.

19 A Okay.

20 Q Are you referring to the additional cost or  
21 are you referring to the total cost?

22 A Well, the -- if you will, the first thing  
23 that you described would be assumed to be covered in  
24 the 80 miles worth of local haul.

25 Q Well, let's -- let's get to the 80 miles in a

1 minute. I'm just trying to figure out what the \$1.90  
2 figure is. Is it the additional costs after farm haul  
3 and after the cost of receipt at the plant to move milk  
4 more distance as opposed to, for example, only a mile?

5 In other words, is it just the line haul  
6 portion or does it include the fixed costs of picking  
7 up milk at the farm --

8 A It's just the transport portion.

9 Q Just the transport portion. Now, how did you  
10 get this \$1.90 again?

11 JUDGE CLIFTON: Let me interrupt. I -- I'm  
12 having trouble with the pace. I'm -- I'm really  
13 concerned that we're going too slowly for everything we  
14 have to cover before 7, and we've only got two hours  
15 left. I don't know what the remedy is, but I think I  
16 need about a five-minute stretch break.

17 MR. MARSHALL: Your Honor, I -- I would join  
18 you in asking for a stretch break and simply say that I  
19 can't do anything about the pace because this is  
20 extremely important material, and I think that if we  
21 had the time, I could demonstrate that some of what  
22 we've heard may not be correct.

23 JUDGE CLIFTON: I understand the importance  
24 and maybe it's true you can't do anything about the  
25 pace. What I'm thinking about, and let's take our



1 five-minute stretch break, is perhaps taking a break  
2 from your questions, Mr. Marshall, letting someone else  
3 cross examine for awhile and then coming back to you,  
4 if anyone will step in.

5 I realize it's always hardest to go first,  
6 but at any rate, let's -- don't go too far. Please be  
7 ready to go again at 5:11.

8 (Whereupon, a recess was taken.)

9 JUDGE CLIFTON: Back on record. All right.  
10 We're back on record. It's 5:13.

11 Before we resume the cross examination, I'd  
12 like to talk with you a little bit about the schedule  
13 for the remainder of the hearing. We're obviously  
14 going to need to convene in the morning, and I'd like  
15 to talk about dress code and time of day. So, let's go  
16 off record for just a moment.

17 (Discussion off the record.)

18 JUDGE CLIFTON: Back on record. We're back  
19 on record at 5:17.

20 We'll plan to convene at 8:00 in the morning  
21 and wearing casual clothing, and tonight, we'll plan to  
22 go until 7, and we anticipate concluding with Mr.  
23 Hollon's testimony, perhaps taking Mr. Vetne's  
24 evidence, and tomorrow that would leave Mr. Conover  
25 beginning at 8, followed by Mr. McBride.

1                   Yes? Mr. Stevens?

2                   MR. STEVENS: Your Honor, could I just --  
3                   Your Honor, I -- I just bring this up and suggest it  
4                   for what it's worth, and I'm a lawyer, so I'm as guilty  
5                   of this as anyone, but -- or can be. The point is that  
6                   this is -- this is a hearing for a record to be made  
7                   for the Secretary, basically a factual record of -- of  
8                   documents and testimony and evidence, and -- and I  
9                   would just ask -- I -- I would -- I would ask that the  
10                  attorneys and others who are questioning the witnesses,  
11                  keep that in mind, and that we don't need to ask  
12                  witnesses questions that would be briefing questions,  
13                  that would be questions that can be certainly handled  
14                  on a brief that everyone will get an opportunity to  
15                  file with the Department, and that -- and that those --  
16                  the issues surrounding those matters can be best done  
17                  on brief, and they don't need to be the matter of  
18                  examination.

19                  I certainly understand that certain  
20                  examination leads to briefs and to arguments in briefs.  
21                  I understand that. But I also know, having done this  
22                  myself, that sometimes we -- we tend a little over into  
23                  the briefing -- more to the briefing than toward the  
24                  adjudication of facts, and I would only suggest that  
25                  for the record and ask everyone to consider that

1 because I think if they do keep that in mind, it will  
2 shorten the examination of the witnesses and -- and all  
3 these points can be raised on brief.

4 That's my only point, and I appreciate the  
5 opportunity to make it.

6 JUDGE CLIFTON: Thank you, Mr. Stevens.

7 Now, Mr. Vetne, thoughts or are you going to  
8 be the next person to cross examine?

9 MR. VETNE: Oh, yes.

10 JUDGE CLIFTON: All right. Thank you. And  
11 thank you, Mr. Marshall, for yielding temporarily.

12 Mr. Vetne?

13 MR. VETNE: Ask questions as opposed to  
14 having thoughts.

15 CROSS EXAMINATION

16 BY MR. VETNE:

17 Q Mr. Hollon, you indicated that -- that you  
18 charge producers a hauling charge for their milk, but  
19 you didn't discuss the charge itself. In this market,  
20 do producers pay the cost on an individual basis of  
21 haul from farm to plant in your organization?

22 A The structure that -- that Mr. Marshall  
23 outlined where there's a local haul, and it goes a  
24 certain -- it's designed to carry a certain distance  
25 and then there is an additional cost after that that in

1 general is borne by all producers. So, that's the  
2 general structure of our hauling arrangement.

3 Q Okay. Are you hauling charges to producers  
4 within the Western Market variable from producer to  
5 producer?

6 A I -- I -- I do not know the nature of the --  
7 of the structure. I don't know if they're all per  
8 hundredweight, if there are stop charges, if there's  
9 distance and mileage charges. I -- I just do not know  
10 the nature of the structure.

11 Q Okay. Are they uniform from producer to  
12 producer?

13 A Well, you know, we offer volume premiums in  
14 this market to producers. So, if you -- if you put  
15 those on that side of the equation, they all have the  
16 same opportunity, so that would be part of the  
17 equation, and the rate determined in a competitive  
18 situation and there's subset of the board that  
19 examines, you know, producer haul.

20 Q Apart from stop charges and pick-up premiums,  
21 such as volume, are producers charged the same hauling  
22 rate whether they're located pretty close to a plant or  
23 pretty far from a plant?

24 A I -- I do not know that. The best I could  
25 tell you is that within the subset of the data that's

1 in the Market Administrator's Exhibit, our -- you know,  
2 where we have producers in those counties, we follow  
3 those averages. They aren't the same per hundredweight  
4 over all that territory, but that's the best I could  
5 tell you.

6 Q Okay. In this particular instance, it's  
7 because you don't know the answer?

8 A That is correct. I do not.

9 Q As a general matter within the DFA system, is  
10 it not the case that producers are generally charged  
11 the same rate for hauling on a mileage basis regardless  
12 of whether their mileage fits that actual experience?

13 A I do not know.

14 Q Okay. Do you happen to have Exhibit 8 in  
15 front of you or near you?

16 A Exhibit 8? No, I don't.

17 Q My -- I think that you asked for it from the  
18 Market Administrator.

19 A I do not.

20 Q Okay. I'll start my questions.

21 JUDGE CLIFTON: He has it now, Mr. Vetne.

22 MR. VETNE: Okay.

23 BY MR. VETNE:

24 Q The last page of that exhibit, Map 3, --

25 A Yes.

1 Q -- your plant in Beaver is one of the  
2 triangles located in Southern Utah?

3 A Yes.

4 Q Which one is it? The far left, the middle or  
5 the far right?

6 A You know, I can't tell you. I don't know.

7 Q All right.

8 A I know it's one of those three triangles, but  
9 I don't know which one of the three that it is.

10 Q Okay. If I represent to you that Beaver is  
11 the middle third county up from the southwest, it would  
12 be the middle triangle.

13 A Okay.

14 Q Do you know who the other plants are operated  
15 by?

16 A No, I do not. I would guess that one is the  
17 Western General -- not -- well, I do not know.

18 Q Okay. Do you whether DFA supplies any milk  
19 to either of the other two plants?

20 A If one is in the Western General, then yes,  
21 we would supply milk to that plant.

22 Q Okay. And Western General makes what kind of  
23 products again?

24 A I've forgotten what we said yesterday.

25 Q Well, remind me. It makes a variety of --

1           A     I think fluid or unit products because it can  
2     be a distributing plant from time to time.

3           Q     Okay. Does it also make condensed products  
4     and water --

5           A     It does make some UHT-type products.

6           Q     Okay.

7           A     Beyond that, I don't know the rest of the  
8     mix.

9           Q     Is that plant regulated anywhere?

10          A     I think one of the exhibits shows it's  
11     regulated 11 out of 12 months in Order 135, and we  
12     couldn't conclude -- I did not know why it wasn't  
13     regulated in December.

14          Q     Okay. As a UHT plant, is that plant more  
15     variable in its Class 1 demand than the -- your  
16     customers in Salt Lake City?

17          A     I do not know that.

18          Q     Okay. Nevertheless, whether more variable or  
19     less, your variability in receipts at the Beaver  
20     manufacturing facility would also reflect Western  
21     General?

22          A     As well as the Salt Lake City plants, also.  
23     Yes, it would.

24          Q     Okay.

25          A     Milk from that part of Utah comes into Salt

1 Lake -- that I do know, comes into Salt Lake City.

2 Q That wasn't my question. The -- the  
3 variability in receipts at your Beaver plant would  
4 reflect variability in demand at the Western General  
5 UHT plant?

6 A It would.

7 Q Okay. And you don't know whether that  
8 variability is as described by Gossner for its UHT  
9 plant?

10 A I do not.

11 Q Are there -- you -- you described the Beaver  
12 plant as relatively modest capacity?

13 A Yes.

14 Q Okay. Does that plant receive any milk from  
15 the bordering states of Nevada, Arizona or California,  
16 to your knowledge?

17 A I do not think that it does.

18 Q Does it receive any milk from either the  
19 north or the east?

20 A It may receive some milk in Utah that's north  
21 of it, and it may receive some milk in Utah that's east  
22 of it, but, you know, from Idaho or Washington or even  
23 outside of the marketing area, it would not receive  
24 milk.

25 Q Okay. The volumes that you show for -- first



1 of all, let's go to the two manufacturing plants,  
2 Smithfield and Beaver, which are Charts 3 and 4.

3 A Okay.

4 Q Okay. These are daily average volumes of  
5 actual receipts of Grade A milk, am I correct?

6 A There may be some Grade B milk in the midst,  
7 but the overwhelming percentage is Grade A milk.

8 Q Okay. And is it total receipts by those  
9 plants regardless of regulated source?

10 A Yes.

11 Q Okay. So, included there could be milk from  
12 four, five or six different markets?

13 A In the few cases, very little milk from  
14 outside the plant comes into Smithfield. Occasionally,  
15 there's milk from outside the market that comes in if  
16 there's an opportunistic purchasing opportunity, but  
17 that's not the major portion of its milk supply, but  
18 from time to time, there is milk from other than Order  
19 135 that's processed there.

20 Q Okay. Do you make cheese at those plants for  
21 the purpose of marketing cheese and -- and having a  
22 revenue stream from cheese?

23 A Yes, we do.

24 Q Okay. Do you have contracts to sell the  
25 cheese production from those plants to other parts?

1           A     A portion of the cheese that's made at those  
2 plants do have sales contracts.

3           Q     Okay. And how was the rest of the cheese  
4 marketed?

5           A     On a week-to-week basis or outside of having  
6 a contract.

7           Q     Okay. Is the majority on a week-to-week or  
8 spot basis as opposed to contract?

9           A     Probably a majority of the cheese made would  
10 be under a contractual basis, on an annual cycle.

11          Q     Okay.

12          A     There'd be surges in production. It's pretty  
13 hard to have a contract when you don't always know that  
14 there's going to be supply there.

15          Q     Do you know whether those -- those plants,  
16 either one of them or both, receive condensed milk or  
17 other forms of skim milk solids for purposes of mixing  
18 with milk to make cheese?

19          A     From time to time, although both have limited  
20 capacity to use condensed milk because of the nature of  
21 the plant, but from time to time, they do receive  
22 condensed.

23          Q     Okay. Do -- and that's for both plants?

24          A     I'm not familiar with Beaver, if it does, but  
25 Smithfield does.

1           Q     Okay.  And with respect to both plants, to  
2     the extent you're familiar, do the plants receive raw  
3     reverse osmosis or ultra-filtered milk?

4           A     No, they do not.

5           Q     Do you know for a fact they do not?

6           A     That's correct.

7           Q     Okay.  And do either of those plants or both,  
8     if you know, receive surplus cream from other sources,  
9     other than producer milk?

10          A     I do not know.

11          Q     Is it not common for cheese plants to receive  
12     cream, bulk cream?

13          A     It -- it is, but I do not know what their  
14     make-up is.

15          Q     Okay.  So, you don't know whether they  
16     receive bulk cream for cheese from, say, California or  
17     Colorado or Oregon or the Midwest?

18          A     As a general rule, in DFA, most of the cream  
19     purchases are directed towards our Keller subsidiary  
20     and not to our cheese plants.  So, I would say that for  
21     the most part, the answer to your question would be no.

22          Q     Okay.  Is it not true that on a month-to-  
23     month basis, it's very profitable to market both  
24     California cream to Federal Order locations?

25          A     Yes.

1 Q Okay. And if it is profitable to do so in a  
2 given month, would you not seek to market California  
3 cream to one of those two locations?

4 A If you -- if you could, but again when we do  
5 move cream out of California, which we don't do a lot  
6 of, but it generally goes to our butter plant.

7 Q Your butter plant where?

8 A Waynesboro, Texas.

9 Q The -- going now to Charts 1 and 2 or Chart 1  
10 and Chart 2, again it -- Chart -- does Chart 1  
11 represent the average actual daily deliveries to your  
12 Salt Lake City Class 1 customers?

13 A Yes.

14 Q Okay. And it's not just daily deliveries for  
15 Class 1?

16 A Correct.

17 Q Okay. And who would be the customers whose  
18 milk is aggregated in Chart 1?

19 A The National Dairy Holdings Plant, the Dean  
20 Foods plant, and the Kroger plant.

21 Q Does National Dairy Holdings plant have  
22 another name?

23 A Cream o' Weber.

24 Q Okay. Is it only those three plants?

25 A Yes.

1 Q Okay. It doesn't include, for example, milk  
2 going to Dannon?

3 Q No.

4 Q No. Do either of those three plants, Dean,  
5 Cream o' Weber or Kroger, have significant ice cream or  
6 Class 2 -- other Class 2 operations?

7 A I do not know.

8 Q Does that mean you also do not have knowledge  
9 of the Class 1 relative to other classes at those  
10 plants?

11 A That is true.

12 Q Are you aware that there -- is the  
13 seasonality and demand for Class 2 products that is  
14 different from demand for fluid milk?

15 A In some cases, yes. Ice cream would be the  
16 biggest case, but the other products, the seasonal  
17 variation is great.

18 Q All right. Do the deliveries shown on Chart  
19 1 and Chart 2 include deliveries of milk from all  
20 sources to those plants, including, to the extent it  
21 happens, sources other than Western Order producer  
22 milk?

23 A The overwhelming majority of milk would be  
24 deliveries from Western Order producer milk.

25 Q I understand that. But to the extent, for

1 example, some milk is diverted from, say, the Dannon  
2 plant for agreed-upon non-Class 1 use to the Kroger  
3 plant, would that show in this chart as a delivery to  
4 Kroger?

5 A I can't tell you if it could or it couldn't.

6 Q Okay. Now, with respect to milk that has  
7 associated with this market from California sources,  
8 would it be correct that that milk has touched base for  
9 pooling purposes at one of the three Salt Lake City  
10 plants that you mentioned?

11 A Likely, yes.

12 Q Okay. And would this -- are those -- those  
13 deliveries began in January 2001, is that correct?

14 A I think they would be pretty clearly noted in  
15 the material.

16 Q Okay. The -- I think it's Exhibit 6. The  
17 tables on producer milk by -- by state and county  
18 reveal that there was a surge in -- an initial surge in  
19 California milk pooled in the Western Market in January  
20 and a second surge in May.

21 Would those deliveries be reflected in the  
22 average deliveries for the month of January and May in  
23 Chart 1?

24 A To whatever extent the touch-base volume  
25 might have been, that would be true.

1           Q     Okay.  Do you know of your personal knowledge  
2     whether those deliveries -- any of those deliveries  
3     were made in such a way that other milk deliveries to  
4     the distributing plants of an equivalent volume would  
5     have to be transferred back out of those plants?

6           A     In terms of pumped-on and pumped-off?

7           Q     Well, you know, it may not be within the same  
8     hour, but, you know, --

9           A     I don't think that would be the case.  So, I  
10    think the answer's no.

11          Q     You think the answer's no?

12          A     Correct.

13          Q     You haven't inquired whether that happened or  
14    didn't happen?

15          A     No, I have not.

16          Q     To the extent that it may have happened, it  
17    would be reflected in higher daily deliveries for the  
18    month in which it happened, wouldn't it?

19          A     If it would have happened, there's no other  
20    way to come to any conclusion other than that, but I  
21    don't know that it did happen.

22          Q     Okay.  And during the months that California  
23    milk was brought to -- to Utah to touch base, the  
24    Western Market milk would have been backed out and  
25    delivered -- probably delivered to one of your -- one

1 of your manufacturing plants, correct?

2 A It would depend on the demand of the day and  
3 the supply of the day. It could have been a scenario  
4 where there was extra milk ordered, and it was tailored  
5 to come on the high-demand days of the week.

6 Q Well, let's see. We're looking at -- I'm  
7 looking at Chart 1 now, which is a monthly delivery.

8 A Okay.

9 Q So, we're not looking at days of the week.  
10 Well, no, I'm not looking -- strike that. Strike that.

11 I'm looking at the monthly for -- for  
12 Smithfield and the monthly for Beaver.

13 A Okay.

14 Q To the extent that -- not just to the extent,  
15 to -- I had it at my fingertips a minute ago. All  
16 right. Exhibit -- I think it's 6, Table 6, which is  
17 the Market Administrator's exhibit, shows 22 to 30  
18 million pounds of milk pooled from California on each  
19 of the months of January through -- through April.

20 Would you agree with me that that's probably  
21 more than -- than -- than the peak or extra delivery  
22 demand by your customers for those months?

23 A Talking about the total monthly volume?

24 Q Yes. Your customers in -- in those months  
25 would not have had use of an additional 22 million



1 pounds?

2 A Probably true.

3 Q Okay. So, --

4 A The volume delivered was only the touch-base  
5 volume. So, in no case did 22 million pounds deliver.  
6 The only --

7 Q All right.

8 A -- delivery requirement for pooling would  
9 have been the touch-base requirement.

10 Q All right. During the month of January,  
11 would it be fair to say that during the month of  
12 January, the milk from the producers represented in  
13 California milk all touch base during that month?

14 A If I answer no, Mr. Daugherty would get after  
15 me. So, I better say yes.

16 Q Okay. And are the California producers  
17 fairly large?

18 A Yes.

19 Q So, the touch base for large California  
20 farmers would have been -- would have been a  
21 significant volume. I know it's not 22 million, but  
22 for all of the producers to touch base once would have  
23 provided a significant volume to those plants?

24 MR. BESHORE: About 131st of pooled volume.

25 MR. HOLLON: Probably a pretty good

1 calculation.

2 MR. VETNE: Yeah.

3 JUDGE CLIFTON: Would you repeat it, Mr.  
4 Hollon, so we have it, please?

5 MR. HOLLON: About 131st of -- for 22-285-895  
6 divided by 31.

7 BY MR. VETNE:

8 Q All right. Do you know what day of the week,  
9 whether those producers would have been delivered at  
10 the beginning of the month in order to be pooled for  
11 the rest of the month?

12 A I do not.

13 Q You don't know whether their deliveries was  
14 clustered within one or two or three days?

15 A I would -- it's my recollection that they  
16 were staggered across the time period.

17 Q Okay. And as the Order was interpreted back  
18 then, would that have meant that they couldn't pool  
19 until after the first time they touched base?

20 A Yes, if that's the way it -- that was the  
21 interpretation, then that was the -- the answer's yes.

22 Q Okay. And again on Table 6, would it be  
23 correct to assume that an additional number of  
24 producers touched base for the first time from  
25 California in the month of May when the numbers went

1 from the 20s to mid-70s?

2 A Some portion of that would be additional  
3 producers.

4 Q And do you know -- have any information to  
5 what extent, at least on those two months, either  
6 monthly deliveries or daily deliveries would be  
7 reflected in -- in the charts for manufacturing plants?

8 A No.

9 Q Okay. Now, we've -- what other markets or  
10 unregulated customers are supplied -- just leave it.

11 A Are you going to use it again?

12 Q I don't know.

13 A Oh, okay.

14 Q What other federal markets or non-federally-  
15 regulated customers are supplied by DFA Utah milk?  
16 We've established -- I'm sorry. We established New  
17 England because Dannon is regulated there, and we've  
18 talked a little bit about Colorado, that there's some  
19 milk flow from Utah to Colorado?

20 A No.

21 Q No. Does some milk flow from Utah to other -  
22 - you told me other markets.

23 A No. The only -- whatever Dannon sells and  
24 where it distributes its product, and, you know, if any  
25 other customer distributes somewhere else, but, you

1 know, to my knowledge, we don't market milk produced in  
2 Utah in -- off the farm to Texas or to Ohio.

3 Q Does milk from any DFA Utah producers go to  
4 plants that are not regulated? For example, not  
5 federally regulated. For example, a state-regulated  
6 Class 1 plant or an unregulated Class 1 plant or to  
7 Clarke County, Nevada, for that matter.

8 A There may be some. I don't think there's  
9 any. If it is, it'd be very small, and I'm not aware  
10 of any. We may sell something to the prison. I think  
11 that was referred to earlier today. Their plant is  
12 unregulated or exempt, but I'm not aware that we have  
13 any large volumes to any plants like that.

14 Q When -- now, we discussed earlier and one of  
15 my clients, I can't remember which, said DFA supplies  
16 milk for manufacturing into Idaho. I think Glanbia,  
17 right?

18 A Yes.

19 Q Is that a contract volume?

20 A Yes.

21 Q Okay. And does DFA have contract volumes to  
22 -- contracts to supply other manufacturing facilities  
23 in the region?

24 A I don't think so.

25 Q Sorrento-Lactalis isn't supplied by any DFA

1 milk?

2 A I think that perhaps we sell the milk on a  
3 spot basis, but I don't -- I -- I don't think that  
4 there's a contractual volume there, but I'm not aware.  
5 I -- I do not know. The only -- the only one that I'm  
6 aware of is -- is the Glanbia arrangement.

7 Q Okay. And does Glanbia require by virtue of  
8 the contract, and I know you committed to supply a --  
9 an even amount of milk on a month-to-month basis.

10 A Those are two different questions, and the  
11 contract has some volume parameters to it, and it's not  
12 always uniform.

13 Q Okay. There are volumes. Okay. Are those  
14 -- is your commitment to supply manufacturing milk, for  
15 example, to Glanbia reflected in the variability of  
16 receipts at Beaver or Smithfield, wherever it is?

17 A Generally, no. Those supplies are not from  
18 the same general -- from that area.

19 Q Okay. And when there is seasonal variation  
20 in the supply of milk producers that DFA sends to  
21 Glanbia, for example, excess in May or April, where  
22 would that milk go?

23 A Say that again.

24 Q Okay. Let me start again. Okay?

25 A Okay.

1 Q Did -- DFA supplies milk to Glanbia, correct?

2 A Correct.

3 Q That milk comes from a group of producers who  
4 are DFA members who are conveniently located to  
5 Glanbia, correct?

6 A For the most part.

7 Q Okay. On occasion, because of seasonal  
8 surplus or herd expansion, do those producers produce  
9 more milk than Glanbia is required to accept?

10 A To answer that question, it's beginning to  
11 get into the details of the contract with Glanbia. So,  
12 I have no other -- I'm going to stop.

13 Q Yeah. Well, I'm not going to ask you to get  
14 into the details.

15 A Then I would say no.

16 Q Okay. Is it -- so, you have no balancing  
17 costs involved of your own --

18 A No.

19 Q -- in supplying that market?

20 A No, that's not true.

21 Q It's not true that you have none?

22 A We have -- we -- we would -- we would not --  
23 we do have balancing costs in supplying Glanbia.

24 Q Okay. And can you tell me where -- where  
25 milk that doesn't go to Glanbia would go on days that

1 it doesn't go to Glanbia and that group of producers?

2 A It's other DFA customers or DFA plants.

3 Q Okay. And those plants could include the  
4 Smithfield or Beaver plants? Well, not the Beaver one.  
5 Smithfield.

6 A And generally not the Smithfield plant. So,  
7 the answer would be to other DFA customers, not to  
8 other DFA plants, because we --

9 Q Okay.

10 A -- have no plants.

11 Q Other DFA customers, meaning the Class 1  
12 plants in Salt Lake City?

13 A Or other DFA customers in Idaho.

14 Q Or Boise or Pocatello?

15 A Yes.

16 Q Okay. Almost done here. Is DFA -- does DFA  
17 have a committed -- have a contract committing it to  
18 supply milk to Dannon?

19 A We have a supply contract with Dannon.

20 Q And does -- do Charts 3 and 4 reflecting the  
21 receipts at the manufacturing facilities reflect,  
22 directly or indirectly, variability in Dannon's demands  
23 for milk?

24 A Yes.

25 Q Does DFA have -- supply any stand-alone Class

1       2 plants in this market? Are there any?

2           A     I was trying to run through that myself. I  
3 think that there are some, but I think that for the  
4 most part, they -- but they buy very little milk. They  
5 buy ingredients but very little milk. So, -- I think  
6 in general, the answer would be no, but I don't have --  
7 you know, even if we went down and looked at all the  
8 plants, I couldn't tell you for every one because I do  
9 not know every one.

10          Q     Okay. Does DFA market condensed milk in this  
11 market?

12          A     Yes.

13          Q     Okay. And condensed milk is an ingredient  
14 just like Class 2 plants?

15          A     Yes.

16          Q     And if condensed milk is marketed, it can be  
17 pooled?

18          A     The milk that's produced to condensed can be  
19 pooled.

20          Q     Yes.

21          A     Yes.

22          Q     Okay. Would the milk received at the  
23 manufacturing plants in Charts 3 and 4 reflect  
24 variability in demand by customers who receive  
25 condensed milk in this market?



1           A     Yes.

2           Q     And would it be fair to say that some of  
3 those customers are pool plants and some of them are  
4 non-pool plants?

5           A     Yes.

6           MR. VETNE:   Okay.  Thank you.  Thank you,  
7 Elvin.

8           JUDGE CLIFTON:  Thank you, Mr. Vetne.

9           Further cross examination?  Mr. Marshall?

10          MR. MARSHALL:  Thank you for the break, Your  
11 Honor.  It will help speed things up.

12          JUDGE CLIFTON:  Thank you.

13                        CROSS EXAMINATION

14          BY MR. MARSHALL:

15          Q     I think we've established, Mr. Hollon, that  
16 the \$1.90 figure is a cost per rolling mile and does  
17 not include the cost of farm pick-up and does not  
18 include the time spent in the receiving bay at a  
19 receiving plant being unloaded or waiting to be  
20 unloaded and so forth, is that correct?

21          A     I would agree with that.

22          Q     And direct your attention again to that Table  
23 1 of your exhibit.

24          A     Table 1?

25          Q     Yes.

1           A     Okay.

2           Q     The rate per hundredweight shown in that  
3 center graph, the center table, --

4           A     Yes.

5           Q     -- that was from the Market Administrator's  
6 survey of hauling?

7           A     Correct.

8           Q     That would be intended, would it not, to  
9 cover both the cost of farm pick-up and the cost of  
10 receiving it?

11          A     Yes.

12          Q     Would you agree with me that the computation  
13 then that you've made as to miles in that center table  
14 is simply not useful and does not in fact depict  
15 anything at all relevant to this hearing?

16          A     No.

17          Q     Well, help me now.  You're going to divide a  
18 rate per hundredweight that includes the cost of pick-  
19 up and receipt by a number that doesn't, and -- and --  
20 and aren't you mixing apples and oranges right there?

21          A     Well, again, the goal was to try to come to  
22 some reasonable establishment of a mile that was  
23 something different than by that.

24          Q     Is it your testimony that the average rate  
25 per hundredweight shown in the Market Administrator's

1 exhibit in both Orders would fund the movement of milk  
2 a 122 miles?

3 A Under these scenarios, yes.

4 Q So, a minute ago, you told me that the 36.85  
5 cents included both farm haul and receiving costs as  
6 well as rolling miles. You're going to divide that by  
7 rolling miles, and you're going to call that the miles  
8 that 36.85 cents is going to move --

9 A That's --

10 Q -- that milk?

11 A -- the best estimate that I could come up  
12 with with the data that I had, that I felt would -- I  
13 felt this approach is the better approach than to  
14 establish -- pick a number out of the air.

15 Q Based on your experience in milk marketing,  
16 would you agree with me that a 36 and a half cent  
17 hauling rate would reflect a relatively short distance  
18 between farm and plant, say less than a hundred miles?

19 A Hauling rates vary from market to market to  
20 market, and there's a wide variation in rate and miles  
21 covered. Producers in different -- different parts of  
22 the country, you know, whether it be the Upper Midwest,  
23 the Mid-East, Southeast or Southwest, you know, face a  
24 wide variety.

25 Q Turn to the second table. I kinda think

1 we're getting kinda close to being done here. The  
2 table that shows at the top Boise, Jerome, Smithfield  
3 and Beaver.

4 A Yes.

5 Q And the line differential at shipping  
6 locations.

7 A Yes.

8 Q Is that accurate as to Smithfield?

9 A It's intended to be. Is it not?

10 Q I think not.

11 A Okay. If it's not, I'll correct it. But --  
12 and I'll be glad to do that, but in the sense that  
13 Smithfield is 80 miles, I guess we could put zero or  
14 500, but it still would be zero.

15 Q Is the credit at Beaver a \$1.60? I don't  
16 know the answer to that.

17 A Got a map in my book. Okay. Getting a sign  
18 the answer's yes from our folks in the market.

19 Q It is a \$1.60?

20 A Yes. Smithfield is -- Smithfield is wrong.  
21 Smithfield should be a \$1.90 instead of a \$1.60.

22 Q But Beaver's correct?

23 A Beaver's correct.

24 MR. MARSHALL: No further questions. Thank  
25 you.

1 MR. HOLLON: Okay.

2 JUDGE CLIFTON: Thank you, Mr. Marshall.

3 Mr. Tosi?

4 CROSS EXAMINATION

5 BY MR. TOSI:

6 Q I have several questions for you. Would you  
7 agree that the -- your proposal for the transportation  
8 credit constitutes a -- what could accurately be  
9 referred to as a marketwide sort of thing?

10 A That is the design. Yes, it would, in our  
11 opinion.

12 Q And it's your testimony then that the -- your  
13 proposal conceptually would benefit all producers in  
14 the market?

15 A The way the proposal is designed, any  
16 producer who -- who fills that role collects for the --  
17 collects the credit for the service. So, it's anybody  
18 who serves the Class 1 market could collect the credit.

19 Q Okay. And in that regard, the numbers that  
20 you've come up, the rates for the transportation part  
21 of -- the --

22 A .302 cents.

23 Q Okay. .302 cents --

24 A Yes.

25 Q -- per hundredweight is based somewhat on DFA

1 costs?

2 A Yes.

3 Q And that the 10-cent assembly credit is  
4 similarly based on DFA costs?

5 A With regard to the balancing portion of that,  
6 I would say it's based on the 2.47 is the cost figure  
7 that's derived out of Class 3 hearing. The -- you  
8 know, the procurement piece is based solely on DFA  
9 costs.

10 Q Okay. Since you brought up the Class 3 and 4  
11 hearing, if the -- when we get to a final decision on  
12 the 3 and 4 hearing, to the extent that we make  
13 allowances and new factors might change, would that  
14 impact on the issue --

15 A Certainly.

16 Q -- of the proposal?

17 A If the combination of those numbers resulted  
18 in 3.27, then that number would be used. If it  
19 resulted in a \$1.47, then that number would be used.

20 Q Okay. Also, your testimony, if I recall  
21 correctly, indicated that there may come a time when we  
22 need to review the rates.

23 A Yes.

24 Q And that the rates could change --

25 A Yes.

1 Q -- as a result of that.

2 A Yes.

3 Q Would you support the notion of giving  
4 authority to the Market Administrator to establish and  
5 adjust that rate?

6 A Yes, I would. I don't know if they would  
7 want to accept that, but I would --

8 Q Or -- or would you envision that it would  
9 have to come to a vote?

10 A I guess my personal preference on that issue  
11 is that it be treated like Section 7 --

12 Q Just like the version that's --

13 A Yes, I think that would be reasonable, if --  
14 if it were put into place, that that language could be  
15 used to review the rate from time to time.

16 Q Regarding the assembly credit, and correct me  
17 if my observations are -- are -- are wrong on this, but  
18 the assembly credit construction theoretically seems to  
19 be based on what might -- you used the term "balancing  
20 cost".

21 A Yes.

22 Q And it's largely reflective of what would  
23 become the -- or what would or what is the unused plant  
24 processing capacity --

25 A Yes.

1 Q -- at manufacturing plants.

2 A Yes.

3 Q Okay. And that you also recognized there are  
4 other costs and they're articulated well in your  
5 testimony. The sum total of all that added up to 30  
6 -- about 30 cents.

7 A The data that we put forward demonstrated  
8 that. Our numbers and calculations came up to 31.4  
9 cents, I think.

10 Q Okay. So, it's basically the summation of  
11 using two processing plants, plus other costs?

12 A Yes.

13 Q Okay. And the other costs basically says  
14 that these other things that I did, they add up to  
15 this. There is this much milk on the market, this much  
16 of it's Class 1. I take that and divide it by --

17 A Yes.

18 Q -- what you did and you come up with at least  
19 --

20 A That was the mathematical computation, yes.

21 Q Okay. And how did you reduce it down to 10  
22 cents is not --

23 A There was no scientific method to that. That  
24 was just an art of again -- I think the idea is to try  
25 to be conservative, recognize the argument that Mr.



1 Marshall put forward regarding fixed and variable  
2 costs. That was a valid argument, but I don't -- I  
3 don't see a way to -- to mathematically work through  
4 it, and the answer would -- would -- would reduce the  
5 number. So, that was -- that was to be conservative,  
6 to recognize that cost and to try to have -- and to --  
7 to have a lower number that would not be -- the lower  
8 the credit, the -- the less potential to abuse the  
9 situation.

10 Q Okay. What does balancing in and of itself  
11 have to do with assembling milk to make it available to  
12 service the Class 1 market? I mean, hasn't the milk in  
13 effect already been assembled and the milk has a choice  
14 with DFA, for example, as a marketing agent to decide,  
15 you know, is it demanded by my customers in the Class 1  
16 market or I'm going to leave it in my cheese plant?

17 I mean, the milk has already been assembled  
18 and maybe we're arguing semantics here, but it -- it  
19 would seem to me that another form of a marketwide  
20 service payment in other places sometimes is referred  
21 to as a balancing credit.

22 A I know, you know, debate over that. The  
23 assembly credit is -- is a term that's used in Chicago.  
24 I just adopted that, but the -- the --

25 Q You're equating assembly and balancing sort

1 of in the same light then.

2 A I would say conceptually, there's a transport  
3 function that to me is -- is -- is identifiable under  
4 the method that I chose, and there's one set of costs  
5 that are there, and there were other costs that I tried  
6 to break out and identify, and I gave them the label of  
7 assembly, but it can have service -- I'm not hung up on  
8 the terminology.

9 Q Okay. Okay. The record just -- the -- your  
10 understanding of the construction of a Class 1  
11 differential. Would you agree that in the Western --  
12 in Order 135, that the \$1.60 Class 1 differential is  
13 the lowest Class 1 differential that we have --

14 A I think that's correct.

15 Q -- in the country?

16 A I think that's right.

17 Q I think maybe perhaps with the exception of  
18 Deep River Falls, Minnesota, or --

19 A I've got a map right behind you in my  
20 notebook. I can look --

21 Q It's one -- it's one of the lowest.

22 A If it's not the lowest, it's among the  
23 lowest.

24 Q Okay. And is it your understanding that the  
25 construction of the Class 1 differential was to

1       compensate producers for the additional costs that they  
2       incur to make their milk available and to cause their  
3       milk to be delivered to Class 1 outlet?

4             A       You go back to the models. That would be at  
5       least one of the -- one of the considerations that --  
6       that was in that charge, the way the -- the way those  
7       types of models were put together. So, I would agree  
8       that yes, there's some relationship in there.

9             Q       And if the Class 1 differential was  
10       constructed to reflect additional marketing costs to  
11       cause producers to deliver their milk to a Class 1  
12       outlet, that it compensates for the transportation  
13       costs that may be involved in doing that?

14            A       That would be certainly the design. It  
15       doesn't necessarily mean that we find ourselves today  
16       all of those costs are covered by the differential  
17       service, and I don't think it was intended to cover all  
18       of the costs.

19            Q       And -- and is it -- is it your -- the  
20       intention of your transportation credit assembly  
21       proposal to capture all of those costs?

22            A       It is not. In fact, we included calculations  
23       in the transport, at least in the transportation  
24       credit, to point out that in every case covers a  
25       fraction of the cost, and we're going to try the best

1 we could with using all the same assumptions and data  
2 to point out that the fraction of the costs that are  
3 covered, and in no case was it -- the highest was 69  
4 percent, then that included -- that included both the  
5 differential and the credit. The credit alone in the  
6 examples that we gave, the highest was 42 percent of  
7 the costs.

8 Q Imagine hypothetically, if you will, that if  
9 the construction of the differential -- excuse me --  
10 that the -- the differential here in the Western Order  
11 was, say, perhaps as high as -- as low as \$2 and as  
12 much as \$3 in -- in range on the -- on the -- on the  
13 Class 1 price service.

14 To the extent that that -- those Class 1  
15 differentia levels are adjusted from -- to reflect the  
16 relevant difference in the value of Class 1 milk from  
17 an alternative source, -- strike that. That's not a  
18 developed-enough question to ask.

19 Previous testimony by other producers and  
20 other interests here in the hearing have made it pretty  
21 clear that -- that they would love to be able to supply  
22 the Class 1 market and because of their limited  
23 abilities to have access to the market or for whatever  
24 their reasons were or are, they're unable to enjoy  
25 supplying the Class 1 market to the extent that they

1        seem to be willing to, want to. Okay?

2            A        Hm-hmm.

3            Q        How would you reconcile those sorts of  
4        statements with the need to remove dollars from the  
5        pool, off the top of the pool, and thereby further  
6        offset the Class 1 differential incentives that already  
7        exist to encourage and cause milk to move?

8            A        Okay. I would say first that you have to  
9        take those statements and you can't just accept them at  
10       face value. You also have to consider the motivation  
11       behind them to -- to decide, you know, how believable  
12       or to what extent they are true.

13                    Secondly, there was also evidence that, you  
14       know, was -- didn't say that it was -- it was outright  
15       incorrect, that there was -- that everything that was  
16       caused was not -- proposed was not correct. So, that  
17       would be one point.

18                    Secondly, if I remember my train of thought,  
19       I suppose conceptually, we would have agreed with Mr.  
20       Carlson's proposal and representing producers, you  
21       know, we can find some conceptual agreements with it,  
22       but practically, we didn't think it would be heard. We  
23       knew it had been turned down prior to the hearing  
24       because someone did propose that. So, we decided not  
25       to go there and felt like that this was the next best

1 opportunity.

2 Q Could you refresh my memory on which --

3 A Mr. Carlson's proposal to raise the Class 1  
4 price to offset the cost of the transportation assembly  
5 credits.

6 Q I understand.

7 A So, that was not an avenue that we felt was  
8 going to be successful.

9 Third, we feel like there are costs that are  
10 not -- that are not borne in the marketplace but are  
11 shared, that the benefits are shared by everyone, and I  
12 think -- I think the final thing that I would say is  
13 there's some interrelationship between the question  
14 that you asked and the question that we hope the  
15 Secretary reviews and looks at and that is, that it is  
16 important to decide the rules for who shares in the  
17 pool returns and that perhaps the answer to that  
18 question may result in, you know, additional revenues  
19 to attract milk and to pay Class 1 dollars.

20 If -- if -- if the Secretary looks at the  
21 data as we have and says there seems to be a lot of  
22 people sharing in the pool returns, far more than any  
23 reserve could be in the marketplace, that would raise  
24 that price level. So, I think that those would be  
25 raised to reconcile the answers to the questions that

1 you asked.

2 Q Okay. It's important for DFA -- for you to  
3 keep, for example, your Beaver and Smithfield plants  
4 both open and operating at the maximum capacity as much  
5 as possible?

6 A We have exactly the same motivation that Mr.  
7 Williams has and that Jerome Cheese has, Mr. Davis has,  
8 that at -- at maximum capacity, plants run the most  
9 efficiently. We -- because those plants serve some  
10 balancing function, that we cannot do that, but the  
11 balancing function is important to the marketplace.

12 Q Okay. And to the extent that you are  
13 servicing the Class 1 market, you -- I think your  
14 testimony is that you -- you -- you are able to  
15 negotiate a -- a premium above minimum Order price?

16 A We negotiate some premiums above minimum  
17 Order prices. Yes, we do.

18 Q And to the extent that your Beaver and  
19 Smithfield plants are used to balance that function, is  
20 the unused plant capacity that you're forwarding now  
21 for us to consider in terms of coming up with your  
22 assembly price, is that a factor in determining how  
23 much you try to negotiate to get out of the marketplace  
24 as an over-Order premium to cover those costs?

25 A Yes. We look at the cost of servicing the

1 market. That's one of the costs. So, you attempt to  
2 recover the cost that you have, and you put that in  
3 your premium-negotiating structure, and again that  
4 thought process would be no different in Federal Orders  
5 5 and 7 where they have some marketwide service  
6 payments and premiums in those markets and no different  
7 than Federal Order 30 where they have premiums in the  
8 marketplace and marketwide service payments, and both  
9 sides, you know, have those included in their  
10 negotiations.

11 MR. TOSI: Okay. I think that's all I have.  
12 Thank you, Elvin.

13 MR. HOLLON: You're welcome.

14 JUDGE CLIFTON: Thank you, Mr. Tosi.

15 Mr. Vetne?

16 CROSS EXAMINATION

17 BY MR. VETNE:

18 Q Mr. Hollon, do you know whether DFA has  
19 producer members in this market whose milk ordinarily  
20 is hauled more than 80 miles to the most efficient  
21 outlet for that producer?

22 A I'm not sure if I can -- I can answer the  
23 question the way it was constructed. There is milk  
24 from DFA member farms that is hauled more than 80 miles  
25 to --



1           Q     On a regular -- on a -- let's start with  
2 this. DFA member milk in this market, at least for  
3 some producers, is hauled more than 80 miles on a  
4 regular basis to their regular customer, correct?

5           A     Yes.

6           Q     And that is because DFA finds that the most  
7 efficient method to market that producer's milk,  
8 whoever or wherever he or she may be?

9           A     On any given day basis, the demands of the  
10 market would call for that transaction to take place.  
11 So, it happens on some days, and on some days, it  
12 doesn't.

13          Q     Yeah. You referred to -- part of your  
14 testimony, to some services that are included in costs,  
15 like field services. Okay. Is it not correct that you  
16 incur field services for your Grade A patrons  
17 regardless of where you market your milk?

18          A     Yes.

19          Q     Okay. And with respect to the -- the  
20 producer, whatever the number of volume that we  
21 discussed a minute ago, whose milk is ordinarily hauled  
22 more than 80 miles, that producer's milk would be  
23 hauled more than 80 miles regardless?

24          A     I don't think so, but try it again.

25          Q     All right. About 90 seconds ago, I thought

1 you agreed that there are at least some members whose  
2 milk on a regular basis is hauled more than 80 miles in  
3 the Western Market to the plant that DFA finds it most  
4 efficient to market that milk, correct?

5 A Yes.

6 Q Okay. So, with respect to that producer,  
7 that milk would move there anyway as the most efficient  
8 outlet and DFA does not incur any additional costs,  
9 additional costs, merely -- merely by transportation in  
10 excess of 80 miles?

11 A Well, to the extent that there may be a  
12 balancing market or some other market on the way and it  
13 doesn't go there, it goes to -- goes to Southwest Utah,  
14 comes into Salt Lake City. That's more than 80 miles,  
15 and so on a given day when it's demanded by the Class 1  
16 market, it goes more than 80 miles, and the days that  
17 it's not, it stays in the Beaver plant to be balanced.

18 Q My question with respect to this scenario  
19 whenever --

20 A Okay.

21 Q Wherever it exists, that milk of a producer  
22 is hauled more than 80 -- 80 miles to a distributing  
23 plant because that is what DFA finds most efficient for  
24 that producer?

25 A On that day?

1           Q     On that -- at any time, yes. Regularly ships  
2 milk of a producer more than 80 miles because that's  
3 what DFA finds most efficient.

4           A     Okay.

5           Q     Okay? If you get a transportation credit for  
6 milk of that producer, you would be going beyond your  
7 objective of recovering additional costs for that  
8 transaction because that is a cost you incur in any  
9 case, and you would incur in any case, and you can't  
10 avoid in any case, correct?

11           JUDGE CLIFTON: Mr. Beshore, do you have an  
12 objection to the question?

13           MR. BESHORE: Yeah. I don't think there was  
14 any testimony anywhere, and it completely misstates the  
15 record. There's no testimony anywhere that the costs  
16 for which reimbursement is sought are additional costs.  
17 They're costs that are borne every day by supply in the  
18 market. So, the premise is completely without any  
19 foundation. They're costs that are incurred every day  
20 marketwide which generate marketwide benefit that are  
21 shared in the blend price for which some partial  
22 reimbursement is sought.

23           JUDGE CLIFTON: Mr. Vetne?

24           BY MR. VETNE:

25           Q     Paragraph 2 of your testimony, Exhibit 43,

1 first sentence, "Areas of Additional Costs". Further  
2 down in the same -- in the same page, you refer to  
3 "disproportionate share of costs".

4 A Hm-hmm.

5 Q Now, let me just ask a different question.  
6 Are you seeking to recover for your Class 1 sales costs  
7 that would be incurred by DFA and are incurred by  
8 others, regardless of whether it goes to Class 1 or 2  
9 or 3 or 4?

10 A We're seeking to recover costs of servicing  
11 the Class 1 market that is --

12 Q That would be incurred regardless of where  
13 the milk goes?

14 A If you would like to come and make a  
15 proposal, you can.

16 Q No. I'm asking you -- I'm asking you if  
17 you're seeking to recover more than the costs -- if you  
18 are seeking to recover costs that are incurred by  
19 everybody for doing what they do every day, just  
20 marketing milk in the most efficient way, or are you  
21 seeking those costs which are additional to you because  
22 you serve the Class 1 market and don't put them in  
23 other uses?

24 A And I guess I would say that again, we're  
25 seeking to cover -- recover costs of serving the Class

1       1 market that are not recovered by the returns, and the  
2       Class 1 market is what builds the blend price and  
3       everyone shares in the blend.

4           Q     Okay. And you're seeking to recover at least  
5       some of those costs, even though they're not in  
6       addition to costs that you and everybody else incurs  
7       for marketing any milk, such as field service costs?

8           A     Say that again.

9           Q     Okay. You are seeking to recover because you  
10       make Class 1 sales costs that are incurred by everyone  
11       simply in the process of marketing milk that are not  
12       uniquely related to additional costs to serve the Class  
13       1 market; for example, field services.

14          A     I think we took the field service costs and  
15       applied it only to Class 1 portion of the market.

16          Q     I understand that's what you did.

17          A     Okay. Then that's what we did.

18          Q     You incur field service costs when you supply  
19       Class 2 and Class 3 and Class 4, correct?

20          A     Didn't associate those with credit.

21          Q     Okay. And is your field service cost any  
22       different for milk that you put together to send to a  
23       bottling plant for Class 1?

24          A     No.

25               MR. VETNE: Okay. That's all I have. Thank

1       you.

2                   JUDGE CLIFTON: Thank you, Mr. Vetne.

3                   Mr. Tosi?

4                                   CROSS EXAMINATION

5                   BY MR. TOSI:

6               Q     I just need to ask one more I forgot to ask  
7       before. If someone received a transportation credit  
8       under your proposal, wouldn't they a priori then also  
9       then receive an assembly credit?

10            A     Yes.

11           Q     So, in other words, the -- the total credit  
12       here on this marketwide service payment would be -- it  
13       would always be 10 plus whatever the transportation --

14           A     Yes.

15           Q     -- credit was?

16           A     Yes.

17                   MR. TOSI: Thank you very much.

18                   MR. HOLLON: You're welcome.

19                   JUDGE CLIFTON: Other questions for Mr.

20       Hollon? Cross examination?

21                   (No response)

22                   JUDGE CLIFTON: All right. Any redirect, Mr.

23       Beshore?

24                   MR. BESHORE: Yes, thank you.

25

## 1 REDIRECT EXAMINATION

2 BY MR. BESHORE:

3 Q Mr. Hollon, maybe to focus or refocus our  
4 discussion about marketwide service payments a bit just  
5 to start with, the Proposal 8 is advanced under the  
6 authority in the Act which wasn't there until 1985 to  
7 allow for provisions in Orders for payment from the  
8 pool for services of marketwide benefit, including  
9 servicing the Class 1 market, is that correct?

10 A Yes.

11 Q And is it your understanding and your  
12 testimony that the purpose of authorizing the function  
13 of any such payments which are promulgated in the  
14 Orders is to recognize that in milk markets, there are  
15 circumstances where, because it's a marketwide pool  
16 that blends values, utilization values, blends the  
17 Class 1 differentials to all and shares it with all  
18 producers, there are situations where some parties bear  
19 costs of generating those values that are shared  
20 marketwide but the costs are not shared marketwide?

21 A That's the principle behind it, the economic  
22 principle for public good.

23 Q The economic principle for public good?

24 A That's the title.

25 Q Okay. And is Proposal 8 intended to reflect

1 and provide for partial reimbursement to DFA or any  
2 other qualifying entity, proprietary or cooperative, in  
3 this Order for their costs of rendering a benefit which  
4 is shared equally by all where the costs are not  
5 incurred equally by all?

6 A That is correct.

7 Q Now, with respect to the issue of over-Order  
8 charges or payments, is Order 35 -- are over-Order  
9 payments in Order 35 -- do they follow the patterns  
10 that we see in many Orders around the country that the  
11 highest over-Order payments tend to be available on the  
12 Class 3 price as opposed to other -- other prices?

13 A I'm not familiar enough with the over-Order  
14 structure in this market to answer.

15 Q Okay. In any event, if there are premiums  
16 paid by cheese plants competing for milk, those -- over  
17 the classified value of -- of milk for cheese, those  
18 premiums are not shared in any way through the Order  
19 pool, isn't that correct?

20 A That is true.

21 Q Okay. And likewise, any payments that may be  
22 made, premiums that may be paid by handlers for -- for  
23 milk for Class 2 uses are not shared in any way?

24 A That is true.

25 Q And the same goes for Class 1?



1           A     That is true.

2           Q     Correct? Okay. In your experience, are the  
3 Class 1 over-Order prices in this market the lowest in  
4 the country?

5           A     They are modest. That would be a fair  
6 characterization.

7           Q     Okay. And they do not compensate for the  
8 costs of providing milk for those Class 1 uses which  
9 are shared marketwide?

10          A     That is true.

11          Q     Okay. So, if we look at the question that  
12 Mr. Tosi asked, you know, a very thoughtful and good  
13 inquiry of -- of what values are built into the Class 1  
14 differential, whatever values are built into the Class  
15 1 differential are shared equally throughout the pool -  
16 -

17          A     Absolutely.

18          Q     -- in the blend price, correct?

19          A     That is true.

20          Q     And if there are values for, you know, making  
21 your milk available to the Class 1 market, if that's  
22 built into the Class 1 differential, the benefit of  
23 that Class 1 price is shared equally by all producers  
24 in the marketplace?

25          A     That's correct.

1 Q Regardless of whether they incur direct costs  
2 of -- of providing the milk to the Class 1 market,  
3 correct?

4 A That is true.

5 Q Okay. And your marketwide service payment  
6 proposal, Proposal 8, simply seeks to recover a portion  
7 of those costs to any handler in the market, DFA or  
8 anyone else, who incurs costs in providing that milk  
9 for Class 1 which value is shared by all in the blend  
10 price?

11 A Correct.

12 Q Okay. Now, let me just -- just a couple of  
13 particular questions. You have Chart 2 of Exhibit 44  
14 in front of you there. It's the -- it's the chart of  
15 daily -- daily receipts.

16 A Yes.

17 Q Okay. Now, the -- the question was asked of  
18 you by Doug Marshall, I think, about seven-day  
19 receiving credits and incentives to handlers to receive  
20 milk every day of the week and level out, Class 1  
21 handlers level out their -- their orders. Do you  
22 recall that?

23 A Yes.

24 Q Okay. Now, -- and there is -- DFA provides  
25 within the limits of minimum Order pooling -- Order

1 pricing and the over-Order structure in this Order,  
2 provides some incentive of that nature to handlers to  
3 take milk on an even basis seven days a week, correct?

4 A We have a receiving credit in this market.

5 Q Okay. That receiving incentive is there and  
6 handlers who can take advantage of it have already,  
7 correct?

8 A Yes.

9 Q Who want to have?

10 A Yes.

11 Q But Chart 2 in Exhibit 44 is the result of  
12 the demand for milk by DFA customers after any -- after  
13 that economic incentive has had its effect?

14 A That's right.

15 Q Okay. So, --

16 A Even with handlers, there is some demands  
17 that are -- by their customers that are out of their  
18 control.

19 Q Okay. And that's net of the economic  
20 incentives you've already provided --

21 A That's correct.

22 Q -- to level out the Orders, correct?

23 A That's correct.

24 Q Okay. Now, if you in the same exhibit, if  
25 you could go to the -- the -- the charts of costs at

1 the balancing plants?

2 A Okay.

3 Q Charts and graphs. Just so this is clear and  
4 everybody understands it, there are two -- there's a  
5 set of bars and there's a line graph.

6 A Yes.

7 Q A line on this. Okay. The -- the bars --  
8 the left axis is the axis that indicates the values for  
9 the bar graphs, correct?

10 A That is correct.

11 Q And that -- the bar graphs represent average  
12 -- average actual throughput per day at the plants in  
13 the indicated month, --

14 A Yes.

15 Q -- and the volume level's indicated on the  
16 left axis, correct?

17 A Yes.

18 Q Now, the line -- the values of the line are  
19 on the right axis, correct?

20 A Correct.

21 Q And they are -- are values per hundredweight  
22 which essentially range between \$2 and \$3 per  
23 hundredweight, correct?

24 A Correct.

25 Q Roughly?

1           A     Roughly.

2           Q     And they -- that line is -- that line was  
3     calculated on the basis of you taking DFA's actual full  
4     operating costs, fixed and variable, during each month  
5     at the plant and dividing it by the actual volumes per  
6     hundredweight, hundredweight of volumes of throughput  
7     at the plant during that month, correct?

8           A     That would be true.

9           Q     Okay. So, -- and of course, the -- depicting  
10    the line and the bars on the same graph shows that the  
11    costs per hundredweight goes up when the throughput  
12    volume goes down, correct?

13          A     That is correct.

14          Q     Okay. But with respect to fixed and variable  
15    costs and they -- whatever is fixed and whatever is  
16    variable, incurred and not incurred, is all built into  
17    the total costs that you use to divide over the volume,  
18    correct?

19          A     That's right. That's right.

20          Q     Okay. Can you give us -- do you have the  
21    actual numbers for the high and low points on those --  
22    on the -- that was graphed on -- on the charts? I  
23    mean, do you have it with you at the witness stand?

24                 JUDGE CLIFTON: Excuse me. Let's go off  
25    record just a moment.

1 (Pause)

2 JUDGE CLIFTON: Back on record. All right.

3 Thank you. We're back on record at 6:30.

4 Mr. Beshore, I'm sorry to interrupt.

5 MR. BESHORE: No -- no problem, Your Honor.

6 MR. HOLLON: It would take me four or five  
7 minutes. I have them in my computer. So, I could -- I  
8 could get them. I don't have them written anywhere  
9 that I know of.

10 MR. BESHORE: Okay.

11 BY MR. BESHORE:

12 Q The -- in any event, those numbers are  
13 precise -- that are graphed are precise values which we  
14 could approximate very nearly by drawing a straight  
15 line to the point over to the right axis and within a  
16 dime per hundredweight probably figure it out?

17 A That would be true. We can discuss providing  
18 that additional exhibit with it, with the high and low  
19 value, if that's what we think's appropriate.

20 Q Okay.

21 A We can take a five-minute break and turn on  
22 the computer and right it down.

23 Q Let's see how close we are to getting done  
24 and how --

25 A Okay.

1 Q -- close your airport -- your plane time is.  
2 Just a couple of details regarding local  
3 marketing facts and conditions. The plant in  
4 Southwestern Utah, you may have referred to it as  
5 Western General.

6 A If I did, it's Western Quality.

7 Q Okay. That's the plant that's identified on  
8 Table 1 of Exhibit 8 as Western Quality Food Products,  
9 LLC, Cedar City, Utah, correct?

10 A Yes.

11 Q Okay. And you may have referred to that as a  
12 UHT plant. Now, would it be --

13 A I said that the plant makes some UHT  
14 products.

15 Q Okay.

16 A I think Mr. --

17 Q Do you know whether they're UHT products or  
18 simply ESL or extended shelf life products?

19 A They're extended shelf life products.

20 Q Okay. They are extended shelf life products.  
21 So, it's not a UHT plant of the -- of the type of the  
22 Gossner facility that we heard about today, to your  
23 knowledge?

24 A It's not the same type.

25 Q Okay. So that, there's really -- there's not

1 any basis that you know of to project fluctuations on  
2 to their volumes of the sort and type that the witness  
3 for Gossner described with respect to their volumes?

4 A Only to say that they have variable demands  
5 on their volume, but I'm not familiar to know if -- if  
6 they have large-scale contracts or that type of  
7 arrangement.

8 MR. BESHORE: Okay. I think those are all  
9 the questions I have for the moment, Your Honor. Thank  
10 you.

11 JUDGE CLIFTON: All right. I'd like to have  
12 anyone who's interested in Mr. Hollon going into the  
13 computer and getting those actual numbers, please  
14 indicate by raising your hand.

15 (No response)

16 JUDGE CLIFTON: All right. I think there's  
17 no interest in being quite that precise. But thank you  
18 for volunteering to try to do that, Mr. Hollon.

19 Additional recross? Mr. Tosi?

20 RE CROSS EXAMINATION

21 BY MR. TOSI:

22 Q A question that came up --

23 A Okay.

24 Q -- as a result of Marvin's recross --  
25 redirect.



1                   DFA has a bunch of proposals to better  
2 identify those producers who are actually servicing the  
3 Class 1 market, --

4           A     Yes.

5           Q     -- and the reason you have those proposals is  
6 because you currently are contending that certain  
7 people are enjoying the benefits of the Order 135 blend  
8 price that are not incurring costs of servicing that --

9           A     Yes.

10          Q     -- Class 1 market?

11          A     That is correct.

12          Q     Hypothetically now, if that's accomplished by  
13 the adoption of those proposals, why is there a need to  
14 further compensate those that would more appropriately  
15 identify as serving the Class 1 market at a level  
16 above?

17          A     I'm not sure I followed your question.

18          Q     Okay. Let me -- let me try to ask that  
19 again.

20          A     Okay.

21          Q     Okay.

22          A     I -- I was up to -- I was with you at the  
23 part --

24          Q     Okay. Given the other proposals that are  
25 intended in part to more appropriately identify those

1 producers and their milk that are servicing the Class 1  
2 needs of the market, okay, --

3 A Are you asking me if the diversion limit  
4 proposals were found for?

5 Q Yes.

6 A Okay.

7 Q That would be one of them, for example, yes.

8 A That would be one.

9 Q A series of --

10 A Yes.

11 Q -- proposals that are -- that target pooling  
12 provisions?

13 A Yes.

14 Q Okay. To the extent that they were adopted,  
15 hypothetically, and to the extent then that that  
16 removes those producers and that milk on this Order  
17 which is not servicing the Class 1 needs of the market,  
18 why should another proposal be adopted to further  
19 offset or to -- or to further compensate those  
20 producers who are already now being properly identified  
21 to enjoy the benefits of sharing in the Class 1 market?  
22 Did that --

23 A I understand -- I understand your question.  
24 I'm pondering now on how I would answer it.

25 Q Okay.

1           A     As -- you know, as I understand your  
2     question, it identified proposals in groups which, you  
3     know, I agree with it, that there are some proposals  
4     that affect the performance and there are proposals  
5     that affect marketwide services, and I understand your  
6     question, that if -- if one -- if the performance  
7     proposals were found for in some fashion, would there  
8     be a -- the same equivalent need for marketwide service  
9     payment, and I guess I would answer your question that  
10    there would be a lesser need for the marketwide service  
11    payment, if the performance standards were stricter.

12           Q     Okay. In that -- in that regard, in reaction  
13    to that response, it --

14           A     Hypothetically.

15           Q     -- reduces the -- it may not reduce -- it may  
16    reduce the need or it may reduce, for example, the need  
17    to capture 10.3 cents, for example, --

18           A     Yes.

19           Q     -- and it could go down --

20           A     Yes.

21           Q     -- to, say, --

22           A     Yes.

23           Q     -- half that or some fraction of that?

24           A     I would -- I would agree with that.

25           MR. TOSI: Okay. That's all I have. Thank

1 you, Elvin.

2 MR. HOLLON: Okay. I would like to ask you a  
3 question. I just want to make sure that you understand  
4 our position on the emergency nature of the hearing and  
5 that the statement in our proposal was clear.

6 MR. TOSI: Yes, I do. Thank you very much.

7 MR. HOLLON: Okay.

8 JUDGE CLIFTON: Any other recross?

9 (No response)

10 JUDGE CLIFTON: Any further direct  
11 examination?

12 (No response)

13 JUDGE CLIFTON: Well, hallelujah. We got it  
14 done. You may step down, Mr. Hollon, and thank you.

15 MR. HOLLON: Yes, ma'am. Thank you.

16 (Whereupon, the witness was excused.)

17 JUDGE CLIFTON: I would like to -- I would  
18 like to take Mr. Vetne's evidence before we quit for  
19 the night, but I would like to take a 10-minute break  
20 first. Let's see. Please be back and ready to go at  
21 6:48.

22 (Whereupon, a recess was taken.)

23 JUDGE CLIFTON: Back on record. Back on  
24 record at 6:51.

25 I just want to indicate to each of you that

1 so far, we have admitted Exhibits 1 through 45. So,  
2 with regard to Mr. Vetne's exhibits, we're starting  
3 with Number 46, and what I think I'll do is I'll just  
4 allow Mr. Vetne to refer to those as he wishes.

5 The court reporter and I have premarked them,  
6 and so the rest of you will need to pay attention to  
7 Mr. Vetne as he goes through and identifies these.

8 (The documents referred to  
9 were marked for identification  
10 as Exhibit Numbers 46 - 53.)

11 JUDGE CLIFTON: All right. Mr. Vetne, would  
12 you state your full name and spell your names again for  
13 the record?

14 MR. VETNE: Yes. My name is John H. Vetne.  
15 I reside and have a law office in Amesbury,  
16 Massachusetts. Vetne, V-E-T-N-E. Hello, hello.

17 JUDGE CLIFTON: That's good.

18 MR. VETNE: Want me to do that again?

19 JUDGE CLIFTON: I'm sure -- I'm sure the  
20 court reporter got it. The only issue is whether the  
21 people in the back of the room got it. So, we're okay.

22 And how do you spell John, and how do you  
23 spell Vetne?

24 MR. VETNE: John, conventional J-O-H-N, Vetne  
25 V-E-T-N-E.

1 JUDGE CLIFTON: All right, sir. Now, you're  
2 an attorney. Why have you chosen to testify and be the  
3 witness here?

4 MR. VETNE: Okay. There's two -- two  
5 reasons. One, I prepared, found and made copies of a  
6 number of documents, generally of the type that can be  
7 officially noticed, and I wanted to identify the source  
8 of that information and explain how I got it and for  
9 convenience, I wanted them to be marked as exhibits,  
10 and secondly, I have a short statement which is self-  
11 explanatory, which involves some factual material of  
12 which I have personal knowledge involving this -- this  
13 market, and then as a previous statement by Mr.  
14 McBride, the statement of policy, argument if you will,  
15 concerning the proposals that we just finished  
16 discussing.

17 JUDGE CLIFTON: All right. Thank you.

18 Mr. Vetne, you may proceed.

19 DIRECT TESTIMONY

20 MR. VETNE: Yes. First, let me say I've been  
21 involved in dairy regulation, particularly Federal  
22 Market Order regulation, as an attorney since the  
23 Summer of 1973, when -- when I -- the same -- the same  
24 year that Garrett Stevens. We both came into the  
25 Department of Agriculture, Office of the General

1 Counsel, in the unit of the General Counsel's Office  
2 that represents the Dairy Divisions and Dairy Programs.

3 I left USDA in -- on January 1 of 1980 and  
4 have been in private practice since. I've represented  
5 a number of processors and a few dairy cooperatives,  
6 including Mid-America Dairymen, AMPI, Upper Midwest  
7 Cooperatives. Over the course of the years, I advised  
8 people on Federal Order issues. I have advocated on  
9 behalf of folks in Federal Order hearings and in  
10 numerous court proceedings involving Federal Order  
11 issues as well as state order issues which are -- are  
12 actually interrelated to what Federal Orders do.

13 MR. ENGLISH: Your Honor, if Mr. Vetne's  
14 qualifying himself as an expert, I think we could  
15 dispense with that. We stipulate.

16 JUDGE CLIFTON: That's fine, but I do think  
17 his background is important with regard to how the  
18 Secretary views the evidence.

19 MR. ENGLISH: I -- I agree. I'm just saying  
20 at some point, he doesn't have to keep doing it.

21 MR. VETNE: I do not offer myself as an  
22 expert in the marketing of milk from a proprietary  
23 standpoint, but I do offer my own 30 years of  
24 experience in milk marketing regulations.

25 JUDGE CLIFTON: Are you proposing, Mr.

1 English, that I accept Mr. Vetne as an expert in the  
2 field of milk marketing regulation?

3 MR. ENGLISH: I didn't -- you know, I'm not  
4 his lawyer, but I think -- I think that a fair  
5 stipulation of that is in order.

6 JUDGE CLIFTON: All right. Is there any  
7 objection?

8 MR. BESHORE: No objection. Join in the  
9 stipulation, Your Honor.

10 JUDGE CLIFTON: All right. I -- I accept Mr.  
11 Vetne as an expert in the field of milk marketing  
12 regulations.

13 MR. VETNE: Okay. And, Your Honor, I will go  
14 through the exhibits. They have been premarked.  
15 They're on the table in the middle of the room, and in  
16 order, they are from left to right on that table.

17 The first exhibit, which is Number 46, is a  
18 one-page, entitled "Table A, Receipts of Producer Milk  
19 by Handlers Regulated Under Federal Milk Orders by  
20 State of Origin".

21 This in fact is a page of the most recent  
22 USDA Dairy Programs publication on producer milk by  
23 state of origin which was officially noticed yesterday.  
24 This is a page to which I made -- Mr. Davis made  
25 specific reference in his testimony, and I would refer



1 to the line for Idaho for the year 2000, in which 2.6  
2 billion pounds of milk were pooled in the Federal Order  
3 system somewhere, representing 36 percent of the fluid  
4 grade milk in that state.

5 Official notice for your reference was also  
6 taken of prior publications. I do not have those  
7 because they weren't on the Internet, and I didn't  
8 bring the copies. Well, I couldn't find them. They're  
9 some place in my office. But I called the Dairy  
10 Division to get the numbers for other publications  
11 which were officially noticed, and for the year 1995,  
12 for the state of Wisconsin, the percentage of Grade A  
13 milk that was pooled was 94 percent. That's the right-  
14 hand side, top state, and for year -- the year 1997,  
15 the percentage of Grade A milk that was pooled was 98  
16 percent.

17 If you go down to Idaho for 1995, the  
18 percentage of milk that was pooled in Idaho was 82  
19 percent, and in 1995, that represented a volume of  
20 3.143 billion, with a B, pounds. For 1997, the  
21 percentage of Idaho milk that -- Grade A milk that was  
22 pooled was 81 percent, and by volume, that represented  
23 3.554 billion pounds.

24 The next exhibit, which has been marked as  
25 Exhibit 47, --

1 JUDGE CLIFTON: Now, I'm -- I'm sorry. I  
2 don't want to slow you down. Are you looking in the  
3 Total column on the right-hand side of Exhibit 46?

4 MR. VETNE: I -- okay. I -- I was making an  
5 oral addition from prior publications to what appears  
6 in Exhibit 46.

7 JUDGE CLIFTON: Okay.

8 MR. VETNE: And that oral addition was for  
9 producer milk for the years 1995 and 1997, and I  
10 provided information on percentage for Wisconsin and  
11 Idaho, and, in addition, I provided pounds of pooled  
12 milk in Idaho for those two years.

13 JUDGE CLIFTON: All right. Now, on Exhibit  
14 46, the column with regard to pounds is in the millions  
15 of pounds, --

16 MR. VETNE: Right.

17 JUDGE CLIFTON: -- is that correct?

18 MR. VETNE: Right.

19 JUDGE CLIFTON: So, when Idaho has 2,555  
20 million pounds --

21 MR. VETNE: It also has 2.555 billion.

22 JUDGE CLIFTON: Okay. Not trillion?

23 MR. VETNE: No. Billion.

24 JUDGE CLIFTON: Billion.

25 MR. VETNE: Right.

1 JUDGE CLIFTON: All right.

2 MR. VETNE: Yes. The document that has been  
3 marked Exhibit 47 are three pages of -- of data that I  
4 secured over the Internet. It's entitled "Idaho  
5 Agricultural Statistics 2000", which is the first page,  
6 and it should simply -- both -- all three pages show  
7 something about production in Idaho and production  
8 growth over the years in Idaho and corresponding cash  
9 receipts. These are not all derived from one single  
10 document, even though they have been stapled together  
11 here, and in fact, they don't represent individual  
12 pages as they appear in the published statistics. The  
13 graph or the chart, for example, on the front of  
14 Exhibit 47 is a chart that was extracted from a page  
15 that also had text.

16 What I wanted to do was to get t he -- the  
17 production data and the growth data from those sources  
18 by the Idaho Agricultural Statistics Service which  
19 works in cooperation with and in conjunction with the  
20 USDA's National Agricultural Statistics Service which  
21 is called NASS.

22 This data is also available in published form  
23 for the most part by NASS Milk Production, Disposition  
24 and Income publication for these various years, but  
25 that's a lot of documents to look at in and this puts

1 it together in one -- in just a few pages.

2 Exhibit 48 is an extract, a -- a bar graph  
3 extract, from a report of the Market Administrator from  
4 this market. The report number, Volume 25, January 1,  
5 2000. It's also available from the Internet, and it  
6 shows something about, on visual bar graph, about milk  
7 production in the states of Idaho, Washington and  
8 Oregon and comparison.

9 Exhibit 49 contains information on production  
10 increases and per capita milk production for various  
11 states. This -- this data came from two sources. The  
12 1999 per capita milk production data, and by the way,  
13 this, in its original form in the market exhibit, is in  
14 really cool colors, but I only had three. So, what you  
15 have is black and white, but what will appear on the  
16 Internet, when it's posted, will be in color.

17 The bottom chart of the United States showing  
18 per capita milk production was prepared and published  
19 by the Market Administrator in Tulsa, who does very  
20 good things every once in awhile to inform the whole  
21 industry. It's available on the Internet, and it's  
22 simply as stated. It -- it's derived from the  
23 population of the states in 1999 and milk production in  
24 the states as reported by NASS.

25 The top graph is derived from production by

1 state as reported by NASS in the milk production  
2 publication for the two years of 1990 and 1999. This  
3 particular assembly in this form was prepared by the  
4 University of Wisconsin at Madison in their website,  
5 and I extracted the graph from them as well as the per  
6 capita milk production graph on the second page, which  
7 contains information on per capita production.

8 Number 50, and this one's going to be a  
9 little bit difficult in the black and white version, so  
10 you'll have to wait till you see the Internet version  
11 or see the report, there are actually red dots and  
12 black dots or blue dots on the original here. Blue  
13 dots showing an increase in -- increase in cow numbers.  
14 One dot equals a thousand-cow increase, and red dots  
15 equal 1,000-cow decrease. But if you look at the  
16 exhibit and draw a line actually from the northeast  
17 corner of Idaho and bring it down straight to the  
18 eastern part of Texas, for the most part, all the dots  
19 on the left of that line would be blue and -- and most  
20 of the dots to the right of that line would be red.

21 It shows something, I think, very important  
22 about the change in -- in milk production and the  
23 regional shift between east and west. This comes from  
24 the 1997 Census about agriculture which is -- for which  
25 USDA is now responsible, since the Commerce Department

1 used to be responsible for that, and it is published on  
2 the USDA website, and the -- the writing at the top of  
3 the document, the top right, has nothing to do with  
4 USDA. That was actually printed from my computer.  
5 That's the way I stored it.

6 Number 51 is a cut and paste from an excerpt  
7 of a publication called "Future Dairy Policy in the  
8 United States" by the University of Missouri FACRI.  
9 FACRI was previously referred to by Elvin Hollon in his  
10 testimony, and this is a FACRI publication actually  
11 that was presented in some proceedings in Canada and is  
12 available on the Internet at the URL shown at the top  
13 of the page. It shows FACRI projections for milk gross  
14 -- growth in certain states, including Idaho, through  
15 2006.

16 And finally, the last of the data exhibits,  
17 Exhibit 52, is also a -- a cut and paste exhibit of  
18 material that I believed was significant from a  
19 publication again from the Tulsa Market Administrator's  
20 Office called "Market Structure of the United States  
21 Dairy Industry", and so the top of the page actually is  
22 a photocopy of the title, and then from there on,  
23 Figure 13 and the figures that follow are portions of  
24 that larger publication by the Market Administrator  
25 that relate in some way to the Mountain and Pacific

1 Regions, and by the way, Mountain Region as used in  
2 this document includes Idaho down through Arizona.

3 And the final document is some testimony I  
4 prepared late last night, which is Exhibit 53, and with  
5 that, I'll ask that all of the exhibits be received,  
6 and I will present my testimony.

7 JUDGE CLIFTON: All right. Thank you, Mr.  
8 Vetne.

9 I appreciate very much you gathering the data  
10 in the way you did and presenting it in exhibit form  
11 rather than just citing us to various sources of the  
12 information. This is very helpful.

13 With regard to these exhibits, 46 through 53,  
14 does anyone wish to Voir Dire the witness before I ask  
15 if there are objections to these exhibits being  
16 admitted into evidence?

17 (No response)

18 JUDGE CLIFTON: There appears to be no one  
19 who does.

20 Is there any objection to the admission into  
21 evidence of any of these exhibits, 46 through 53? Mr.  
22 Beshore?

23 MR. BESHORE: Yeah. I want to object to 51.  
24 I do not -- I don't believe that it's -- that it's  
25 appropriate to take into the record on, you know, an

1 officially-noticed basis, I guess or whatever excerpts  
2 of publications by university people. I mean, it just  
3 literally opens the floodgates to admitting anything  
4 without the possibility of cross examination.

5 I mean, statistical publications by the  
6 Market Administrators are in one category, but, I mean,  
7 FACRI's a think tank. It was referred to in passing by  
8 Mr. Hollon as somebody who uses some of the same  
9 information sources that Mr. Hollon used, but, I mean,  
10 frankly, you know, we could -- anybody could notice or  
11 could assemble or attempt to put into the record  
12 studies by university folks that support various  
13 positions, and I don't think it's -- I don't think it's  
14 appropriate.

15 With respect to the testimony, I want to have  
16 some comments before that is taken.

17 JUDGE CLIFTON: All right. Let's turn first  
18 then to your objection to Exhibit 51. Does anyone else  
19 join in that objection or wish to be heard on it? Mr.  
20 Stevens?

21 MR. STEVENS: I want -- Garrett Stevens. I  
22 want the record to reflect that I -- I'm not objecting.  
23 I'm -- I'm making the point that exhibits of this type  
24 can be admitted for -- and given appropriate weight as  
25 determined by the fact-finder and the determiner, who



1 in this case -- and the person who's making the  
2 ultimate determination, who in this case is the  
3 Secretary of Agriculture.

4 So, my comment is that I don't see a -- a big  
5 problem with it being admitted, qualifying that by its  
6 weight is to be determined by the deciding authorities.

7 JUDGE CLIFTON: All right. Thank you.

8 Any other comments before I hear from Mr.  
9 Vetne?

10 (No response)

11 JUDGE CLIFTON: Mr. Vetne?

12 MR. VETNE: Yes. Concerning Exhibit 51, Your  
13 Honor, Exhibit 51 is, by its nature, as to --  
14 particularly as to the years 2002 through 2006,  
15 something that is not currently fact. It is a fact  
16 that projections have been made. Folks like FACRI or  
17 the University of Missouri, Andy Novocavich and Mark  
18 Stevenson at -- at Cornell make projections concerning  
19 milk production consumption patterns upon which the  
20 industry relies, and I can tell you that -- that my  
21 clients and I rely on this to make judgments on the  
22 future, and in fact, what the Secretary is doing today  
23 at this hearing and throughout the summer will be to  
24 make a rule that applies in the future, and it is  
25 certainly relevant for the Secretary to have some

1 information to be given whatever weight it can be  
2 given.

3 I didn't ask Mr. Brown to be here, but this  
4 is the kind of information that is useful for trends to  
5 which the rules that will be adopted here are going to  
6 apply.

7 JUDGE CLIFTON: All right. Thank you, Mr.  
8 Vetne.

9 Mr. Beshore, I appreciate your objection, and  
10 it will signal the hazards of utilizing the information  
11 to the fact-finders within the Department. I'm going  
12 to admit it. I rather regularly rely on expertise that  
13 comes out of universities, even though it may be  
14 flawed, and projections, of course, are merely that.

15 However, if -- if any participant wishes in a  
16 briefing to, in addition to objecting to this  
17 information, to supply any information to the contrary,  
18 I would allow you to do that with your briefs, if you  
19 have any information to the contrary to what's  
20 contained in Exhibit 51.

21 MR. BESHORE: I appreciate the -- you know,  
22 the -- the offer, the suggestion by Your Honor, but I  
23 would respectfully say I think that compounds rather  
24 than -- rather than corrects the problem, the problem  
25 being on -- being presentation of factual assertions

1 without the possibility of examination and cross  
2 examination, which is what these on-the-record  
3 adjudicatory-type rulemaking proceedings involve, and,  
4 you know, I don't know that -- that this exhibit, the  
5 information that it presents, is likely to be the  
6 fulcrum of any decision-making here. But I would  
7 certainly hope not.

8 JUDGE CLIFTON: All right. Thank you, Mr.  
9 Beshore.

10 I respect your opinions, but nevertheless I  
11 find the information, not necessarily projections but  
12 the factual information presented in 51, is probably  
13 more reliable than much of the testimony that I've  
14 taken here, even though it was subject to cross  
15 examination.

16 So, if -- if -- if the issue is whether we  
17 can reliably utilize the information in decision-  
18 making, I think we may be able to, and so over your  
19 objection, I do admit into evidence Exhibit 51.

20 Furthermore, I stand by my offer to allow any  
21 interested party who has information to the contrary to  
22 submit it in briefs.

23 All right. Let me take the statistical  
24 exhibits first and then I'll hear you, Mr. Beshore,  
25 with regard to the last one. I do hereby admit into

1 evidence Exhibits 46 through 52, noting for the record  
2 Mr. Beshore's objection to Exhibit 51.

3 (The documents referred to,  
4 having been previously marked  
5 for identification as  
6 Exhibits 46 - 52, were  
7 received in evidence.)

8 JUDGE CLIFTON: Now, with regard to the  
9 testimony, Mr. Beshore?

10 MR. BESHORE: Having -- having had a brief  
11 opportunity to peruse Mr. Vetne's proposed testimony as  
12 reflected in Proposed Exhibit 53, my concern is not  
13 with -- with the speaker in any way or with his -- his  
14 expertise or -- he's an esteemed member of the Milk  
15 Bar. But we -- we essentially to hear Mr. Vetne's  
16 testimony and accept the statement of testimony are  
17 having, you know, a legal brief elevated to the witness  
18 stand, and I don't think it's -- you know, it's a  
19 practice that we ought to -- ought to involve in these  
20 proceedings, ought to indulge in in these proceedings.

21 It would suggest that arguments that can be  
22 made and will be made in briefs, in all briefs, but  
23 that are not testimonial perhaps are not going to have  
24 the same weight, and frankly I don't think we should go  
25 there.

1 JUDGE CLIFTON: All right. Thank you.

2 Mr. Stevens?

3 MR. STEVENS: Oh, Mr. English, would you like  
4 to speak? Please. I yield to Mr. English.

5 MR. ENGLISH: I'm concerned we are sort of  
6 setting a precedent in this hearing about how we're  
7 going to do things in the future, and the next time,  
8 you're going to have every lawyer come here at the end  
9 of the hearing and yes, put in their brief, and yes, as  
10 Mr. Beshore indicates, elevate it to the status of  
11 testimony.

12 I think I heard Mr. Vetne say he had some  
13 facts in here that he'd like to testify to and maybe  
14 one way to do this is to, if he has facts, testify as  
15 to the facts, mark the document for what it is, which  
16 is essentially a closing argument here or something for  
17 today, and treat it as argument as opposed to the sworn  
18 testimony of interpretations, which, you know, other  
19 lawyers may or may not have different interpretations  
20 that we don't need to get on the witness stand and  
21 swear that that's our interpretation.

22 I think that I'm not trying to say that I'm  
23 in disagreement, but on the other hand, I'm certainly  
24 going to reserve my right on brief to say I disagree  
25 with an interpretation here. You know, the fact of the

1 matter is that we can all talk about how long we've  
2 been in this business and how we can sit on the witness  
3 stand and talk about those things.

4 If Mr. Vetne has specific facts that he wants  
5 to cull from this and testify about, I think that's  
6 fine.

7 JUDGE CLIFTON: All right. Mr. Stevens?

8 MR. STEVENS: I'd like to say for the record,  
9 Your Honor, that calling this testimony of John Vetne  
10 on behalf of Glanbia Foods and Jerome Cheese, to the  
11 extent, and I agree with the points that have been made  
12 by both counsel, that to the extent that it's factual  
13 from personal knowledge, I believe the witness can  
14 testify.

15 To the extent that it's a brief and has legal  
16 argument and conclusionary argument, opinion beyond  
17 fact, I think it is or it certainly is everything but a  
18 brief being put in as an evidentiary document, and  
19 certainly it will be treated as such, if it is  
20 admitted. It will be treated as a brief submitted like  
21 any other brief.

22 But to the extent that it's factual, I think  
23 if it's going to make factual assertions, then I have  
24 to say I haven't read -- had time to read through it  
25 carefully, but certainly for having legal argument,

1 that's a brief. If we're talking about factual items,  
2 they can be testified to and cross examined.

3 So, I think it should -- if it is going to be  
4 admitted, it should be admitted with those types of  
5 reservations, and I agree that it should not be an  
6 opportunity for representatives, attorneys, whatever,  
7 to -- to file in essence two briefs, to file a brief  
8 during the course of the hearing, one or more,  
9 depending on how many they choose to do, and then file  
10 a brief during the course of -- of the -- of the  
11 proceeding.

12 JUDGE CLIFTON: All right. Thank you.

13 Mr. Vetne, your comments, and then I'll rule.

14 MR. VETNE: Sure. I think I can respond in  
15 two ways, and then I'm going to respond in both ways.

16 I could, in response to Mr. Beshore's  
17 objection, ask the Court to go back in the hearing and  
18 strike 90 percent of Elvin Hollon's testimony which  
19 quoted at length from rules, decisions, the statute and  
20 made legal arguments and policy arguments from -- from  
21 that and that is the function here.

22 I can refer the Court and the Secretary to,  
23 for example, the prior testimony of Mr. McBride, which  
24 was presented very forthrightly as a -- a policy  
25 statement by the witness, referring to what the

1 Secretary had done in the past and -- and what kind of  
2 policy the witness believed should be applied here.

3 That has been the nature of the testimony up  
4 till now, Your Honor, and the only difference between  
5 the testimony that Mr. McBride gave and Mr. Hollon gave  
6 is that I happen to also be a lawyer presenting that  
7 kind of testimony, and indeed all of Mr. -- all of Mr.  
8 Hollon's testimony of that nature is argument. It is  
9 argument. It does tend in these hearings to be  
10 included in the hearing to sort of weave in the facts,  
11 and the Secretary can and should treat all of that in  
12 the same way as argument.

13 At the end of this hearing, the Secretary  
14 will cull out argument from fact and cull out facts  
15 from argument and indeed consider what is argument and  
16 what is policy in bringing the two together to come to  
17 a decision.

18 So, what I suggest is my statement should be  
19 treated just like everybody else's statement that  
20 addressed these issues in this way.

21 JUDGE CLIFTON: All right. Thank you, Mr.  
22 Vetne.

23 I'm going to admit Exhibit 53 in its  
24 entirety. The objections are valuable and certainly  
25 will assist the Secretary and the staff in separating



1 argument from fact.

2 I think the only reason the facts are  
3 important to any of us here is what effect they have,  
4 what impact they have, what meaning they have, and in  
5 order for us to understand those things, it is  
6 necessary for us to have an appreciation of the history  
7 that got us here and what unforeseen consequences are  
8 occurring, and to that extent, argument is necessary.

9 I have appreciated very much the policy -- I  
10 don't necessarily want to call it argument, the -- the  
11 policy concerns expressed by many of the witnesses, and  
12 I -- I would be doing the Secretary a disfavor if I  
13 prevented those of Mr. Vetne from being considered.

14 As far as whether this is setting a bad  
15 precedent, I appreciate when counsel tips his hand at  
16 this stage of the proceeding because if everyone else  
17 disagrees, they are forearmed when they do their  
18 briefs, and it will all be addressed fully by the time  
19 it's before the Secretary. So, I really don't think  
20 that puts Mr. Vetne at an advantage; rather, it puts  
21 the Secretary in -- at an advantage, and I would not  
22 discourage other counsel from doing similar things.

23 We also -- we also have had Mr. Vetne's  
24 testimony that he did this late last night. Now,  
25 there's been a number of developments during the

1 hearing that can only be commented on after we get this  
2 far into it. So, to some extent, some of the  
3 presenters don't have the opportunity that Mr. Vetne  
4 had in preparing this last night. They already did  
5 their presentation.

6 But nevertheless, I do appreciate the  
7 information, and so I do receive into evidence Exhibit  
8 53 over the objections of both Mr. Beshore and Mr.  
9 English.

10 (The document referred to,  
11 having been previously marked  
12 for identification as  
13 Exhibit Number 53, was  
14 received in evidence.)

15 JUDGE CLIFTON: All right. Mr. Vetne, you  
16 may proceed.

17 MR. VETNE: Okay. Thank you, Your Honor, and  
18 at the -- at the risk of causing slight irritation,  
19 after Your Honor complimented me on assembling  
20 officially-noticeable kind of materials into exhibit  
21 form, I'm going to ask official notice of some things.

22 JUDGE CLIFTON: Might I ask, Mr. Vetne? My  
23 Page 7 is blank. Is yours, also?

24 MR. VETNE: There is -- there is no Page --  
25 yeah. The -- I don't know why that printed. It's just

1 the way the word processor worked.

2 JUDGE CLIFTON: Okay. So, really, we -- I'm  
3 going to -- I'm going to ask the court reporter to take  
4 off, if there's a blank page, the back and just remove  
5 it, and it will become a six-page document.

6 MR. VETNE: Yes.

7 JUDGE CLIFTON: All right. You may proceed.

8 MR. VETNE: Okay. There are a few things  
9 that I suggest would be helpful to be officially  
10 noticed, in addition to those I mentioned yesterday.

11 First, we -- we've been talking at this  
12 hearing about the reform decision and how that brings  
13 us here because some folks thought it took things that  
14 were working and broke them, others think it took  
15 things that were broken worked.

16 The Federal Reform decision, final decision,  
17 I'd like officially noticed and that was published at  
18 64 Federal Register 16026, on April 2 of 1999.

19 Do you want the whole list first or  
20 individually?

21 JUDGE CLIFTON: As you wish.

22 MR. VETNE: Okay. I'll just do the list.  
23 The second document, the second decision of the  
24 Secretary that I'd like to have officially noticed and  
25 it was noticed at the hearings in Kansas City and then

1 Minneapolis, and I didn't bring the reference with me,  
2 but it's the final decision for the Great Basin and  
3 Lake Mead Marketing Order, after the hearing in 1986.  
4 So, I guess the decision would have been 1987, in  
5 Docket Number AO-309-827. That's the decision which,  
6 among other things, addressed pooling and performance  
7 standards in this market and also most notably was the  
8 first decision adopting protein pricing in any federal  
9 market.

10 The third thing I would like noticed is U.S.  
11 Census of Population, 1990 and 2000, and Population  
12 Updates through 2002, that are available, state and  
13 county, for the states of Utah, Idaho, Nevada, Oregon  
14 and Washington. Census of Publication is a publication  
15 of the Census Bureau of the U.S. Department of  
16 Commerce, and this information is available on the  
17 Internet.

18 The next item I'd like officially noticed is  
19 the U.S. Census of Agriculture for 1992 and 1997, the  
20 last two that are available, Volume 1, which contains  
21 state data for the states of Utah and Idaho, and in  
22 particular, within that Volume 1 for the state data, I  
23 would refer to what's called Table 51. I think it's 51  
24 in both, but I'm not sure. The Summary by Standard  
25 Industrial Classification, which contains information

1 on milk and dairy product sales and activities in each  
2 state, farmer activities.

3 Table 20, the table in any case is entitled  
4 "Cattle and Calves, Inventory and Sales by Size of  
5 Herd", Table 18, it may be a different number in the  
6 most recent one, called "Selected Characteristics" --  
7 boy, am I tired -- "by Standard Industrial  
8 Classification", Table 2, "Market Value of Agricultural  
9 Products", and Table 1, "Historical Highlights".

10 Okay. All of those are -- are tables within  
11 the state data of U.S. Census of Agriculture, Volume 1,  
12 for 1992 and 1997, and all of -- all of that, by the  
13 way, is available on the USDA website.

14 The next item is a publication of the U.S.  
15 Department of Agriculture, called "Dairy Products",  
16 provides information on manufactured products  
17 nationally and in many cases by state. It's published  
18 monthly. I don't particularly care about the monthly  
19 ones, but I would like the annual summaries for 1997  
20 through 2001 officially noticed and that also is  
21 available on the USDA website.

22 For the same years, 1997 to 2001, a  
23 publication called "Milk Production Disposition and  
24 Income, Annual Summary". This is a publication of NASS  
25 that is released in April of each year. So, if it

1 hasn't already been released for the year 2001, it will  
2 be within the next few days during the month of April.

3 Next, for the same years, 1997 through 2001,  
4 "USDA Dairy Markets Statistics Annual Summary". This  
5 is an annual summary of what's published weekly as the  
6 Dairy Market News by the USDA Dairy Programs Branch of  
7 Agricultural Marketing Service.

8 There has been reference -- one of the early  
9 exhibits is an analysis of hauling costs of producer  
10 milk prepared by the Market Administrator's Office in  
11 Seattle for the Pacific Northwest and the Western  
12 Market. Earlier versions were published for 1997  
13 through -- data for 1997 through 2000 by the same  
14 Market Administrator's Office for Pacific Northwest and  
15 the Eastern Oregon/Southwest Idaho Orders. Those also  
16 are available on the Internet. It corresponds with the  
17 exhibit that's physically produced in the record for  
18 earlier years, and finally, the last thing I would like  
19 officially noticed is milk producer -- producer milk by  
20 state and county for individual Orders as contained on  
21 the Market Administrator websites for 2001 and 2002.

22 That's the end of my list.

23 JUDGE CLIFTON: Is there any objection to my  
24 taking official notice of any of those items? Mr.  
25 Beshore?

1 MR. BESHORE: Just a question about the last  
2 one.

3 JUDGE CLIFTON: Yes.

4 MR. BESHORE: All Market Administrator  
5 websites? The whole country or are you limiting it to  
6 any of the Orders?

7 MR. VETNE: Well, actually, yes. All -- the  
8 whole country, and the reason that I asked for that is  
9 there is evidence in -- in other material that milk  
10 from this region is being pooled, among other places,  
11 in New England. I would, among other things, like to  
12 be able to refer to producer milk from various Orders  
13 to ascertain in what market milk from Utah and Idaho  
14 might be pooled or moving to.

15 JUDGE CLIFTON: Is there any objection to my  
16 taking official notice of any of those items?

17 (No response)

18 JUDGE CLIFTON: There is none.

19 MR. STEVENS: Your Honor, not an objection,  
20 but I'd like to -- I'd like to put something in the  
21 record --

22 JUDGE CLIFTON: Yes.

23 MR. STEVENS: -- about it. Mr. Tosi wants to  
24 make a comment about the request for official notice.

25 MR. TOSI: I appreciate Mr. Vetne's

1 thoroughness in trying to put as many materials before  
2 us as he thinks appropriate for us to use in guiding  
3 the Secretary in the decision-making process here.

4           However, if -- if Mr. Vetne would be kind  
5 enough to remind us of his list. Part of our internal  
6 procedures are to develop a list which I think we may  
7 end up putting on the Internet, which identifies things  
8 that were officially noticed, and people would know  
9 where to go to look at those things.

10           JUDGE CLIFTON: Well, the transcript would be  
11 the best source of what he just got.

12           MR. TOSI: That occurs to me. We have a  
13 separate document here with a list of officially-  
14 noticed publications.

15           MR. VETNE: I will -- I will be happy to  
16 spend a little time this evening and type this up and  
17 provide it.

18           MR. STEVENS: Also, -- well, let's  
19 understand. It's not -- it's not to replace what is in  
20 the record. Certainly the record is the official  
21 enumeration of what he's asked for for official notice.

22           JUDGE CLIFTON: Yes, and I'd rather have --

23           MR. VETNE: Well, that's -- that --

24           JUDGE CLIFTON: I'd rather have a brief for  
25 the transcript than have him try to reconstruct this.



1           MR. STEVENS: Well, we're going to have to  
2 reconstruct it from what he said.

3           MR. VETNE: Your Honor, I will provide off  
4 the record, you know, outside of the record a courtesy  
5 copy, a legible copy of the list I read from. That's  
6 really all they're asking for, as I understand it.

7           MR. STEVENS: And to the extent it makes a  
8 difference in any way of what's recorded -- what the  
9 reporter wrote in the report, that will be noted, and  
10 -- and if this does, I believe, at some point go out on  
11 the Internet from the Department to the public and to  
12 the extent there's any difference in the courtesy list  
13 from the official list, I'm sure that the dairy people  
14 will be responsible to make sure that those differences  
15 are taken care of and that the list that goes out is  
16 the list that is being created here today.

17           JUDGE CLIFTON: All right.

18           MR. TOSI: Also, just to add here to  
19 counsel's comment, I -- I believe Mr. Vetne provided a  
20 similar list in our first hearing that we had on the  
21 Upper Midwest Order when we were considering pooling  
22 issues, and if I recall correctly, it may have been put  
23 in as an exhibit.

24           MR. VETNE: Well, we'll do what you asked  
25 for.

1 MR. TOSI: Okay.

2 JUDGE CLIFTON: All right.

3 MR. TOSI: Also, Your Honor, to the extent  
4 the list is provided, in previous hearings that you've  
5 held on those Orders, to the extent that people were  
6 officially noticed and things, if they would make those  
7 things available.

8 JUDGE CLIFTON: I think what I -- what I  
9 think will be the most practical is that anyone who  
10 really wants the information that is officially noticed  
11 to be noticed by the Secretary should reference it in  
12 briefs and it could be attached, the relevant portion  
13 could be attached to the brief.

14 MR. TOSI: We're talking just about the  
15 briefs then.

16 JUDGE CLIFTON: Well, what Mr. Vetne is doing  
17 right now is getting the information he wants into  
18 evidence, but what I'm suggesting is there's -- there's  
19 so much material here, that if it's not referred to in  
20 a brief, it's not very useful because we can't focus in  
21 on it. So, if a person refers to it in their brief,  
22 the brief could attach that particular portion of the  
23 officially-noticed material.

24 Would that be acceptable to you, Mr. Vetne?

25 MR. VETNE: Sure.

1 JUDGE CLIFTON: Would it be acceptable to  
2 you, Mr. Beshore?

3 MR. BESHORE: Yes.

4 JUDGE CLIFTON: All right. And Mr. English?

5 MR. ENGLISH: Yes.

6 JUDGE CLIFTON: Fine. Okay.

7 MR. ENGLISH: Thank you.

8 JUDGE CLIFTON: You're welcome. All right.

9 MR. VETNE: I'll proceed with my statement  
10 now.

11 JUDGE CLIFTON: Thank you.

12 MR. VETNE: My name is John Vetne. I had not  
13 originally anticipated testifying at this hearing.  
14 However, hearing testimony over the last few days  
15 provides me with a strong sense of deja vu all over  
16 again which compels me to say a few words from personal  
17 experience about the regulatory history of the Western  
18 Market. I hope that by doing so, I can provide some  
19 important history for the hearing record.

20 In early 1980, USDA held a hearing in Boise,  
21 Idaho, to reconsider whether there should be a federal  
22 milk order in Southwestern Idaho and Eastern Oregon.  
23 At that time, there was opposition to regulation from  
24 Meadow Gold, let me say that that was very moderate,  
25 and by producers supplying Meadow Gold who were

1 fortunate enough to have a Class 1 outlet for their  
2 production.

3 The cooperative proponents argued that  
4 performance requirements should be relatively tight  
5 because Class 1 utilization would be relatively high.  
6 I attended that hearing, representing Kraft, and argued  
7 that proponents grossly understated the volume of milk  
8 that would be attracted to the market's pool.  
9 Performance standards therefore should be relaxed.

10 It was as a result of this effort that a bulk  
11 tank handler option was first provided, permitting  
12 proprietary manufacturers to pool milk efficiently in  
13 much the same way as supply plants in the Midwest but  
14 without having to construct separate Grade A receiving  
15 silos. Due to the larger size of farms in Idaho, there  
16 was no practical need to receive and assemble milk at a  
17 supply plant, and I would observe that yesterday, I  
18 asked for official notice of that final decision which  
19 refers actually to a number of issues addressed here,  
20 and I provided copies to a few people that I thought  
21 might have use of them, and I have two more copies of  
22 that decision if somebody really wants one.

23 Returning to the prepared statement. Kraft  
24 was right about projected utilization. Shortly after  
25 the Order went into effect, Class 1 use was about 20

1 percent, half of that projected by the proponents. A  
2 good portion of the milk on the new Order 35 -- 135 was  
3 reserve production of farmers located in Idaho that the  
4 proponents had previously pooled in the Great Basin or  
5 Oregon Orders.

6 The creation of Order 135 immediately  
7 permitted the Great Basin pool to slough off Class 3  
8 milk and shift some of the burden of surplus milk to  
9 producers on the new Order 135 pool. Since the advent  
10 of Order 135, but ending on January 1, 2000, Great  
11 Basin's reserve has been carried on a separate pool.

12 During the two decades since the creation of  
13 the Southwest Idaho Market, pooling provisions in Order  
14 135 and 139 caused frequent problems because they could  
15 not accommodate the growing supply of Grade A milk in  
16 the mountain states. As a result, diversion rules were  
17 routinely suspended at the request of cooperatives that  
18 associated milk with the markets.

19 At a hearing in Salt Lake City in early 1986,  
20 Docket Number AO-309-A27, that's the protein price  
21 hearing also, from which the first protein pricing plan  
22 also resulted, I heard Judd Mason, the spokesman for  
23 IMPA, that's InterMountain Milk Producers, a DFA  
24 predecessor, describe the problem as follows in support  
25 of less restrictive performance requirements for the

1 Great Basin Market.

2 "If one group of farmers receives the  
3 benefits of the Order and their neighbors equally  
4 qualified are totally neglected, it would result in  
5 absolute market chaos. A cooperative association like  
6 IMPA cannot determine that one member is entitled to  
7 participate in the Federal Order pool and that his  
8 neighbor, also a member, should be excluded if he meets  
9 the same requirements. The only result would be  
10 turmoil among farmers throughout the area with one  
11 farmer being pitted against another for a place in the  
12 market. The milk in some manner must be accommodated  
13 by the Federal Order."

14 This testimony was reported at Pages 654 and  
15 Page 700 of the 1986 hearing transcript. Judd Mason,  
16 incidentally, was for many years on the staff of  
17 National Milk Producers Federation, NMPF, and regularly  
18 represented cooperative associations as one of the  
19 nation's leading dairy marketing policy experts.

20 This experience is relevant for reasons of  
21 fact and regulatory policy to pooling -- to DFA's  
22 pooling proposals in this hearing in 2002, which, as  
23 the record shows, has pitted one farmer against  
24 another.

25 Judd Mason's 1986 testimony reflects the

1 principal objective of milk order pooling that has  
2 driven government intervention since the 1930s, has  
3 been to equitably share the burden of lower value  
4 surplus milk not needed for Class 1 use. Based on  
5 DFA's testimony here and in other parts of the country  
6 last year, many in today's industry appear unaware of  
7 or perhaps have forgotten this objective.

8           The grandfather of court decisions describing  
9 the need for government intervention is the U.S.  
10 Supreme Court case of Nebia v. New York, published at  
11 291 United States 502 (1934), which described the milk  
12 problem at Pages 517 to 518 of that opinion as follows:  
13 "Close adjustment of supply to demand is hindered by  
14 several factors difficult to control, thus surplus milk  
15 presents a serious problem as the prices which can be  
16 realized for other uses are much less than those  
17 obtainable from milk sold for consumption in fluid form  
18 or as cream. A satisfactory stabilization of prices  
19 for fluid milk requires that the burden of surplus milk  
20 be shared equally by all producers and all distributors  
21 in the milkshed. So long as the surplus burden is  
22 unequally distributed, the pressure to market surplus  
23 milk in fluid form will be a serious disturbing  
24 factor."

25           A similar explanation of the need for

1 government intervention was made in the Rock Royal case  
2 four years later, the first federal milk order issue  
3 decided by the Supreme Court.

4 The provision of the AMAA, the Agricultural  
5 Marketing Agreement Act, that provides for marketwide  
6 pooling is 7 USC Section 608(c)(5)(b)(2)(i). This  
7 section says nothing about Class 1 use and does not  
8 condition pool eligibility on use or performance of  
9 milk for the Class 1 market. Quite to the contrary, it  
10 says that the market's producers must be paid a uniform  
11 price "irrespective of the uses made of such milk by  
12 the individual handler to whom it is delivered".

13 This sharing of marketwide proceeds in a  
14 manner that does, and here I'm quoting from a decision  
15 of a court, "that does not distinguish between  
16 producers on the basis of the use of their milk" has  
17 been called "the core of the congressional program" by  
18 the U.S. Court of Appeals in Washington, D.C., in a  
19 case entitled Blair v. Freeman in 1966, and has been  
20 called "the foundation of the statutory scheme" by the  
21 Supreme Court in a case called Zuber v. Allen in 1969.

22 In both of these cases, courts overturned  
23 efforts to tilt the economic playing field created by  
24 regulation in favor of producers on account of closer  
25 association with the market's Class 1 outlets.



1           The 1962 Norris Report, and that's in quotes,  
2           the name of the report is the Report of the Federal  
3           Milk Order Study Committee to the Secretary of  
4           Agriculture, also addressed the need to accommodate all  
5           local milk supplies on policy and economic grounds.

6           While noting that large surplus milk supplies  
7           could present problems, the report cautioned at Page 67  
8           that "the only alternative for such supplies may be the  
9           even more disruptive status of milk without a market or  
10          at least without a share of the Class 1 outlet".

11          The Norris Report was cited as authority by  
12          the U.S. Supreme Court on at least one occasion and has  
13          been relied upon by USDA's Judicial Officer on  
14          countless occasions as an authoritative source of  
15          federal milk order economic and regulatory policy.

16          Consistent with these court decisions,  
17          economic counsel and with principles of efficiency and  
18          equity in milk marketing rules, USDA has consistently  
19          resisted overt efforts to use performance requirements  
20          to exclude or discourage local milk from participating  
21          in a market's pool due to its use in Class 3 where the  
22          market's Class 1 needs are being met. There are many  
23          examples of application of this policy. Some are as  
24          follows.

25          From a New England decision. "To share in

1 the pool proceeds of the Order, supply plants must  
2 demonstrate the ability to furnish market fluid milk  
3 needs by shipping milk to pool distributing plants.  
4 Shipments should not be encouraged to a greater degree  
5 than necessary to satisfy fluid milk needs. To do so  
6 results in uneconomic movements of milk to distributing  
7 plants solely for pooling purposes rather than to meet  
8 fluid milk needs." That's from 43 Federal Register  
9 12695-12699 (March 27, 1978), New England.

10 Next, in quotes, "The existence of pool  
11 manufacturing plants should not be a basis for narrowly  
12 limiting the amount of milk which may be diverted to  
13 non-pool manufacturing plants since it would continue  
14 to encourage inefficient milk handling by producer  
15 groups that use non-pool manufacturing plant outlets."  
16 That's from 46 Federal Register 55876, 55,888, a 1981  
17 New England decision.

18 And finally, "One day's production" -- I'm  
19 sorry. One day's production of a producer -- that  
20 should be delivery to a pool plant during Fall months  
21 is "sufficient to demonstrate that a producer has some  
22 association with the fluid market." That's from 44  
23 Federal Register 64,087-64,091, in November 1997, a  
24 decision in the Inland Empire, which is this area.

25 JUDGE CLIFTON: Is that 1997?

1 MR. VETNE: I'm sorry. 1979. Thank you.

2 Returning to non-quoted testimony.

3 Suspension or reduction of diversion limits under  
4 Federal Orders has been very frequent and justified by  
5 USDA as necessary to ensure that producer milk  
6 historically associated with the market can continue to  
7 be pooled.

8 In the Western Order, Federal Milk Order  
9 Reform unintentionally caused disassociation of more  
10 than half of Idaho's Grade A milk that was pooled for  
11 many years, and DFA's proposals are unabashedly  
12 intended to disassociate more of Idaho's historically  
13 pooled milk supply.

14 The policy reflected in decisions and  
15 suspension rules described above is also addressed in  
16 USDA's program brochure, the Federal Milk Order  
17 Program, which explains at Pages 5 and 10 that federal  
18 milk marketing orders facilitate orderly marketing by  
19 providing for "the sharing among producers of the  
20 returns from all milk uses". Further, "there has been  
21 a general lessening of pooling requirements to  
22 facilitate the efficient pooling of additional supplies  
23 of Grade A milk".

24 In short, pool performance -- the pool  
25 performance amendments proposed by DFA for the Western

1 Market are not objectionable merely as a large step  
2 backwards, they would represent a radical departure  
3 from past policy for which strict and demanding  
4 standards of explanation and justification is required  
5 by law. That was the end of my testimony.

6 Thank you.

7 JUDGE CLIFTON: Thank you, Mr. Vetne.

8 Cross examination? Mr. Beshore?

9 CROSS EXAMINATION

10 BY MR. BESHORE:

11 Q John, on -- I don't want to get into any  
12 argument.

13 A Take your best shot.

14 Q Legal argument. No. I don't want to get  
15 into any -- I won't get into any legal argument that we  
16 will get into in our briefs where they belong.

17 So, I want to know on Page 1 of your  
18 testimony what facts, other than argument, what facts  
19 you are offering firsthand testimony of which is  
20 relevant and which you believe the Secretary should  
21 utilize from your voice from the witness stand in  
22 making this decision.

23 A The facts related about the promulgation  
24 hearing in Boise, Idaho, in 1980, which I attended, the  
25 fact about what happened to the milk after that from my

1 observations.

2 Q I'm on the first page.

3 A Yeah. Well, okay. The first paragraph is an  
4 introduction. The second paragraph begins in early  
5 1980.

6 Q USDA held a hearing.

7 A USDA held a hearing in Boise, Idaho.

8 Q Okay. Now, --

9 A That starts -- that starts some historical  
10 fact --

11 Q Right. Now, --

12 A -- of which I have personal knowledge, yes.

13 Q Thank you.

14 Now, we've taken official notice of the  
15 Secretary's final decision which makes his findings and  
16 actions from that hearing.

17 A Yes.

18 Q Okay. Now, is it your position that your  
19 personal recollections of the record and the market  
20 should be considered by the Secretary here in this  
21 decision-making process?

22 A Yes.

23 Q Okay. Should they be considered above and  
24 beyond and over and against his final decision?

25 A Oh, not -- not over and against, but his

1 final decision didn't include the transcript of  
2 everything that -- that transpired there. It didn't  
3 include the rationale of the proponents, and it didn't  
4 include all of the material, factual material and  
5 proffered material by DFA's predecessors, for example.

6 It included some factual findings and  
7 included policy judgments and created an Order. What  
8 happened at that hearing and what was advocated is  
9 relevant as we go through the history of what's being  
10 advocated now. Sure.

11 Q Okay. So, the -- the prism of your  
12 recollection 20 years later of what was advocated at  
13 that hearing in your view is important in the decision  
14 today?

15 A I believe it's important in much the same way  
16 that other witnesses have been asked questions about  
17 what got us here, yes, and my recollection is very much  
18 refreshed from going to the old dusty box of material  
19 from the Great Basin -- from the Southwest Idaho/  
20 Eastern Oregon promulgation record.

21 Q Okay.

22 A It was in fact my very first federal order  
23 hearing, and Sid Verde was representing the proponents.  
24 I have a very good recollection of it. My first  
25 federal order hearing in private practice.

1 Q Okay. Have you been involved in -- as a --  
2 as a principal in any of the marketing -- in any of the  
3 transactions in the market since that time?

4 A If by principal, you mean have I operated as  
5 a handler --

6 Q Or been an agent for.

7 A I've been an agent for handlers in my  
8 capacity as an attorney --

9 Q In marketing transactions in these markets?

10 A Not in -- as I said earlier, not in marketing  
11 transactions but in market regulatory transactions, and  
12 in that capacity have received information repeatedly  
13 and consistently about what transpires and has  
14 transpired and have listened to market participants,  
15 including DFA's predecessors, concerning what they have  
16 done.

17 Q So, it's your request that the information  
18 you have gleaned from your clients over the years about  
19 marketing conditions and developments in these Orders  
20 since 1980 should be considered by the Secretary?

21 A No, that is not what I -- that's not what I'm  
22 saying.

23 Q Well, do you --

24 A It is not -- it is not so limited as  
25 information I gleaned from my clients. It includes

1 information gleaned from your clients and their  
2 predecessor interests.

3 Q But you've not been involved in the market as  
4 a principal or as an agent in marketing matters for any  
5 entities --

6 A I have not --

7 Q -- during these years?

8 A I have not -- I have not been involved in  
9 marketing milk. I become involved after milk is  
10 marketed and the dust starts flying.

11 Q So, the information you have is information  
12 that has been reported to you by your -- your clients  
13 or -- or which you have heard from whatever sources  
14 from other parties?

15 A My clients, your clients, USDA, yes.

16 Q Okay. And those are the -- your presentation  
17 of those facts is what you have presented as your -- as  
18 your testimony here today?

19 A In part, yes.

20 Q Okay.

21 A That --

22 MR. BESHORE: Thank you.

23 MR. VETNE: Okay.

24 JUDGE CLIFTON: Other cross examination? Mr.  
25 Tosi?



1 CROSS EXAMINATION

2 BY MR. TOSI:

3 Q Mr. Vetne, --

4 A Yes, sir.

5 Q -- in -- in your written testimony, you refer  
6 to the hearing held in 1980 -- excuse me -- a decision  
7 -- excuse me -- no. You did say a hearing. The  
8 hearing for the Salt Lake market that established  
9 multiple component pricing.

10 A Yes.

11 Q And you drew -- you related extensively about  
12 Mr. Mason's testimony.

13 A Yes.

14 Q What were the -- what were the decision's  
15 findings? I appreciate that you quoted Mr. Mason, but  
16 what -- what's the decision findings regarding the sort  
17 of issues that Mr. Mason raises in his testimony?

18 A You know, I -- I asked for official notice of  
19 that decision and official notice has been taken. I  
20 cannot recall precisely. I went looking for that  
21 decision which is why I didn't have the precise  
22 reference to it.

23 Q Okay.

24 A My intention was to reference a description  
25 by DFA's predecessor of marketing disorder when

1 producers can't be pooled.

2 Q Okay. Also, you recite a decision, a couple  
3 of New England decisions from 1978.

4 A Yes.

5 Q Do you know if that decision, in the context  
6 of which you present certain selected findings, --

7 A Yes.

8 Q -- do you know if that decision found that  
9 producers who do not supply the fluid market should be  
10 eligible to have their milk receive the blend price?

11 A All of the decisions that are here and the  
12 additional ones for two decades, which I'll probably --  
13 some of which I'll refer to in my brief later, speak of  
14 producers and market pool suppliers participating on  
15 the basis of the demonstrated ability to serve the  
16 fluid market and the next step is the degree to which  
17 they serve the fluid market which is, as a matter of --  
18 as described by the Secretary's meta policy over the  
19 years, directly related to the degree of need for that.

20 So, every producer must show an ability to  
21 serve the fluid market and usually that's by a touch  
22 base, whether it's once, you know, forever or once a  
23 month or five times a month. Every producer must show  
24 that ability.

25 Q Well, the decision says, the one that you're

1 quoting from says the -- they demonstrate ability --

2 A Yes.

3 Q -- to furnish the market by --

4 A Yes. By shipping.

5 Q -- shipping milk to pool distributing plants.

6 A Yes.

7 Q So, you could contact -- you're saying that  
8 they --

9 A Yes.

10 Q -- just need to touch base at a pool plant.  
11 That's very different.

12 A This is -- yes. This is a -- this is a  
13 reference to a statement of policy on how -- how  
14 performance requirements are structured in relation to  
15 market need and how they should be restructured in  
16 addition in relation to market efficiency and, thirdly  
17 but most importantly, the whole purpose for doing that  
18 definition of who's a producer and who's a handler is  
19 so that the Section 8(c)(5) objective can be met of  
20 allowing all producers to share equally in the burden  
21 of lower value surplus milk.

22 MR. TOSI: Okay. John, thank you. I  
23 appreciate it.

24 JUDGE CLIFTON: Any other cross examination?  
25 Mr. English?

1 MR. ENGLISH: Your Honor, this is going to  
2 demonstrate, I think, the nature of the problem.

3 CROSS EXAMINATION

4 BY MR. ENGLISH:

5 Q Mr. Vetne, you have stated that some of this  
6 material, factual material came from your files, is  
7 that correct?

8 A Some of the factual material came from my  
9 clients in the form of a public hearing, yes.

10 Q Okay. Not -- not by -- in private?

11 A Not in private. I mean, I do -- I do get  
12 information from my clients in private, and after that  
13 is done, I frequently, as in this hearing, encourage my  
14 clients to make that private information publicly  
15 available by being candid on the witness stand. I'm  
16 referring to information in all cases here that -- that  
17 has been made public usually in a hearing form.

18 Q Okay. So, if we went back and looked, we  
19 would find all of this in public form, correct?

20 A Yes.

21 MR. ENGLISH: Thank you, sir.

22 JUDGE CLIFTON: Other questions for Mr.

23 Vetne?

24 (No response)

25 JUDGE CLIFTON: There appear to be none. Mr.

1 Vetne, anything further?

2 MR. VETNE: Nothing further. Thank you.

3 JUDGE CLIFTON: Thank you. You may step  
4 down.

5 (Whereupon, the witness was excused.)

6 JUDGE CLIFTON: Mr. Beshore?

7 MR. BESHORE: Yes, Your Honor. I would like  
8 to move to strike Mr. Vetne's testimony on the basis  
9 that the answer -- it has been shown to be nothing more  
10 than an attempt by he as the representative of his  
11 clients to elevate his argument and statements about  
12 what's transpired at public hearings apparently and to  
13 a level because it's sworn testimony on the record that  
14 is different than that in this hearing record, than  
15 that of other -- other parties in the record.

16 It's completely inappropriate and should not  
17 be taken and be a part of the record. I'd move to  
18 strike it.

19 JUDGE CLIFTON: Mr. English?

20 MR. ENGLISH: Your Honor, I want to be very  
21 careful here because as the actual issue, again I'm  
22 more concerned about the precedent that it sets. The  
23 precedent that it sets is that a person can get on the  
24 stand and put information in that is not subject to  
25 cross examination for those persons who actually said

1 it, and indeed it is again a compilation, and I do  
2 think that it elevates argument to a level that no  
3 other person has done yet, and I emphasize "yet",  
4 because it is now, you know, 3 after 8 p.m. on  
5 Thursday, April 18th, and by your own invitation, what  
6 you're suggesting to us is that we should spend this  
7 evening, those of us who have not done this, and come  
8 in tomorrow and do the same thing, and I -- I  
9 respectfully suggest, Your Honor, that that is not what  
10 these Federal Order hearings are for.

11 I agree with Mr. Stevens, and I have tried  
12 very hard throughout this proceeding, I think it's  
13 demonstrated by the direct that we've given and by the  
14 cross examination, to try to stick to facts and not  
15 argument, and if the ruling of -- of -- of Your Honor is  
16 to be that no, we can have argument all over the place,  
17 and we're going to elevate lawyers' argument to sworn  
18 testimony, then I think what you're inviting literally  
19 is why bother having any witnesses who aren't the  
20 lawyers?

21 From now on, come to Federal Order hearings  
22 and just the lawyers are going to show up and they're  
23 going to get on the stand and they're going to testify  
24 and we're going to cross examine the lawyers, and with  
25 all due respect, that doesn't make a good record for

1 the Secretary, and I think that this is -- this is not  
2 where we should be.

3 If this wants to accompany the record as  
4 argument, that's fine, but -- and -- and to the extent  
5 there's factual elements, I'm sure the Secretary in her  
6 infinite wisdom can pull those facts out of the  
7 statement, but for this statement to be elevated the  
8 way it is and the precedent that it sets in the future  
9 is very unfortunate, and I join in Mr. Beshore's motion  
10 to strike.

11 JUDGE CLIFTON: Thank you, Mr. English.

12 Mr. Marshall?

13 MR. STEVENS: Please.

14 MR. MARSHALL: Thank you, Your Honor.

15 My reason for speaking to this motion is  
16 that, excuse me, as Mr. Vetne correctly pointed out, in  
17 the materials and testimony that Mr. McBride has  
18 prepared for this hearing, there has been an attempt to  
19 put policy perspective on the facts being testified to.  
20 Without a policy perspective, I do not see how one can  
21 determine what the appropriate types of testimony might  
22 be nor can one explain the context in which testimony  
23 about facts is offered, and for that reason alone, I'm  
24 asking that no ruling be issued to limit the ability of  
25 Mr. McBride tomorrow to discuss quite candidly many of

1 the same things that it turns out Mr. Vetne has already  
2 discussed.

3 JUDGE CLIFTON: Thank you.

4 Mr. Stevens?

5 MR. STEVENS: Your Honor, I would refer you  
6 to my previous comments on this matter, and I -- and I  
7 -- I believe that those are still relevant to the  
8 discussion.

9 I think it should be noted and everyone  
10 should be put on notice that to the extent testimony is  
11 given here by witnesses, by their representatives, by  
12 lawyers, by whomever, the Secretary wants to review the  
13 records and find the facts and make determinations on  
14 the facts.

15 I've been doing these hearings long enough to  
16 know that all the parties engage in what we are calling  
17 "argument", what we are calling "opinion", stating  
18 facts and making assertions, opinions, argument, with  
19 respect to those facts, and I'm certainly not naive  
20 enough to think that most of the record of a lot of  
21 these hearings is just that, and it's not facts but  
22 discussion of the facts, assertion of -- of -- I mean,  
23 discussion of the facts, opinions, argument, legal or  
24 otherwise, and -- and no one who's worked in this area  
25 would say any differently, I don't think.



1           But I do believe that we should not encourage  
2 the presentation of -- and I can't characterize it any  
3 other way as -- than as a legal brief during the course  
4 of the hearing. There is an opportunity to present  
5 legal briefs in -- in these hearings. For them to come  
6 in during the course of the hearing is to -- in -- I  
7 would assert, is to unduly burden the record, and the  
8 record should be facts and certainly opinions come in  
9 and assertions and argument, but to begin a process  
10 where what I'm hearing now is that if one lawyer or one  
11 representative feels it necessary to file what in  
12 essence is a legal brief during the course of the  
13 hearing, that this will cause all the other  
14 representatives and lawyers to feel compelled to do the  
15 same thing, and I must say that I think that this does  
16 unduly burden the record.

17           Everyone gets their opportunity to make their  
18 legal arguments at the appropriate time during the  
19 proceeding, but it is not something that is -- comes in  
20 during the course of the hearing. It is something that  
21 is post-hearing and comes in as the Rules of Practice  
22 provide during the course of these proceedings.

23           So, just to reiterate and go back to what I  
24 said before, to the extent that -- that legal arguments  
25 are made, to the extent that opinions are given that

1       may well be based on facts, factually based, the  
2       Secretary's looking at the facts. The Secretary is  
3       trying to make a determination based on the facts  
4       presented in the hearing.

5                To the extent these arguments -- these other  
6       arguments and other points are made, they may be part  
7       of the record, they do come in to records, we don't  
8       need to unduly burden the record with these, and if  
9       we're going to start the process of lawyers and other  
10      representatives feeling compelled to -- to present  
11      testimony and to present in essence a legal brief  
12      during the course of the hearings, we will unduly  
13      burden these records.

14             So, for one, I think it's -- it's not a good  
15      precedent to set, with all due respect to Your Honor,  
16      and would ask that you -- that you consider that as to  
17      whether we need to head down that road.

18             Thank you, Your Honor.

19             JUDGE CLIFTON: Thank you, Mr. Stevens.

20             Mr. Vetne, anything further?

21             MR. VETNE: I probably should say no but I  
22      can't.

23             I am both puzzled and offended with the  
24      presentations that have been made by Mr. Beshore, Mr.  
25      English and Mr. Stevens. As indicated before, 90

1 percent, perhaps more, of the testimony of Mr. Hollon  
2 was reference to policy, reference to decision,  
3 argument of exactly the same kind.

4           Unfortunately, my clients, one of which never  
5 attended a hearing before, do not have the -- the  
6 status that Mr. Hollon has in being comfortable with  
7 and knowing how the facts about their company relate to  
8 the regulatory policy and histories that have -- have  
9 been expressed by the Department in the past and by  
10 other authorities in the past and by other markets in  
11 the past.

12           It could be that I could, as Mr. Beshore  
13 probably has done and Mr. English probably will do and  
14 -- and Mr. Marshall, I could have with my clients  
15 presented a -- a statement that with those witnesses  
16 put both policy and factual statements in one document  
17 and put it through those witnesses. The difference  
18 would have been that my clients would have been  
19 completely disadvantaged because when these lawyers  
20 start asking my clients policy questions about their  
21 testimony, they don't have a clue.

22           Now, when somebody starts asking Mr. Hollon  
23 policy questions about the same kind of testimony, Mr.  
24 Hollon actually can answer because he has a -- he has a  
25 history with that. I think what's being suggested here

1 really is that the policy questions, the policy issues  
2 that I've addressed in my testimony are being objected  
3 to because they came from the testimony of the person  
4 who actually wrote the policy arguments.

5 My belief is that Mr. Hollon's testimony,  
6 which contained exactly the same kind of argument, were  
7 written by his lawyer. The difference is that the  
8 scribe did not get up on the stand and submit to  
9 cross examination as I have done on the same policy  
10 questions.

11 Finally, the Rules of Practice expressly  
12 provide for argument at the hearing and that is all.  
13 That portion of my testimony was intended exactly as I  
14 hope 90 percent of Mr. Hollon's testimony will be  
15 considered as argument that fits the facts.

16 Thank you.

17 JUDGE CLIFTON: Mr. English?

18 MR. ENGLISH: Number 1, Mr. Conover always,  
19 always, always, Mr. Vetne, writes the testimony, and if  
20 you're puzzled and offended, I think it's probably  
21 because we're puzzled and offended by what has happened  
22 here.

23 And as for asking the witness policy  
24 questions of which they can't answer, I put a witness  
25 on the stand who specifically said before you asked a

1 question that he doesn't have the policy and you  
2 continued to ask the policy questions.

3 So, Mr. Vetne, you know, before you start  
4 those issues, you know, the fact of the matter is at  
5 least Mr. Conover's statement will have facts in it,  
6 and yours was entire policy and was entire -- I'm  
7 sorry. It should not be personal. I apologize, Your  
8 Honor. That the fact of the matter is that the  
9 statement made by Mr. Vetne has so few facts in it and  
10 is overwhelmingly argument, that is a major difference,  
11 and I think that it really is a departure from prior  
12 practice, and if we're angry, it's because it is such a  
13 departure from prior practice, it requires us at this  
14 late moment in this hearing to decide this evening  
15 whether we have to do the same thing tomorrow morning  
16 and that departure is what I was saying, and it is that  
17 departure which I think, Your Honor, with all due  
18 respect we need to consider as to whether that's what  
19 we want to do down the road with these hearings because  
20 from now on, I can assure you, I can assure you that  
21 that will have to be a consideration and this hearing  
22 has gone on long enough. This hearing will not be over  
23 tomorrow, and every other hearing is going to go twice  
24 as long. This is not a good precedent.

25 JUDGE CLIFTON: Thank you, Mr. English.

1 Mr. Beshore?

2 MR. BESHORE: I'll be very brief. The only  
3 thing I want to say is that Mr. Hollon wrote his own  
4 testimony, and I'll just make that representation  
5 without taking the stand. I was not the scribe. My  
6 syntax and grammar is much better.

7 JUDGE CLIFTON: Gentlemen, I do not wish to  
8 establish any policy that will require these hearings  
9 to take longer. However, I find that on the whole,  
10 what Mr. Vetne's Exhibit 53 does is balance the  
11 information that I have gathered in this hearing and  
12 that is, this is always a balancing difficulty for the  
13 Secretary, and yes, we want to honor those who daily  
14 serve the fluid needs of the market and we want them to  
15 be rewarded for their labor and that's what 90 percent  
16 of the evidence that I have gathered emphasizes.

17 But that's not the only body of producers who  
18 asked to be heard here, and I believe I would be doing  
19 a disservice to the Secretary if I struck Mr. Vetne's  
20 evidence.

21 Now, to the extent 53 contains more argument  
22 than fact, I agree with Mr. Stevens, but the policy-  
23 makers can sort that out. I -- I do not think it  
24 damages the proceeding for me to have made it an  
25 exhibit. I think all of the evidence that has come in

1 here must be weighed, and yes, Exhibit 53 looks a lot  
2 like a brief in some portions, but it bears  
3 consideration if we're being asked to go down the same  
4 road that's been gone down before.

5 So, I decline to strike Exhibit 53. I  
6 decline to strike Mr. Vetne's testimony. I do not wish  
7 anyone to stay up all night preparing a document, and I  
8 do not wish for us to spend however long we've been  
9 with Mr. Vetne, an hour and a half, I do not wish for  
10 us to add another hour and a half per party tomorrow.

11 So, I apologize if what I've done is put any  
12 party at a disadvantage by changing the procedures  
13 here, but nevertheless I find value in what Mr. Vetne  
14 has presented.

15 Mr. English?

16 MR. ENGLISH: Your Honor, I accept that,  
17 except I do note my exception, and I do indicate that I  
18 do think you put us at a disadvantage. I was certainly  
19 not prepared to do a brief. I do not know whether I  
20 have time or, for that matter, the ability to prepare  
21 such a brief this evening. Tomorrow, I will certainly  
22 indicate what I may need to do which may, of course,  
23 mean that this hearing will have to continue tomorrow  
24 afternoon.

25 Thank you, Your Honor.

1                   JUDGE CLIFTON: Thank you, Mr. English. I  
2 hope that's not your decision.

3                   Mr. Beshore, anything further?

4                   MR. BESHORE: Nothing further.

5                   JUDGE CLIFTON: All right. Thank you.

6                   I'll see you all at 8:00 tomorrow morning.

7                   (Whereupon, at 8:45 p.m., the hearing was  
8 adjourned, to reconvene tomorrow morning, Friday, April  
9 19th, 2002, at 8:00 a.m.)

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