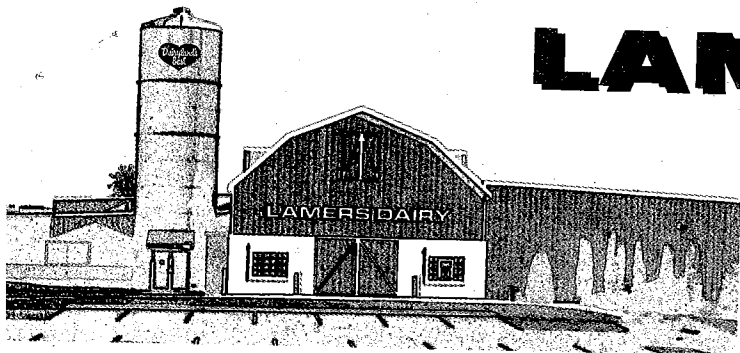




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January 24, 2007

Hearing Clerk
United States Department of Agriculture
Room 1031-Stop 9200
1400 Independence Avenue SW.
Washington, DC 20250-9200

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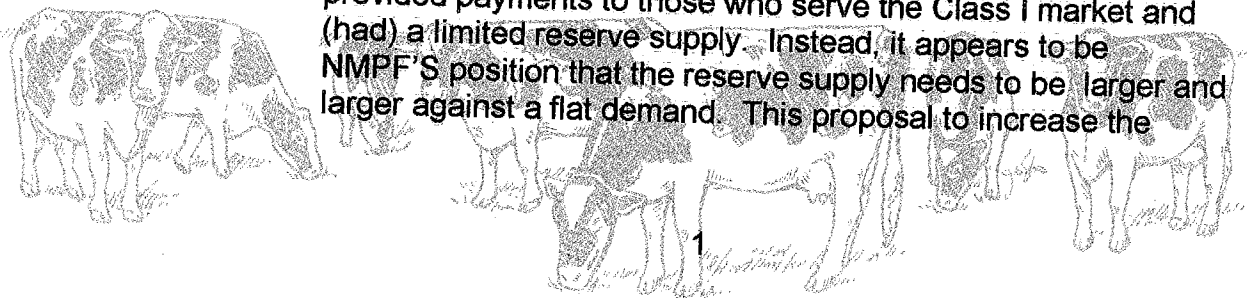
BRIEF TO CLASS I PRICE HEARING
DOCKET NO. AO-14-76, et AL.; da-07-01

STATEMENT OF FACTS

1. The primary purpose of Federal Orders under the AMAA is to maintain an adequate supply of fresh fluid milk to the consuming public. This is done by establishing a minimum price for producer milk used for fluid consumption (Class I) which will accomplish this end. Only Grade "A" milk is regulated and is shipped to fluid plants.

Dr. Brian Gulden testifies @ page 704, lines 13-23, "We contend that the federal order pricing system has created more than sufficient supply for Class I use. The federal milk marketing order programs is a marketing program with the objective of assuring that fluid drinking milk markets are adequately supplied. There is no guarantee that all the milk needed will be produced or bottled in those same markets, but the fact that the system by setting minimum prices has created enough Grade "A" milk to get the job done is hard to deny."

2. The market wide pool negates the ability of the Class I price to attract milk to fluid use. Evan Kinser states @ page 991, line 20 thru page 992 line 16. "It is troubling for us to be here in opposition to higher prices for dairy farmers, yet we feel that the Class I price is sufficient such that dairy farmers could receive more money if the pooling was structured in such a way that it provided payments to those who serve the Class I market and (had) a limited reserve supply. Instead, it appears to be NMPF'S position that the reserve supply needs to be larger and larger against a flat demand. This proposal to increase the



overall price will just make the scramble to be part of the reserve supply in the South more competitive and cause more dilution, pool riding, disorderly marketing and likely result in very little if any of these higher Class I and Class II dollars sent back to the Southern United States dairy producers' pockets that supply our plants." This constitutes disorderly marketing.

3. This then follows that the Grade "A" blend price is being used to attract milk for use for manufactured dairy products. **This is not authorized by the Act.** This in turn, caused producers to seek out the Grade "A" price which flooded the Grade "A" market.
4. An adequate supply of milk for fluid use is equal to 120% of Class I utilization. This equals a 20% reserve.
5. There is approximately a 100 % reserve supply nation wide and 400% in order 30, which can not possible be used in the fluid market. This is caused by lax shipping requirements promulgated by the AMS and is an abuse of administrative discretion. Evan Kinsen testified and quoted from the federal register @ hr. pg 969 lines 6-18 "The very nature of the market tends not to encourage the movement of milk to distributing plants for Class I uses because manufacturing plants are located throughout the marketing area and provide strong competition for producer milk supplies. The result is that distributing plants have difficulty attracting adequate milk supplies at prices that allow them to be competitive with handlers under other nearby orders." That is taken from the 52 Federal Register 38235 and 38240. published October 15, 1987. " **This also applies to handlers with in the same marketing area as well.**
6. The above results in "artificially high" Class I prices in order to attract milk to fluid use. Under the market wide pool, higher Class I prices do not attract milk to fluid plants without shipping requirements which in turn are misguided and misused. To cause fluid milk consumers to pay artificially high prices which are diluted and used to subsidize prices for manufactured uses is not in the public interest, promotes disorderly marketing and perverts the purpose of the Act.
7. The production of "manufacturing grade" milk diminished, the MW series was replaced with the basic formula for pricing Class III and IV milk as a result of the above.

8. While manufacturing plants perform as balancing plants for fluid plants, **it was never intended that manufacturing plants should use a blended grade "A" producer milk price through the market wide pool, to attract Grade "A" milk to be used for manufacturing in competition with fluid plants. This again is an abuse of the intent of the Act and is a result of the abuse of administrative discretion.**

FLAWED PRICING SYSTEM

Hearings under dockets AO-14-A74 et al, prove that the basic formula pricing structure is flawed and pooling standards which promote more than adequate supplies of Grade "A" milk do not allow manufacturing plants to price their milk relative to their income and costs as was prevalent under the MW series.

Instead of raising Class I prices, what is needed to save Federal milk marketing orders is to minimize the level of Class I prices and operate under an individual handler pool. See Kinser cross by Mr. Tosi, Page 1055, line 14.

Q. " Your proposal sort of suggests that we could do something there, but it is unclear to me are you talking about do you want higher performance standards if you will? Do you want more of an assurance that the order is going to bring Class I milk first or are you wanting the Secretary to do something?

A. It is our bottom line most that we would like the dollars that we pay --go to those producers which supply us milk, and marketwide pooling disrupts that signal and the dollars we spend get spread across a lot of different voices that supply that is not putting milk into our plant.

Q. Are you advocating individual handler pooling?

A. We would be supportive of that, yes..

Q. Have you ever submitted a proposal asking for that?

A. It is my understanding that we have in fact submitted a proposal asking for that.

Q. Since Federal Order reform?

A. Since Federal Order reform, yes.

Given the above, government regulation does not fulfill the purpose of the "Act" as per 1 of the Statement of facts above, with the market wide pool. It is an abuse of administrative power and it unjustly distorts the purpose of the AMAA and is arbitrary and capricious.

Untruths and Distortions

The NMPF proposed increase of the Class I & II price , will allow greater pooling of milk for manufacturing and will not increase prices for producers. (See testimony of Dr. Gulden and others) This will also give manufacturers more money out of the pool with which to compete with fluid plants for Grade "A" milk.

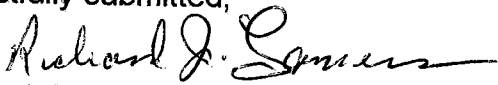
Remedy

A fix to the problems can only be a reduction of the artificially high Class I prices and an individual handler pool. An individual handler pool would eliminate shipping requirements, pool riding and Order jumping. The unfair trade practice of manufacturing plants competing with fluid plants with draws from the pool would be eliminated. This would allow an MW series, a free market for manufacturers and free market base pricing for federal orders. Under an individual handler pool, Class I & II moneys would go to those producers actually supplying the Class I & II markets. This is what the Act intended.

CONCLUSION

The Class I & II price levels should be reduced as they are already in excess of the cost to produce milk for Grade "A" versus milk for manufacturing. The AMS would then provide a true and just service to the industry and the consumer. Supply demand will adjust the level of prices to producers as the free market requires. See the testimony of E. Holon, cross by R. Lamers Pg. 443, line 16 et al.

Respectfully submitted,


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