

September 13, 2006

The Honorable A.G. Kawamura
Secretary
Department of Food and Agriculture
1220 N Street Room A-400
Sacramento, CA 95814

RE: Petition for Hearing

Dear Secretary Kawamura,

We are petitioning you to call a narrowly defined hearing to consider the specific issue of whey values to be applied in the class 4b formula. We understand that this is a highly unusual request, but we feel that the circumstances surrounding the June 1, 2006 hearing and its aftermath were so unfair that a rehearing of this specific issue is justified.

In the hearing notice for the June 1, 2006 hearing, as is standard, was a prohibition on "ex parte" communication between potential participants in the hearing and department officials, including yourself. The purpose of this prohibition is to prevent "lobbying" by the participants, but there is an underlying assumption that the department staff is objective. However, for the issue of greatest importance (the value of whey components) that was dealt with at this hearing, the department staff people who made up the hearing panel were definitely not objective. In a hearing in 2005 that dealt with the whole issue of a producer value for the portion of milk from a cheese making operation that is turned into whey products, the department economists who served on the hearing panel advocated the complete elimination of a producer value for the whey solids portion of milk. In effect, the hearing panel became an advocate for a specific position rather than a neutral and objective evaluator of the facts.

Milk Producers Council and our fellow producer colleagues were put in an impossible position in the 2006 hearing. We specifically sought to address each of the positions advocated by the 2005 hearing panel report. It is clear from the 2006 hearing panel report that they decided to discount all arguments that did not agree with their previously stated positions. They were then able, unlike all other participants, to shape the information provided to you and your deputies to bolster their preconceived opinions without any opportunity for comment and rebuttal from us.

In addition, the view of the panel as clearly stated in the findings of the 2005 hearing provided a guide to the processor side of our industry that precluded any consideration of a proper value for whey. The processor side of the industry has the expertise needed to reach a sensible value for whey, but did not present any useful ideas nor data. They knew, and played to, the stated bias of the panel.

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A lot of space in the beginning of the 2006 hearing panel report was dedicated to pointing out the increase in production that occurred in the Spring of 2006 and the stress that placed on plant capacity statewide. The report even cited that this was not just a California phenomenon, because plant capacity was stressed nationwide. MPC pointed out in the hearing testimony that the production increases not only in California but nationwide, were stimulated by relatively high milk prices in 2004 and early 2005 and that the market was now responding to that extra production by dramatically reducing prices. We pointed out that those reduced prices would bring about a negative supply response. Even before the devastating heat wave of late July, milk production increases in California were dramatically slowing. Now with the heat wave and the corresponding impact on production, it should be exceedingly clear that the June 1, 2006 hearing decision to shift millions of dollars from producer pockets to California cheesemakers pockets needs to be revisited.

Finally, the Cornell University Program on Dairy Policy and Markets has just released a new comprehensive study on the cost to manufacture dairy products. This study will be the major new evidence that USDA will be considering on September 14, 2006 in a reconvened Federal Order hearing on make allowances. This report itself sheds valuable light on the cost of processing dry whey, as will the data presented by other participants at those hearings. Participants in the Federal Order hearing will provide data and meaningful discussion of alternatives because they know there will be a whey value included in the Class III formula. Again, we contrast this with the California situation in which the members of the panel had already made clear their view that there should be no value attached to whey in the 4b formula.

Specifically, it is the dry whey make allowance adopted by CDFA as a result of the June 1, 2006 hearing to which we object. The magnitude of this decision, both in its policy implication that 4b make allowances will be dramatically increased in an effort to increase cheese plant expansion and the negative impact on producers, is so great that a rehearing on this issue in the near future is necessary.

Department policy on hearing petitions requires petitioners to submit new stabilization language to match the petition proposal. At the moment, we do not have a specific new proposal except the indefinite suspension (or outright withdrawal of) the new dry whey make allowances, and the request to call a hearing to consider the issue of establishing a proper formula that will properly value the whey component in the 4b formula. For the purpose of this petition, our request is to have Section 300 (E) (c) of each Stabilization and Marketing Plan for Marketing Milk be the same as was in the plan adopted on April 1, 2006.

We appreciate the opportunity to submit this petition. Our request for this hearing is not done lightly but only after much serious thought and contemplation. We urge you to grant our request.

Sincerely,

Sybrand Vander Dussen
President

William C. Van Dam
Executive Director

cc via email:

A. J. Yates, Undersecretary - CDFA

Kelly Krug, Director, Marketing Services - CDFA

David Ikari, Chief, Dairy Marketing Branch - CDFA