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September 20, 2006

Via Facsimile (916) 651-6378 and Regular Mail

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

RE: Request for Reconsideration of Decision Issued on August 22, 2006 Following Public Hearing on July 6, 2006

Dear Secretary Kawamura.

Western United Dairymen hereby respectfully requests that the Department reconsider its decision issued on August 22, 2006 (the "Decision") following a public hearing on July 6, 2006 (the "Hearing") to the extent that such Decision amends the Northern California Stabilization and Marketing Plan to add Sacramento County as a Deficit County for receiving bulk milk from plants in the Supply Counties of Merced and part of Stanislaus at a rate of 0.20/cwt.

The Hearing was initiated pursuant to Subsection 2080.2(b) of Title 3 of the California Code of Regulations following a written petition by California Dairies, Inc. for certain specific changes to the transportation credits and allowances in the Southern California market. (See Attachment 1.) Four alternative proposals were submitted by the deadline. (See Attachment 2.) None of these proposals suggested adding Sacramento County as a Deficit County under the Northern California Stabilization and Marketing Plan.

The request to add Sacramento County as a Deficit County for receiving bulk milk from plants in the Supply Counties of Merced and part of Stanislaus was made by Crystal Cream and Butter Company ("Crystal") orally at the Hearing (the "Request"), toward the end of the Hearing after all the other witnesses but one had completed their testimony. (See Attachment 3, 99:23-100:11, 104:4-9.) This untimely oral Request at the Hearing does not satisfy the requirements for a petition under Subsection 2080.2(a) of Title 3 of the California Code of Regulations and,

therefore, does not constitute a valid or proper petition. Further, because the Request was not made prior to the Hearing, proper notice of the Request was not, and could not have been, given to interested producers or processors, contrary to the requirements of California Food & Agriculture Code § 61993, and the Request was not considered in the pre-Hearing workshop. In short, the Request did not fall within the scope of the Hearing. This is made clear by the comments of the Hearing Officer on the record. "[T]he purpose of this hearing is to consider the amendments as proposed by the California Dairies, Incorporated, petition; the alternative proposals, those offered by the organizations already mentioned." (Attachment 3, 2:13-17.)

Because the Request was not properly before the Department at the Hearing, it should not have been considered and any action on the request is procedurally defective. The procedural defects in the Request and its consideration by the Department prejudiced interested producers by denying them an opportunity to provide evidence on the Request. The Decision to grant the improper, extemporaneous Request was made on an inadequate record due to the procedural defects.

The prejudice caused by the procedural defects is evidenced by Crystal's own comments at the Hearing. After orally requesting that a transportation credit be created for shipments from Merced and Stanislaus Counties to Sacramento County, the Crystal representative was asked by the Hearing panel:

> Q. . . . Now you've proposed transportation credits for the Sacramento area. How might that affect the competitive situation for processors in the North Bay, which have allowances but no credits?
>
> A. Well, certainly I had anticipated that someone from the processor in the North Bay would actually be here today, considering the individual had come to the pre-hearing workshop. It may or may not have an impact. I can't say that. I don't know. (See Attachment 3, 109:25-111:9.)

Like the competing processor in the North Bay, the affected producers were denied notice of and an opportunity to provide evidence on this substantive change in the Northern California Stabilization Plan that has a financial impact on producers as well as other processors. The public notice and hearing requirements under the Food & Agricultural Code and its implementing regulations exist to prevent just such an occurrence and to ensure that interested parties have notice and an opportunity to present input about proposed amendments that affect their livelihoods.

To the extent that the Decision amends the Northern California Stabilization and Marketing Plan to add Sacramento County as a Deficit County for receiving bulk milk from plants in the Supply Counties of Merced and part of Stanislaus at a rate of 0.20/cwt, it constitutes a denial of due process and should be reconsidered and vacated.

Additionally, the Decision was based on a clearly inadequate record that did not include evidence from interested producers or competing processors. Acknowledging this fact, the Hearing Panel recommended against established a transportation credit for the Sacramento Receiving Area. (See Attachment 4.) Despite the lack of required notice and opportunity to be heard, the absence of key evidence, and the recommendation of the Hearing Panel against establishing the requested transportation credit, the Department decided to implement a transportation credit for the benefit of a single processor. For these reasons, among others, the Decision appears to be arbitrary and capricious and to constitute an abuse of the Department's discretion

Western United Dairymen respectfully requests that the Decision to amend the Northern California Stabilization and Marketing Plan to add Sacramento County as a Deficit County for receiving bulk milk from plants in the Supply Counties of Merced and part of Stanislaus at a rate of 0.20/cwt be reconsidered and vacated and that if the Department wants to entertain the Request, it must do so following a properly noticed public hearing.

Sincerely,

John J. Vlahos/SAJ

John J. Vlahos

S. Anne Johnson

S. Anne Johnson

Enclosures

cc: A.J. Yates, Undersecretary
John Dyer, Chief Counsel
Kelly Krug, Director of Marketing Services
David Ikari, Chief, Dairy Marketing Branch
John Lee, Chief, Milk Pooling Branch
Case Van Steyn, Western United Dairymen

Note Regarding Attachments

Attachment 1 – Original Petition Available at:
(http://www.cdfa.ca.gov/dairy/pdf/hearings/Jan2006/CDIPetitionMay206.pdf)

Attachment 2 – Alternative Proposals Available at:
http://www.cdfa.ca.gov/dairy/dairy_hear_altproposals_TranspAllownc.html

Attachment 3 – Transcript pages: i, 1-4, 96-108 Available at:
http://www.cdfa.ca.gov/dairy/dairy_hearing_TransportationPostHearingBriefsJuly62006.html

Attachment 4 – Panel Report pages: 1-2, 2-10, 20-22, 31, 33, 38, 39 Available at:
http://www.cdfa.ca.gov/dairy/pdf/hearings/2006/finalpanelreportaug21_06.pdf