



November 7, 2008

Mr. David Ikari, Chief  
Dairy Marketing Branch  
California Department of Food and Agriculture  
560 J Street, Suite 150  
Sacramento, CA 95814

**RE: October 30-31, 2008 Class 1, 2, and 3 Hearing -- Post Hearing Brief**

Mr. Hearing Officer and Members of the Panel:

Dean Foods Company appreciates the opportunity to submit the following post-hearing brief to amplify our testimony and respond to other testimony that was presented on October 30<sup>th</sup> 2008 in Sacramento, California.

**1. Answer to question about fuel.**

I was asked for the fuel price used to calculate hauling rates. I have confirmed they are based on \$3.50/gallon diesel. Thus, I continue to stand behind my follow up response concerning the impact of changing fuel prices having an effect. Particularly, as fuel continues down the rate will decrease- increasing the advantage.

**2. Opposition to other proposals.**

Dean does not see any evidence in the Record or in evaluating the market conditions that would justify the Secretary adopting either of the producers' proposals up for consideration. To the contrary, we continue to see the dire impact should any action be taken, even in the short-run to increase prices. The only way prices could move higher in the short-run to no effect is if there was enough of a price break at the end to justify holding the business in the short-run by incurring losses. I consider that a very risky venture.

### **3. Continued impact of out-of-state packaged milk.**

The price advantage that has helped to establish out-of-state milk's presence in the California market continues to drive market pricing. This non-California regulated milk has price points at wholesale costs and on retail prices that everyone now is forced to meet. Lost California Class 1 sales are difficult to recover. Matching alone is not enough. These lost sales mean pool dollars flow out of state. At some point this erosion will cost plant capacity in California as processors lose business and are forced to consolidate to remain efficient.

### **4. Support for Dairy Institute's Proposal**

Because CDFA's statutes cannot regulate either packaged or bulk out-of-state milk entering California, Dean Foods wishes to reiterate our support for the Dairy Institute's proposal to lower the overall Class 1 price level in both the Northern and Southern Marketing Areas. We further believe there is benefit for the California dairy industry to lowering Class 2 and 3 prices. These actions increase the likelihood of increased demand for milk in California plants from California producers. Something that is much needed. We believe the prices are out of alignment with alternative supplies and other class prices.

The Secretary should adopt Dairy Institute's proposal to lower the Class 1, 2 and 3 prices to lessen the accelerated loss of Class 1 sales, stop Class 1 dollars from leaving the state, and keep plant capacity in California. Otherwise, Class 1 sales that historically have accrued to all California producers will increasingly go to a select few producers, out-of-state interests, and trucking companies. Milk demand for Class 2 and 3 plants will be lost, putting more pressure on under resourced Class 4a and 4b plants.

We sincerely appreciate your consideration of our post-hearing brief.

Sincerely,

Evan Kinser  
Director of Dairy Policy & Commodities