May 13, 2005

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

RE: May 6, 2005 Class 1 hearing – Post Hearing Brief:

Mr. Hearing Officer and Members of the Panel:

Swiss Dairy appreciates the opportunity to submit the following post-hearing brief to amplify our testimony and respond to other testimony that was presented on May 6th 2005 in Ontario, California.

1. **Adequate milk supply**

   It is understood there to be some price enhancement provided for within the Class 1 differential. Dr. Schiek when testifying on behalf of the Dairy Institute explained how enactment of their proposal would admittedly lower, but not eliminate this benefit. Within this process an idea has been put forth that there is an inadequate supply of milk and to lower the price enhancement is to jeopardize the milk supply. To make such a statement is to ignore many factors within the dairy industry.

   - Supply Management Programs
     Cooperatives Working Together (CWT) is dairy cooperatives and individual dairy farmers contributing 5 cents per hundredweight assessment on their milk production to several supply reduction programs to improve the national all milk price. It seems unthinkable to believe that US dairy cooperatives and individual producers would be so selfish to enact supply reduction programs in order to enhance their price at a time when milk supply is insufficient, as Mr. Tillison has suggested.

- Discontinued CCC purchases
  A point is made that sales to the Commodity Credit Corporation (CCC) have ceased since some time in 2004. The CCC purchases are a part of the price support program, not connected with a real domestic need. In fact, purchases by the CCC clearly point to the reverse, excess supply. It is implied that if we are not in an excess supply situation, we must be in a deficit. That is not necessarily true.

- Exports
  The US dairy industry has always looked to export products when economically feasible. USDA has even provided the Dairy Export Incentive Program (DEIP) to encourage such transactions. Recent history has provided that chance without use of DEIP dollars. The US dairy industry has responded by accelerating International sales (See Appendix 1). Export sales are just as indicative of over supply as sales to the CCC. US powder manufactures are merely capitalizing on higher market values provided by world markets rather than support prices provided by CCC. Thus, exports and increases in exports should not in any way be viewed as an indication of domestic milk shortage.

2. Rationalization for narrowing price spread

We understand that round-tripping milk is a controversial issue, and some would not like it to be included in the discussion of the decision at hand. We feel that it points clearly to the problem that exists in the Class 1 price being out of alignment with the other California prices.

Round tripping at its most basic level is the purchasing of milk at a different price through a normally uneconomic movement of the milk. One would think if prices were properly aligned you could not, using sound economic judgment, justify hauling milk away from a plant, to only backtrack in order to deliver to a plant. It is the price spread between the overbase (farmers alternative sale price) and the Class 1 price (plants alternative cost) that allows such chaotic movements of milk to make sense.

3. Concern for equal treatment

Throughout the hearings, in briefs filed and likely briefs to be filed, the Dairy Institute and its members have been attacked for referencing the farm milk coming from out-of-state as a problem when many processors are doing precisely that. This is not a hypocritical statement. It is a statement that all seek equal treatment under the law.

When USDA undertook Federal Order reform under the direction provided in the 1996 Farm Bill, California was given the option to join the Federal order system, or retain it's own state regulation. California opted to stay with a state system. Thus, California passed on the ability to regulate interstate commerce (allowed within the Federal Order system). This choice permitted a plant to be built out of the state and ship packaged milk into the state without having minimum price and pool obligations owed to anyone.

Now because of California's decision to maintain state regulation, the Dairy Institute and its members are not willing to acknowledge one implication of this decision, packaged out-of-state milk can come in unregulated, and turn our backs on the other implication, out of state bulk milk can come in unregulated. Both are clear examples of interstate commerce. The package, form, or transportation method should not provide one "exemption" and allow the other. The Dairy Institute and its members believe the state of California cannot regulate interstate commerce. Any action to that effect is not one of opposing the state of California, rather requesting equal treatment as a result of California's decision not to be part of the Federal order system, thereby relinquishing all rights to regulating interstate commerce.

We understand that California cannot do anything to regulate interstate commerce. Lowering the Class 1 price in California to provide for reasonable alignment with surrounding markets, while having an effect on the economic viability of interstate commerce, is not an attempt to regulate interstate commerce.

4. Further Clarification

I would like to clarify a statement in Mr. Yates' testimony, which was included in this hearing record by Cheryl Gilbertson, CDFA witness, and as an attachment to my testimony. In his testimony Mr. Yates stated "…we then must seriously look at how such a failure [no action by the California dairy industry on this issue] impacts our continuing obligation, if any, to pay Class 1 minimum prices at our bottling plants in California." We do not intend to threaten the Secretary, but would like to be forthright that this price misalignment is of significant consequences for both Dean Foods and California dairymen. Regardless, Dean Foods will continue to pay producers competitive prices for milk.

5. Response to Question

In response to my statement "…our operations in southern California have been negatively impacted to the tune of millions of dollars," I was asked if I could and would quantify these losses. Due to the confidentiality of such sensitive data, I along with other managers from Dean Foods have provided information to Dairy Institute. We understand the Dairy Institute has summarized our information and information from other members into a single exhibit to assist the Members of the Panel in understanding the significance of these damages.

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

Sincerely,

Steve James
General Manager
Swiss Dairy