

PUBLIC HEARING  
STATE OF CALIFORNIA  
DEPARTMENT OF FOOD AND AGRICULTURE

HOLIDAY INN CAPITOL PLAZA  
300 J STREET  
CALIFORNIA ROOM  
SACRAMENTO, CALIFORNIA

MONDAY, NOVEMBER 3, 2003

9:00 A.M.

JAMES F. PETERS, CSR, RPR  
CERTIFIED SHORTHAND REPORTER  
LICENSE NUMBER 10063

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

APPEARANCES

DEPARTMENT PANEL MEMBERS

Richard Estes, Hearing Officer  
California Department of Food and Agriculture

Eric M. Erba, Senior Agriculture Economist  
Dairy Marketing Branch  
California Department of Food and Agriculture

David Ikari, Chief  
Dairy Marketing Branch  
California Department of Food and Agriculture

John Lee, Chief  
Milk Pooling Branch  
California Department of Food and Agriculture

Dan Roderick, Auditor Manager  
Milk Pooling Branch  
California Department of Food and Agriculture

Donald Shippelhouse, Research Manager  
Milk Pooling Branch  
California Department of Food and Agriculture

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HEARING OFFICER ESTES: Good morning. This hearing will now come to order. The California Department of Food and Agriculture has called this public hearing at the Holiday Inn Capitol Plaza 300 J Street in the California Room on this date November 3rd, 2003 beginning at 9 a.m.

On October 1st, 2003 the Department received a petition from the Alliance of Western Milk Producers, AWM, requesting amendments to the pooling plan for market milk. The AWM petition proposes amendments to the pooling plan.

First it requests to -- it seeks to limit the ability of producers shipping to handlers with no Class 1 or mandatory Class 2 usage to enter or leave the pool; and 2, limit the ability of handlers with no Class 1 or mandatory Class 2 usage to enter or leave the pool.

Currently, producers and handlers can enter or leave the pool on a monthly basis. AWM amendments would limit the ability to do so and to annually.

The petition for a hearing to amend the pooling plan is considered pursuant to Food and Agricultural Code Sections 62031 through 62079, Section 62717 and Section 2080.2 of the California Code of Regulations.

A copy of this petition can be obtained by contact with the Dairy Marketing Branch at (916)341-5988

1 or by accessing the Department's web site at  
2 WWW.CDFA.CA.GOV/-- or dairy, or it's the back slash dairy.

3 This hearing will consider the petitioner's  
4 proposal to amend Sections 106 and 114 of the pooling plan  
5 in effect on August 1st, 2003 to address the ability of  
6 producers shipping with handlers with no Class 1 or  
7 mandatory Class 2 usage to enter or leave the pools as  
8 already mentioned.

9 There is an alternative proposal that the  
10 Department has received from the Dairy Institute in  
11 response to the AWM petition, and they will be allowed to  
12 make a presentation after the AWM one.

13 My name is Richard Estes, and I have been  
14 designated as the hearing officer for today's proceedings.  
15 Testimony and evidence pertinent to the call of the  
16 hearing will be received. Anyone wishing to testify must  
17 sign the hearing witness list roster located at the  
18 sign-in table.

19 Staff available at the back of the room to  
20 provide assistance are Candace Gates and is that Kristina  
21 Kreutzer? Is that Kristina Kreutzer in the back anyone?

22 Anyway, there's another woman --  
23 (Laughter.)

24 HEARING OFFICER ESTES: Karen Dapper is also  
25 present. Sometimes my memory is not very good. So we

1 want to make sure that the record is, you know, accurate.

2           As a courtesy to the panel, Department staff and  
3 the public, please speak directly to the issues presented  
4 by the petition and avoid personalizing any disagreements.  
5 As the hearing officer, I reserve the right to interrupt  
6 and to curtail any testimony that is irrelevant for the  
7 purposes of this hearing.

8           As an additional courtesy, please treat the  
9 panel, the staff and the witnesses respectfully, avoid any  
10 verbal expressions of approval or disapproval such as  
11 cheering or hissing.

12           That's probably not much of an issue today, but  
13 there have been hearings in the past where the admonition  
14 has been more appropriate.

15           Please note that only those individuals who have  
16 testified under oath during the conduct of the hearing may  
17 request a post-hearing briefing period to amplify, explain  
18 or withdraw their testimony. Only those individuals who  
19 have successfully requested a post-hearing briefing period  
20 may file a post-hearing brief with the Department.

21           The hearing panel list has been selected by the  
22 Department to hear testimony, receive evidence, question  
23 witnesses and make recommendations to the Secretary.  
24 Please note the questioning of witnesses by anyone other  
25 than members of the panel is not permitted. The panel to

1 my left is composed of members of the Department's Dairy  
2 Marketing Branch and the Milk Pooling Branch include Don  
3 Shippelhouse, Research Manager 1 of the Milk Pooling  
4 Branch; Dan Roderick, Supervising Auditor of the Milk  
5 Pooling Branch; Dave Ikari, Chief of the Dairy Marketing  
6 Branch; Eric Erba, Senior Agricultural Economist of the  
7 Dairy Marketing Branch; and John Lee Chief of the Milk  
8 Pooling Branch.

9 I am not a member of the panel and I will not be  
10 taking part in any decisions relative to the hearing. The  
11 hearing reporter today is James Peters of Peters  
12 Shorthand, located here in Sacramento. A transcript of  
13 today's hearing will be available for review at the  
14 Marketing -- at the Dairy Marketing Branch headquarters.  
15 And that will be at the downtown office, located in  
16 Sacramento at 1220 N Street, Room A247.

17 Anyone desiring copies of the transcripts of  
18 today's hearing must purchase them directly from Peters  
19 Shorthand.

20 Now, at this time, I'll introduce the Department  
21 witnesses, Kristina Kreutzer And Cheryl Gilbertson of the  
22 Dairy Marketing Branch who will introduce the Department's  
23 exhibits.

24 (Thereupon Ms. Kristina Kreutzer was sworn  
25 by the Hearing Officer to tell the truth and

1 nothing but the truth.)

2 MS. KREUTZER: I do.

3 (Thereupon Ms. Cheryl Gilbertson was sworn  
4 by the Hearing Officer to tell the truth and  
5 nothing but the truth.)

6 STAFF ANALYST GILBERTSON: I do.

7 HEARING OFFICER ESTES: And you have a number of  
8 exhibits that you'd like to introduce -- the two of you  
9 would like to introduce into the record?

10 STAFF ANALYST GILBERTSON: Yes, we do.

11 Mr. Hearing Officer, my name is Cheryl  
12 Gilbertson. I'm an analyst with the Dairy Marketing  
13 Branch of the California Department of Food and  
14 Agriculture.

15 My purpose here this morning is to introduce the  
16 Department's hearing exhibits number 1 through 43.  
17 Relative to these exhibits, previous issues of Exhibits 12  
18 through 43 are also hereby entered by reference.

19 The exhibits being entered her today have been  
20 available for review at the Offices of the Dairy Marketing  
21 Branch since the close of business on October 24th, 2003.  
22 An abridged copy of the exhibits is available for  
23 inspection at the back of the room. Multiple copies of  
24 Exhibits 1, 4, 6, 7, 8, 9 and 11 are also available at the  
25 back of the room.

1 I ask, at this time, that the composite exhibits  
2 be received.

3 HEARING OFFICER ESTES: Can you please bring them  
4 forward.

5 The Department's Exhibits 1 through 43 will be  
6 introduced into the record at this time.

7 (Thereupon the above-referenced documents were  
8 marked by the Hearing Officer as  
9 Exhibits 1 through 43 for identification.)

10 HEARING OFFICER ESTES: Are there any panel  
11 questions regarding the content of the exhibits?

12 Seeing none, does anyone in the audience have any  
13 questions regarding the content of the Department's  
14 exhibits?

15 If you do have any such questions, please  
16 recognize that they are limited for purposes of  
17 clarification. Cross examination of the Department's  
18 staff is not permitted. Please identify yourself and your  
19 organization for the record before asking your questions.

20 Seeing that there are no questions, we will now  
21 proceed with taking petitioner's testimony.

22 STAFF ANALYST GILBERTSON: I have one correction.  
23 The transcripts will be available at 560 J Street, at the  
24 downtown plaza.

25 HEARING OFFICER ESTES: Okay.

1           STAFF ANALYST GILBERTSON: This concludes my  
2 testimony.

3           HEARING OFFICER ESTES: Alliance of Western Milk  
4 Producers now has 60 minutes to make its presentation in  
5 support of the petition. James Tillison will now make the  
6 presentation before the petition followed by questions  
7 from the panel.

8           (Thereupon Mr. James Tillison was sworn by  
9 the Hearing Officer to tell the truth and  
10 nothing but the truth.)

11          MR. TILLISON: Yes, I do.

12          HEARING OFFICER ESTES: And would you give a  
13 brief description of yourself and the organization that  
14 you represent.

15          MR. TILLISON: All right. My name is James  
16 Tillison. I'm CEO of the Alliance of Western Milk  
17 Producers. The Alliance of Western Milk Producers  
18 represents dairy cooperatives in the state of California.  
19 And membership includes California Dairies Inc., Dairy  
20 Farmers of America Western Council, and Humboldt Creamery  
21 Association.

22          HEARING OFFICER ESTES: And, Mr. Tillison, you've  
23 given me a copy of your testimony today in support of the  
24 petition. I assume you'd like to have that introduced  
25 into the record.

1 MR. TILLISON: Yes, I would.

2 HEARING OFFICER ESTES: And it will be so  
3 introduced as Exhibit number 44.

4 (Thereupon the above-referenced document was  
5 marked by the Hearing Officer as Exhibit  
6 44 for identification.)

7 HEARING OFFICER ESTES: So please proceed with  
8 your testimony.

9 MR. TILLISON: Thank you. Mr. Hearing Officer  
10 and members of the panel. My name is Jim Tillison CEO of  
11 the Alliance of Western Milk Producers. I'm testifying  
12 today on behalf of the Alliance and its member  
13 cooperatives as directed by the Board of Directors.

14 The Alliance cooperative members both supply milk  
15 to and process milk into all uses of milk. The Alliance  
16 has submitted a proposal to amend the pooling plan for  
17 market milk. The Alliance proposal limits the ability of  
18 plants to jump in and out of the pool by doing the  
19 following:

20 A, under Section 106 of the pooling plan add a  
21 new subsection (d):

22 Any pool plant which does not process Class 1 or  
23 mandatory Class 2 products shall be a pool plant for the  
24 entire calendar year, unless it notifies the Department  
25 prior to January 1 of the coming calendar year that it

1 intends to no longer be a pool plant. A non-pool plant  
2 which has previously been a pool plant shall remain a  
3 non-pool plant unless it notifies the Department prior to  
4 January 1 of the coming calendar year that it intends to  
5 be a pool plant effective January 1.

6 B, under Section 114(a) add subsections 1 and 2:  
7 Market milk pooled on January 1 of the calendar year shall  
8 remain pooled for the entire year. Market milk being  
9 delivered to a non-pool plant may not be pooled by any  
10 other plant prior to January 1.

11 The purpose of this petition to amend the pooling  
12 is simple, to preserve the orderly marketing function of  
13 the California pooling system. It also will provide some  
14 competitive equity between producers and between  
15 processors operating Class 3, 4a and 4b plants in the  
16 State of California.

17 Unless our proposal is adopted, the predatory  
18 pooling and depooling of milk will continue -- unless our  
19 proposal is adopted the predatory pooling and depooling of  
20 market milk will continue to disadvantage those who do not  
21 have and do not want the option of jumping in and out of  
22 the pool.

23 During the pre-hearing workshop in response to a  
24 question, CDFA staff indicated that two plants have pooled  
25 and depooled during the period between January 2000 and

1 August of 2003. The amount of milk involved ranged  
2 between 17 million and 25 million pounds of milk per month  
3 according to CDFA data.

4           Assuming the plants average 21 million pounds of  
5 milk processed per month for the 4 months, July through  
6 October, the 2 plants depooling reduced pool revenue by  
7 approximately \$1.3 million. Consider that if these plants  
8 were pooled from January through June of 2003, these  
9 plants would have drawn \$4.8 million out of the pool.

10           Put another way, had the Alliance proposal been  
11 put in place, the pool would have had an additional \$1.3  
12 million to distribute to producers during the 4 months in  
13 question. That is an additional \$700 per dairy. Not a  
14 great deal of money until you consider that the 2 cheese  
15 plants in question, thanks to the ability to depool, have  
16 the ability to entice producers to ship to their plant  
17 with the promise of receiving the higher of the overbase  
18 price or the Class 4b price. For the above 4 months that  
19 is an average of \$1.59 per hundredweight more.

20           Consider too that a cheese plant with its own  
21 production capability -- I'm sorry -- the Alliance urges  
22 the Department to immediately act to adopt this proposal.

23           The Dairy Institute Proposal. We are gratified  
24 that the Dairy Institute sees the wisdom of requiring all  
25 plants to make a commitment to participate in the pool.

1 Like the Alliance proposal, the Institute believes that  
2 the commitment to the pool should be a year, 12 months.  
3 Unlike the Alliance, the Institute's proposal gives  
4 proprietary plants the flexibility to depool when it  
5 chooses.

6           The Alliance opposes this type of flexibility.  
7 First and foremost, the risk to the processor of depooling  
8 when it chooses to do so is greatly reduced with the  
9 institute's proposal. This year is an excellent example.  
10 By the end of June indications were clear that milk  
11 production was slowing dramatically in the top 20 states.  
12 The block market had climbed 16 cents by the end of June,  
13 while butter and powder remained fairly stagnant.

14           The Class 1 price was languishing around \$12.  
15 Essentially, manufacturers knew that nearly 60 percent of  
16 the overbase milk price was going no where, and estimates  
17 were that the June overbase price was going to be less  
18 than the 4b price, and the National Milk Producers  
19 Federation hundredweight program looked like it was going  
20 to move ahead, which would further reduce milk production.

21           My point is that the view for the next few months  
22 was clear in June of 2003 than it would have been in  
23 December of 2002. The last time prices moved as  
24 dramatically as this year was in the summer of 1999. Like  
25 this year, in December of 1998, a plant was less likely to

1 depool than it was in June of 1999.

2           In addition, the State Legislature determined in  
3 1997 that the ability of a producer to give up his or her  
4 Grade A permit should be effective only on January 1 of  
5 each year, and that the producer would be unable to regain  
6 Grade A status until the next January 1.

7           The Alliance proposal continues the Legislature's  
8 timeline and intent. The Dairy Institute's proposal does  
9 not.

10           The Department's Proposal.

11           What the Department is attempting to do with its  
12 proposed amendment is to bring the pooling plan in line  
13 with what common practice is. The Alliance supports the  
14 Department's intent, but not the approach that the  
15 Department has proposed.

16           Section (a) of Section 1001 says the handler must  
17 pay the producer for the milk it receives in the last half  
18 of the previous month based on the quota or overbase price  
19 for the month prior to the month in which the milk was  
20 received.

21           The industry practice, however, is to pay the  
22 producer an estimated value for his or her milk based on  
23 the plant's estimated milk price for the month in which  
24 the milk was received. The Department amendment adds a  
25 Section (e) to Section 1001 that gives the plant the

1 option to either use an estimation method approved by the  
2 Department of what is required instead of what is required  
3 in Section (a).

4           At the pre-hearing workshop literally all the  
5 industry participants questioned this optional approach.

6           Therefore, the Alliance proposes that rather than  
7 add a Section (e), that Section (e) be rewritten as  
8 follows.

9           "On or before the 15th day of the month, each  
10 handler shall pay each producer the approximate net value  
11 for milk received during the last half of the preceding  
12 month based on estimated quota, base and overbase prices  
13 for the month in which the milk was received using an  
14 estimated method that has been reviewed and approved by  
15 the pool manager."

16           Consideration was given to leaving the existing  
17 language and adding "or based on" before the word  
18 estimated in our proposed change. However, since industry  
19 practice is using an estimate, it makes little sense to  
20 offer an option in our opinion.

21           Summary.

22           In a letter dated October 7th, 1 of the 2 cheese  
23 plants that depooled wrote the Department opposing the  
24 Alliance's petition for a hearing. In its letter Joseph  
25 Gallo Farms states quote, "This option," and this is my

1 addition, to depool, "is open to any cheese and butter  
2 powder plant and is not limited to a select few."

3           The fact is that cooperative associations do not  
4 have the option to depool their milk. The pooling plan  
5 says a cooperative is a pool handler, period.

6           The Gallo Farm letter goes on to say that  
7 cooperatives are trying to usurp the right of smaller  
8 independent plants to depool.

9           First, we would point out that the Dairy  
10 Institute, which represents a number of independent cheese  
11 plants, supports the concept of pooling in -- of limiting  
12 the pooling and depooling of milk.

13           Second, pooling is not a right. It is a  
14 privilege, for which plants like Gallo Farms essentially  
15 have no performance requirements.

16           Third, neither the Alliance proposal nor the  
17 Institute's proposal takes away the privilege of an  
18 independent producer to pool or depool. The proposal  
19 simply limits that privilege to prevent pool riding.

20           The final point Gallo Farms tries to make to  
21 justify the Department not limiting the pooling privilege  
22 is competition from plants and federal orders who have the  
23 option of pool riding. The Alliance questions what  
24 advantage, if any, really exists.

25           Also, it appears the days of random depooling of

1 federal orders may be numbered. At least 1 federal order  
2 may be ordered out, in part because of depooling of the  
3 magnitude that the Gallo letter references. In other  
4 orders, it is likely that hearings will be requested to  
5 address depooling as well.

6 In conclusion, handler-optional pooling -- or I'm  
7 sorry. Handler-option depooling of milk randomly, also  
8 known as pool riding, is a practice that threatens the  
9 entire pooling system if it is allowed to continue.  
10 Pooling is a privilege that neither plants nor producers  
11 should be allowed to abuse.

12 The Alliance urges the Department to immediately  
13 adopt its proposed amendments to the plan. We also  
14 request that we be allowed to file a post-hearing brief  
15 with the brief due at CDFA no later than 4 p.m. Friday,  
16 November 7th, 2003.

17 Thank you for taking such quick action on our  
18 petition, and I'll answer any questions you may have as  
19 best as I can.

20 HEARING OFFICER ESTES: Before we proceed to  
21 allow the panel to question, I just have an inquiry I'd  
22 like to make to the panel. Is there any specific  
23 consideration concern you have about the time about either  
24 a post-hearing brief request or the timing limitation  
25 placed upon that request?

1           Because if -- the Alliance request also limits  
2 the time for that brief to be filed as of November 7th,  
3 which would be, I think, this Friday. So we would  
4 obviously have to impose that on all subsequent people  
5 that request it.

6           Okay, so we will grant your request for a  
7 post-hearing brief. And likewise please note that for  
8 anyone else who requests them obtains the ability to do  
9 so, that the brief will be -- is required the brief be due  
10 to CDFA no later than this Friday at 4 p.m.

11           And are there any panel questions for Mr.  
12 Tillison?

13           MILK POOLING BRANCH CHIEF LEE: I have a  
14 question.

15           Mr. Tillison, the definition for pool plant is a  
16 plant handler that processes Class 1 or mandatory Class 2  
17 products.

18           In your proposal where a non-pool plant that  
19 deems themselves to be non-pool for a year, if during that  
20 period that they wanted to be depooled, they all of a  
21 sudden decide to begin processing Class 1 or market grade  
22 Class 2 required products, how would you address that  
23 issue?

24           MR. TILLISON: Well, we don't address the issue  
25 specifically. However, the way I would address it is that

1 they then become a mandatory pool plant and would  
2 obviously have to be pooled. The milk that they process  
3 into Class 1 and so forth would have to be pooled, not  
4 necessarily all the milk they handle.

5 Because our main concern here, obviously, is the  
6 depooling of Class 3, 4a or 4b milk.

7 MILK POOLING BRANCH CHIEF LEE: Thank you.

8 SENIOR AGRICULTURAL ECONOMIST ERBA: Mr.  
9 Tillison, a couple questions for you. I'll start on the  
10 first page. Under your Subsection (b), first page, second  
11 point number 2. "Market milk being delivered to a  
12 non-pool plant may not be pooled by any other plant prior  
13 to January 1." Can you explain what the intent of that  
14 particular language is?

15 MR. TILLISON: Yeah, the intent of that language  
16 is to not only limit the ability of plants to pool and  
17 depool but also producers to pool and depool by switching  
18 plants. There are some processing plants that have a pool  
19 plant and a non-pool plant. And the purpose there is to  
20 not allow that producer to be shifting back and forth  
21 between the plants for the purpose of depooling that milk.

22 SENIOR AGRICULTURAL ECONOMIST ERBA: So this  
23 section is really to deal with the producer's plants.

24 MR. TILLISON: Yes.

25 SENIOR AGRICULTURAL ECONOMIST ERBA: Also, on the

1 first page you made mention of the fact that the depooling  
2 has become an issue. Depooling has been in effect ever  
3 since pooling has been in effect, so why is it now a  
4 crisis mode when it's been in place for more than 30  
5 years?

6 MR. TILLISON: Well, I think one of the reasons  
7 is the dramatic fluctuation that we're seeing in milk  
8 prices in recent years. When you have a situation where  
9 from one month to the next you have a price inversion of  
10 the magnitude we saw in July, for example, I don't believe  
11 we've seen that any time prior to at least the late  
12 1990's.

13 SENIOR AGRICULTURAL ECONOMIST ERBA: Do you  
14 anticipate the prices will continue to be as volatile as  
15 they have been this year?

16 MR. TILLISON: Well, I think that we're going to  
17 see the inversion go back the other way eventually. But  
18 certainly with a support price as low as it is, with milk  
19 production fluctuating the way we've seen it, the  
20 likelihood is there in the future. And therefore, we  
21 think we might as well close this loophole now.

22 SENIOR AGRICULTURAL ECONOMIST ERBA: On your  
23 second page, you have a statement sentence that I'm not  
24 quite sure what your intention is. I'll just read it to  
25 you and maybe you can explain what it is you meant. It's

1 about halfway down the page. It says, "Essentially  
2 manufacturers knew that nearly 60 percent of the overbase  
3 milk price, (Class 1, 2 and 3) was going no where."  
4 What's the Class 1, 2 and 3 refer to?

5 MR. TILLISON: Well, basically, you know, because  
6 of the advanced pricing in Class 1, the advanced pricing  
7 on Class 2 and Class 3 plus the 4a price, those 4 classes  
8 together, the producer had a pretty good idea that those  
9 prices weren't changing very much in that month.

10 SENIOR AGRICULTURAL ECONOMIST ERBA: I see, so  
11 that really that 60 percent includes those 4 even though  
12 those parenthesis don't indicate that it would?

13 MR. TILLISON: Right.

14 SENIOR AGRICULTURAL ECONOMIST ERBA: Okay. You  
15 make mention of the fact that the requirement of the  
16 producer to state his or her preference for Grade A, Grade  
17 B must be done by January 1st. And that's accomplished  
18 through legislation -- was accomplished with legislation.  
19 Do you think that having plants declare a pool or non-pool  
20 is the same thing -- is it comparable to having Grade A,  
21 Grade B status?

22 MR. TILLISON: I think it has the same purpose.  
23 The reason that that loophole was closed is because we  
24 have a situation in 1996 where producers were either  
25 degrading their milk or giving up their Grade A permits to

1 take advantage of a similar price inversion as to what we  
2 saw. So I think that the purpose is the same. And  
3 therefore, I think that for the sake of consistency with  
4 what producers are being held to that the handlers should  
5 be held to that same standard.

6 SENIOR AGRICULTURAL ECONOMIST ERBA: I just have  
7 one last question. You make mention of the fact that  
8 really the pooling should be more restrictive not less.  
9 And I guess that's kind of my question. Why not make  
10 pooling less restrictive rather than more restrictive?  
11 Why not allow all plants to depool rather than making all  
12 plants to declare whether they're going to be pooled or  
13 not pooled?

14 MR. TILLISON: Because then I think there's  
15 little reason to have pooling at all. The whole concept  
16 of pooling, in my opinion, is equity between processors as  
17 well as equity between producers. And, frankly, there are  
18 some in our organization that think that someone shouldn't  
19 have the right to depool at all.

20 SENIOR AGRICULTURAL ECONOMIST ERBA: That  
21 everybody should be in the pool?

22 MR. TILLISON: That everybody should be in the  
23 pool who handles Grade A milk in the state of California.  
24 But we did not make that proposal in our paper.

25 SENIOR AGRICULTURAL ECONOMIST ERBA: You make

1 mention of the fact that the federal system may be  
2 changing that portion of their pooling rules to look at  
3 plants that are depooling. Again, why hasn't that been  
4 addressed before now? Pooling has been around, in the  
5 federal system, for way more than 30 years. Why wasn't it  
6 addressed before now?

7 MR. TILLISON: Well, I think one of the reasons  
8 that it's being looked at now is because of the Federal  
9 Order Form in the consolidation of orders. For example,  
10 if you look at the western order prior to federal order  
11 form, that western order was -- you had Utah had its own  
12 little order and so forth.

13 And the depooling question didn't have that great  
14 of an impact. But for example if you look at what  
15 happened in the western order, their Class 1 utilization  
16 has gone from about 15 percent up to over 50 percent. The  
17 amount of milk that they have in Class 3, which is the  
18 same as our Class 4b has dropped from 354 million pounds a  
19 month to 4 million pounds a month.

20 So you've got a situation there where producers  
21 who are committed to supplying the Class 1 market, perhaps  
22 even locked into supplying the Class 1 market, are  
23 tremendously disadvantaged financially by the depooling.  
24 And then when the people come back in the pool, they're  
25 disadvantaged because of the impact they've had on their

1 Class 1 utilization.

2           So I think that federal order of form has had a  
3 lot to do with the situation, as well as with the  
4 increased volatility we've seen in milk prices.

5           SENIOR AGRICULTURAL ECONOMIST ERBA: Thank you.

6           MILK POOLING RESEARCH MANAGER SHIPPELHOUTE: In  
7 your testimony regarding the Department's proposal, you  
8 amend Section 1001, paragraph A. In sub (v) there is also  
9 a section that speaks to paying producers based on the  
10 prior month's pool prices. Would you recommend putting  
11 similar language to what you recommended in A in B as  
12 well?

13           MR. TILLISON: Yeah, I would recommend that the  
14 Department make any necessary conforming changes to the  
15 pooling plan.

16           MILK POOLING RESEARCH MANAGER SHIPPELHOUTE: So  
17 it would be your preference then -- just to clarify it,  
18 your preference is that all handlers that are paying  
19 producers to pay based on an estimated pool price and not  
20 use the prior months'?

21           MR. TILLISON: Yes.

22           DAIRY MARKETING BRANCH CHIEF IKARI: I just have  
23 one question, Mr. Tillison. In developing your testimony,  
24 did you make any analysis of the Class 4b price or Class  
25 4a price relative to the overbase price? Just looking at

1 it in a quick review, it looks like there's a series of  
2 runs where it went for several months, extended periods,  
3 one price would be higher than the overbase price. Did  
4 you look at that and then use that analysis to form your  
5 testimony?

6 MR. TILLISON: Yeah. I went back through 1995  
7 when we had 3 periods where we had this run situation, as  
8 you referred to it Mr. Ikari, occur. And in looking at  
9 those situations, that's part of the reason that we, you  
10 know, we looked at the Institute's proposal and say, you  
11 know, that it's a lot less of a gamble to be able to  
12 depool immediately prior to the month when you forecast  
13 the milk price is going to change than to do it on  
14 December 1.

15 If you go back and look at the years when it  
16 occurred, in terms of milk production, the price of cheese  
17 and that sort of thing, there really aren't any  
18 indications that would probably lead you to believe that  
19 depooling would be a benefit at that point in time.

20 DAIRY MARKETING BRANCH CHIEF IKARI: Thank you.

21 HEARING OFFICER ESTES: Do we have any other  
22 panel questions?

23 Thank you for your testimony here today.

24 We will now proceed to take testimony in regard  
25 to the alternative petition presented by the Dairy

1 Institute. The Institute will receive up to 60 minutes to  
2 present its alternative petition. Although, it appears  
3 that probably won't be necessary.

4 DR. SCHIEK: I sure hope not.

5 (Thereupon Dr. William Schiek was sworn by  
6 the Hearing Officer to tell the truth and  
7 nothing but the truth.)

8 DR. SCHIEK: I do.

9 HEARING OFFICER ESTES: And I think I neglected  
10 to do this for the last witness, but would you please  
11 state your name and spell your last name for the record.

12 DR. SCHIEK: My name is William Schiek. That's  
13 S-c-h-i-e-k.

14 HEARING OFFICER ESTES: And could you give a  
15 brief description of the organization that you represent  
16 and the purpose for the hearing today.

17 DR. SCHIEK: Yes. The Dairy Institute of  
18 California is a trade association representing processors  
19 and dairy product manufacturers in the state. And I'm  
20 here to present various issues pertinent to this hearing.

21 HEARING OFFICER ESTES: And I see that you've  
22 given us a copy of your testimony today. Would you like  
23 to have that entered into the record?

24 DR. SCHIEK: Yes, I would.

25 HEARING OFFICER ESTES: It will be introduced

1 into the record as Exhibit number 45.

2 (Thereupon the above-referenced document was  
3 marked by the Hearing Officer as Exhibit 45  
4 for identification.)

5 HEARING OFFICER ESTES: Dr. Schiek, please  
6 proceed with your testimony.

7 DR. SCHIEK: Thank you, Mr. Hearing Officer and  
8 members of the hearing panel. My name is William Schiek  
9 and I'm an economist with the Dairy Institute of  
10 California. And I'm testifying today on the Institute's  
11 behalf.

12 The Dairy Institute is a trade association  
13 representing 40 dairy companies, which process  
14 approximately 75 percent of the fluid milk, cultured, and  
15 frozen dairy products over 60 percent of the cheese  
16 products and a small percentage of the butter and nonfat  
17 milk powder processed and manufactured in the state.

18 Member firms operate in both marketing areas in  
19 the State. And the position presented at this hearing was  
20 unanimously adopted by Dairy Institute's Board of  
21 Directors.

22 At issue in this hearing are proposed changes to  
23 the pooling plan that would impact the ability of plants  
24 and/or producers to change their pool status. While  
25 pooling issues are sometimes of greater concern to

1 producers than they are to processors, the ability of the  
2 pooling plan to operate without impeding the normal and  
3 efficient functioning of the marketplace is of critical  
4 importance to Dairy Institute's members.

5           To that end, Dairy Institute has historically  
6 maintained that the pooling provisions be established in  
7 such a way as to limit their impact on the market. Such  
8 impacts should be confined to what is necessary to ensure  
9 that the essential purpose of pooling is met, namely that  
10 revenues from Class 1 and Mandatory Class 2 uses are  
11 shared among producers in an equitable manner.

12           Our members oppose any effort that expands  
13 mandatory pooling beyond the classes to which it currently  
14 applies. We also oppose provisions which, while not  
15 explicitly requiring mandatory pooling of Classes 4a, 4b  
16 or 3, would so restrict milk handlers options and choices  
17 so as to create de facto mandatory pooling of these milk  
18 classes.

19           Thus, in addressing any perceived or actual  
20 pooling problems, the Department should take great care so  
21 that the reach of milk pooling is not extended beyond its  
22 current mandate.

23           The Current Pooling Issue.

24           The Alliance of Western Milk Producers filed a  
25 petition with CDFA aimed at preventing plants from

1 engaging in opportunistic depooling. According to the  
2 Alliance, 2 large cheese plants have depooled since July  
3 1st, when the Class 4b price moved significantly above the  
4 overbased price. The Alliance has estimated their  
5 depooled milk has caused producers remaining in the pool a  
6 total of \$700,000 during July and August.

7 The Alliance has requested that the Secretary use  
8 his emergency powers to immediately and retroactively  
9 require plants and producers whose milk was pooled prior  
10 to June of 2003 to resume being pooled until a decision is  
11 rendered on a pooling issue as a result of this hearing.

12 Based on what has happened to date, it appears  
13 that the Secretary has elected not to treat the current  
14 pooling issue as an emergency. It's our understanding  
15 that the plants that have depooled this summer have not  
16 been required to repool their milk.

17 We also note that no retroactive action has been  
18 taken. Retroactive action would presumably require plants  
19 that have benefited from depooling to repay the pool for  
20 the amounts that they would have paid had they not chosen  
21 to depool.

22 Dairy Institute opposes any effort to  
23 retroactively pool any milk that was not pooled  
24 previously. Such an action by the Department would be a  
25 horrible precedent for policy and would provide an ongoing

1 uncertainty in a regulatory climate that would not allow  
2 businesses to make necessary operational decisions with  
3 any degree of competence in the regulatory environment.

4           Any pattern of retroactive policy decisions would  
5 likely deter investment in California's milk processing  
6 industry and put producers at risk for losing market  
7 outlets for their milk. Retroactive prescriptions are a  
8 bad idea and should be rejected by the Secretary.

9           Plants have an incentive to depool when the price  
10 for the milk they use, that is their class price, is  
11 higher than the pool price that its producer would  
12 ordinarily receive. By depooling, the plant is able to  
13 pay its producers the higher class price directly rather  
14 than share those higher revenues with the pool.

15           Plants that depool are still required to pay  
16 minimum class prices for Grade A milk. But even so, they  
17 can benefit directly if the higher price they return to  
18 producers through depooling allows them to payoff fewer  
19 dollars over and above the class price in the form of  
20 competitive premiums.

21           CDFA data presented at the pre-hearing workshop  
22 indicates that there have been multiple occasions when  
23 either Class 4a or Class 4b handlers had enormous economic  
24 incentives to depool their plants. However, during the  
25 past 6 years according to CDFA only 2 cheese plants have

1 depooled. A fact which raises the question as to why more  
2 plants are not depooling and causes us to ask just how big  
3 of a problem the plant depooling really is.

4           Plants with producers who hold quota generally  
5 will not depool their milk, because in so doing they would  
6 put their producer's quota at risk. That is, if the plant  
7 remained unpooled for more than 60 days, its producers  
8 would have to forfeit their quota holdings. And I believe  
9 that's Section 500(h) of the pooling plan where that's  
10 specified.

11           Also, plants that source milk from cooperatives  
12 may have non-pool status, but the milk they receive is  
13 often pool milk because the supplying cooperative is  
14 pooling the producers.

15           Since plants with quota shippers are unlikely to  
16 depool, the profile of plants that likely to depool seems  
17 to be limited to manufacturing plants with patron milk  
18 supplies; and where those supplies are provided solely by  
19 overbase shippers.

20           Even though the Class 4a price was above the  
21 overbase price for many months during the past several  
22 years no Class 4a plants have depooled. The reason for  
23 this counterintuitive phenomenon is due to the fact that  
24 virtually all the Class 4a milk plants with direct ship  
25 milk supplies are cooperative plants.

1            Pooling regulations have been written so that  
2 cooperatives are defined to be pool handlers and all their  
3 member milk is pooled. Likewise, most Class 3 plants in  
4 the state receive their milk supplies from cooperatives,  
5 and therefore the plants pool status has not affected the  
6 pool status of the milk.

7            Based on the foregoing arguments, it appears that  
8 proprietary Class 4b plants are currently the only likely  
9 candidates for depooling. Within the Class 4b plant group  
10 only those with patron milk supplies consisting almost  
11 exclusively of overbase shippers, are likely depoolers.  
12 In cases where producers have an ownership interest in the  
13 cheese plant, the incentive to depool is probably even  
14 greater because all of the monetary benefits of depooling  
15 accrue to a single entity.

16           The number of plants that fit this category is  
17 undoubtedly small and the amount of milk that they  
18 represent is also small in relation to all Class 4b milk  
19 and to the total volume of milk in the pool.

20           The foregoing may explain why only 2 plants have  
21 depooled since 1998, despite the fact that tremendous  
22 economic incentives for depooling have occurred several  
23 times during the recent years. The purpose of reviewing  
24 these details is to frame the significance of the problem  
25 facing us today. Rather than being the tip of the

1 iceberg, the depooling that we have seen in recent months  
2 is more likely the total extent of the problem. It is  
3 quite conceivable that no more plants will depool than  
4 those that have already done so.

5 That said, the question of whether plants should  
6 be allowed to depool must still be addressed. But  
7 whatever the decision on that question, the limited nature  
8 of the problem suggests that there is no need to employ  
9 draconian solutions.

10 Should Manufacturing Plants Be Allowed To Depool  
11 and Repool Whenever It Is To Their Economic Advantage To  
12 Do So?

13 Dairy Institute has traditionally opposed  
14 proposals that would expand the reach of pooling, and we  
15 continue to do so. However, our membership does believe  
16 that plants and the producers who ship to them, which pool  
17 milk to benefit from being able to pay producers pool  
18 prices as opposed to class prices, ought to show some form  
19 of commitment to the pool when their class prices exceed  
20 pool prices.

21 That is, Dairy Institute's members feel that  
22 manufacturing plants should not be able to depool and  
23 repool on a month-to-month basis. The cheap argument that  
24 has been used to defend depooling is that overbase  
25 producers do not share in the higher Class 1 revenues to

1 the same extent as quota holders. Therefore, they should  
2 be allowed to depool when so doing would return them more  
3 money.

4           It must be noted, however, that all producers  
5 have the opportunity to purchase quota. Also overbase  
6 producers are receiving a share, albeit a small one, of  
7 the higher class revenues since the introduction of fixed  
8 quota differential in the early 1990s. In spite of these  
9 caveats, the overbase equity depooling argument cannot be  
10 totally discounted.

11           However, the inequities of the current pooling  
12 system should not be remedied by allowing plants and  
13 producers to jump into and out of the pool when it suits  
14 them. Although, the ability of overbase producers to  
15 depool might address some equity issues on the producer  
16 side, it appears to create greater inequities among  
17 plants, specifically between plants that are required to  
18 be pooled and those that are not.

19           Dairy Institute would like to point out for the  
20 record that cheese plants in most federal orders can and  
21 do depool on a month-to-month basis. When federal order  
22 plants depool, they have no regulatory obligation to pay  
23 minimum class prices to their producers, as do plants in  
24 California.

25           In some cases, such depooling can give federal

1 order plants a milk cost advantage relative to plants in  
2 California. We believe it is essential that the  
3 Department consider the differences between federal order  
4 and California cheese plants with respect to depooling,  
5 when establishing Class 4b pricing formulas. The prices  
6 generated by those formulas must allow California cheese  
7 plants to remain competitive with plants in the federal  
8 orders. And we continue to have concerns about the  
9 sufficiency of prices generated by the current formulas,  
10 but that is a topic for another day.

11 Dairy Institute's Proposal.

12 Dairy Institute's proposed modification to the  
13 pooling plan is as follows. Add the following language to  
14 Section 106 of the pooling plan for market milk.

15 Section 106(d). "Any pool plant which does not  
16 process Class 1 or mandatory Class 2 products may elect to  
17 change its pool status to that of 'non-pool plant' for  
18 pool accounting purposes. After electing to change its  
19 pool status, the plant will remain a non-pool plant for a  
20 minimum of 12 consecutive months. Any non-pool plant may  
21 become a pool plant by meeting the requirements for pool  
22 plant designation as set forth in this section. Once a  
23 non-pool plant has attained pool plant status, it may not  
24 elect to become a non-pool plant until it has been a pool  
25 plant for a minimum of 12 consecutive months."

1 Dairy Institute wishes to limit opportunistic  
2 depooling, but we believe that the Alliance's proposal is  
3 unnecessarily restrictive. The current pooling plan  
4 already contains language that limits the ability of  
5 handlers operating multiple plants to move their  
6 manufacturing plants in and out of the pool. Section  
7 106(a) and 106(b) of the pooling plan both state, "...any  
8 handler with a pool plant qualified under this paragraph  
9 shall have the option to have any non-pool plant of that  
10 handler treated as either a pool plant or a non-pool plant  
11 for pool accounting purposes. This option may only be  
12 made once in any 12-month period."

13 In our proposal, Dairy Institute has adopted the  
14 principles contained in Section 106 and 106(b) to deal  
15 with the case of single plants that are not required to be  
16 pooled. That is those without Class 1 or mandatory Class  
17 2 usage.

18 Thus, our alternative proposal is consistent with  
19 language already contained in the pooling plan that limits  
20 the ability of certain plants to depool.

21 The language we have proposed would allow pool  
22 plants without mandatory usage to depool beginning in a  
23 month of their choosing, but would require that they  
24 remain outside the pool for an entire year. This language  
25 would limit opportunistic depooling and repooling, because

1 the plant operator would have to guess whether the change  
2 in plant status would net a positive return for the entire  
3 12-month period.

4           We believe the restrictions we have proposed are  
5 sufficient to limit opportunistic depooling by plants  
6 without restricting their ability to make longer term  
7 business decisions regarding their pool status. The  
8 measures proposed by the Alliance are more restrictive  
9 than needed to prevent short-term depooling based on price  
10 inversions.

11           Such restrictions that are in excess of what is  
12 needed to deal with the stated problem would expand the  
13 reach of the pool and would constitute a step toward  
14 mandatory pooling of all manufacturing classes, which is  
15 something Dairy Institute strongly opposes.

16           The evidence to show that our proposed language  
17 is sufficient to eliminate the incentive for plants to  
18 depool is revealed through an examination of the  
19 historical data. We examined the period since 1995 when  
20 butter prices began to move free of CCC support levels, a  
21 period where market conditions are similar to those that  
22 have existed recently and are expected to persist in the  
23 coming years.

24           Table 1 shows the average gain or loss incurred  
25 by a cheese plant that elects to depool the first month

1 where there is an economic incentive to do so that exceeds  
2 10 cents per hundredweight, and where the plant then  
3 remains out of the pool for an entire year.

4           The incentive threshold of 10 cents per  
5 hundredweight was chosen because of our judgment that any  
6 incentive of less than that amount would fail to provide  
7 an unambiguous indication that the plant would make money  
8 by depooling in that month.

9           What the analysis shows is that in 4 cases cheese  
10 plants would have made money by depooling even though they  
11 were required to be out of the pool for 12 months. The  
12 average gain of plants depooling over those 4 periods was  
13 22 cents per hundredweight.

14           The analysis also shows that there were 4 other  
15 periods where depooling for 12 months would have resulted  
16 in a financial loss for the cheese plants. The average  
17 loss incurred by the plants in these 4 periods was 31  
18 cents per hundredweight.

19           Overall, the average impact for plants that  
20 depooled in the period would have been a negative 4 and a  
21 half cents per hundredweight under Dairy Institute's  
22 proposal.

23           It is possible that the plant operator may still  
24 choose to depool and take his chances. But most would  
25 find depooling to be less attractive if they cannot simply

1 jump back in when price relationships change again. The  
2 analysis shows based on 1995 to 2003 data that such  
3 opportunistic depooling has a negative expected value  
4 under the Dairy Institute proposal.

5 Put another way, the odds are that the plants  
6 which depool will be more likely to lose money than to  
7 make money if they are required to stay out of the pool  
8 for 12 months.

9 Rational risk averse or risk neutral profit  
10 maximizing chief plant operators will choose to stay  
11 pooled in the Dairy Institute's proposal.

12 In summary, Dairy Institute's members are  
13 sympathetic to limitations on opportunistic depooling, but  
14 it is our view that the alternative language we have  
15 suggested is preferable to the Alliance's proposal.

16 The Alliance of Western Milk Producer's Petition.

17 The core of the Alliance's petition is as  
18 follows: And I'm not going to read this because this is  
19 taken straight out of the Alliance petition. There is  
20 some paraphrasing there, but the part that's in italics is  
21 taken right out of their petition.

22 As stated earlier our overriding concern when  
23 considering changes to the pooling requirements for plants  
24 is ensuring that the changes do not have the effect of  
25 creating de facto mandatory pooling of plants that have

1 historically not been required to depool.

2 Dairy Institute has some concerns regarding the  
3 Alliance's proposed language. First, the language appears  
4 to prohibit a pool plant from depooling at any time other  
5 than January 1. This requirement seems overly  
6 restrictive. Consider the following example:

7 A Class 3 plant decides that it wants to depool  
8 because it wishes to make a long-term change from being a  
9 pool plant receiving co-op milk to a non-pool plant  
10 receiving patron milk supply from overbase shippers.

11 In this case, the Alliance's proposed regulations  
12 might interfere with that change, especially if the Class  
13 3 plants contract with a co-op expired on some day other  
14 than January 1st. The example we've just cited, it  
15 appears that the Alliance proposal interferes with the  
16 plant's ability to make long-term choices about its pool  
17 status.

18 We do not believe that such restrictions are  
19 necessary to prevent plants from jumping in and out of the  
20 pool when pricing conditions change. Likewise, the impact  
21 of the Alliance's provisions to be added to Section 114(a)  
22 would appear to restrict their producer who currently  
23 ships to a pool plant, but who wants to begin shipping his  
24 milk to a non-pool plant when his contract with the pool  
25 plant expires on April 1st.

1           In such a situation the producer wants to make a  
2 long-term change in the market for his milk, but he  
3 appears to be restricted from making those choices. The  
4 producer's freedom to determine whether he or she will  
5 market his or her milk has been taken away.

6           It has been suggested that individual producers  
7 will seek to take advantage of pricing inversions by  
8 changing the handler to which they sell their milk. This  
9 would seem to be a very difficult task. Our understanding  
10 is that the majority of producer contracts with  
11 proprietary handlers are at least 12 months in length. It  
12 is doubtful that producers will be able to employ this  
13 method to ride the pool, by shipping to non-pool cheese  
14 plants when Class 4b prices are above the overbase price,  
15 and then shipping to pool plants when Class 4b prices are  
16 below the overbase price.

17           Absent evidence to the contrary, we do not  
18 believe the issue of individual producers depooling needs  
19 to be addressed as long as the plant depooling issue is  
20 remedied. The Alliance's proposed language of Section  
21 114(a)(2) appears somewhat ambiguous and may have  
22 unintended consequences. One troublesome potential  
23 interpretation is that milk delivered to a non-pool plant  
24 cannot have been pooled previously by another plant.

25           This would have the effect of preventing any

1 producer's milk that has ever been pooled from being  
2 shipped to a non-pool plant.

3           Such an interpretation would essentially extend  
4 mandatory pooling to all milk that is currently in the  
5 pool. This is something Dairy Institute vehemently  
6 opposes. An effort to extend mandatory pooling through  
7 legislation was attempted a few years ago. At the time,  
8 the Legislature refused to sanction such an extension. We  
9 do not believe the Department should extend mandatory  
10 pooling through regulation when the Legislature was  
11 unwilling to do so.

12           An extension of mandatory pooling might not have  
13 been the Alliance's intention, but the ambiguity of the  
14 proposed language in Section 114(a) could leave  
15 interpretation to the courts and therefore we oppose it.

16           This is not in the written document, but I would  
17 like to comment on the CDFA proposal language additional  
18 technical amendments. We agree with the language offered  
19 by the Department, but would suggest adding the following  
20 at the end of Section 1001(e).

21           And the language we would add is, "The method  
22 used shall be consistent from month to month unless the  
23 pool manager approves a change in the pool handler's  
24 estimation procedure."

25           Thank you for the opportunity to testify. Dairy

1 Institute respectfully requests a filing period for  
2 post-hearing briefs. And I'm willing to answer any  
3 questions you may have at this time.

4 HEARING OFFICER ESTES: Dr. Schiek, your request  
5 is granted. Please keep in mind that the brief is due  
6 this Friday by 4 p.m. at the Dairy Marketing Branch here  
7 at 560 J Street.

8 HEARING OFFICER ESTES: Are there any panel  
9 questions of Dr. Schiek?

10 SENIOR AGRICULTURAL ECONOMIST ERBA: Dr. Schiek,  
11 is anybody in your organization depooling at this time?

12 DR. SCHIEK: Not to my knowledge.

13 SENIOR AGRICULTURAL ECONOMIST ERBA: Have they  
14 expressed any interest in depooling?

15 DR. SCHIEK: No. No one has expressed any  
16 interest in depooling.

17 SENIOR AGRICULTURAL ECONOMIST ERBA: I don't  
18 normally like to do this, but I'll ask you kind of a  
19 similar question of what I asked Mr. Tillison. Why not  
20 make pooling requirements more liberal than making them  
21 more restrictive?

22 DR. SCHIEK: Well, I think my response would be  
23 similar to Mr. Tillison's in that we see a lot of price  
24 movement up and down, and we think that a lot of jumping  
25 in and out of the pool creates instability in the pool,

1 makes it -- creates a situation -- an inequity between  
2 plants that are required to be pooled, namely Class 1  
3 plants, and plants that aren't required to be pooled if  
4 they're jumping in and out and take advantage of when they  
5 can draw from the pool and then jumping out when they  
6 would have been contributing to the pool.

7           So it's a plant equity issue. You know, we  
8 believe -- we don't believe in expanding the pool, but  
9 this idea of riding the pool, I think, is something that  
10 creates a plant equity issue. So that's why we're sort of  
11 offering some ways to limit opportunistic depooling.

12           SENIOR AGRICULTURAL ECONOMIST ERBA: The  
13 opportunity to ride the pool, as you say, has been in  
14 place ever since pooling has been in place. And Mr.  
15 Tillison suggested that the way the prices are now that  
16 volatility -- he expects volatility to continue with this  
17 problem if you do not address the problem. Do you also  
18 agree with that? You also suggest that prices are  
19 expected to be more volatile in the future than they have  
20 been in the past.

21           DR. SCHIEK: I would say I would expect a  
22 continuation of the volatility that we have seen, not  
23 necessarily more volatile, but a continuation of the  
24 volatility that we've seen in recent years. And I think,  
25 you know, the question that of why has this not shown up

1 as a big problem before. Also, I think I addressed in my  
2 remarks earlier that, you know, when you look at the way  
3 our pool is structured, when you look at how quota holders  
4 have an incentive to remain pooled, how people receiving  
5 co-op milk are going to have, whether they're pool plant  
6 or not, their milk that they receive is going to be  
7 pooled, if they're getting co-op milk, all those factors  
8 really limit the cases where plants are going to be  
9 depooled to, you know, a select few.

10 And as I said, I don't think it's a problem  
11 that's going to grow into an overwhelming problem. I  
12 think the plants that are currently depooling are probably  
13 the few who it makes sense for them to depool.

14 SENIOR AGRICULTURAL ECONOMIST ERBA: There's  
15 really only a slight difference in what I can determine  
16 from your proposal versus the petitioner's proposal, that  
17 is the date of declaration.

18 In their case, they declare by the 1st of January  
19 and in some sense that gives you, as you said, a more  
20 restrictive approach to it. In your case, it almost seems  
21 like you're allowing plans to take one shot at taking  
22 advantage of pooling or depooling. How would you defend  
23 that?

24 DR. SCHIEK: Well, I think I'd defend it in that,  
25 you know, if the plant examines history, they're going to

1 find out that they're probably going to be wrong by taking  
2 that shot. Nineteen ninety-nine was a very similar year  
3 to what we're seeing now. We had some very strong, over a  
4 dollar a hundredweight, incentives beginning in July of  
5 1999 to depool.

6 Yet, under our proposal, if the plant had  
7 depooled in July of '99, and stayed out for an entire  
8 year, they would have lost 37 cents a hundredweight on  
9 average for that year, okay.

10 So my point here is that, you know, history  
11 teaches you that depooling, if you've got to stay out for  
12 a year, is just not a good idea. And it doesn't have to  
13 be January 1. It's not a good idea no matter when you do  
14 it. But the reason we're proposing a more flexible  
15 depooling language is the other concerns that we talked  
16 about regarding the restrictions on producer and handler  
17 choices of making long-term changes.

18 SENIOR AGRICULTURAL ECONOMIST ERBA: Thank you.

19 DAIRY MARKETING BRANCH CHIEF IKARI: Let me  
20 follow up on that question. Your data and your analysis  
21 is based on the history, but the recent change in the  
22 Class 4b price beginning in July of this year and running  
23 through, I don't think -- correct me if I'm wrong, but  
24 does it track with the history? Would the difference  
25 between the 4b price and the overbase price from July to

1 current track with the average annual that's in your  
2 analysis?

3 DR. SCHIEK: I think it tracks pretty closely  
4 with what we saw in July '99, beginning in July '99. In  
5 terms of the magnitude, is that what you're saying?

6 DAIRY MARKETING BRANCH CHIEF IKARI: Yes, the  
7 magnitude.

8 DR. SCHIEK: Yeah, I think it tracks pretty  
9 closely. And the other thing that you sometimes see when  
10 you have a big run up with the cheese price, which is what  
11 led to this incentive to depool, is prices drop like a  
12 stone, too. And a lot of times when they drop like a  
13 stone, you can actually get a whip-saw effect or whiplash  
14 effect where suddenly, you know, the incentive to stay  
15 pooled is as strong as the incentive was -- you know, they  
16 get an extra dollar or two a hundredweight by staying in  
17 the pool. That's what we see historically.

18 And, you know, we can all sit here and try to  
19 look ahead and say we know what's going to happen. But,  
20 you know, butter prices this year have been fairly low.  
21 We haven't had a big run up in butter prices. But if you  
22 begin looking at what's happening with solids output  
23 nationwide, butter fat output nationwide, and what's been  
24 happening with butter inventories, a rapid draw down, and  
25 we could be in a situation next year where the butter

1 price spikes, and, you know, the incentive on the 4b side  
2 would be in the pool is as strong as it is to be depooled  
3 now.

4 And that's the kinds of things that have happened  
5 in the past, and I don't think there's any reason to  
6 expect that it won't happen in the future.

7 DAIRY MARKETING BRANCH CHIEF IKARI: In my review  
8 of the prices, isn't it true that the 4b or 4a relative to  
9 the overbase they seem to run in periods almost like runs?  
10 In basketball games one team will score 12 points and then  
11 the next team will score 12 points. If you could get over  
12 6 months by being able to depool, aren't you better off as  
13 a cheese plant?

14 DR. SCHIEK: It depends on what happens in that  
15 next 6 months. In other words, you could have where the  
16 average for that 6 months is over a dollar a hundredweight  
17 advantage to the cheese plant through depooling. But if  
18 the next 6 months it's \$1.50 a hundredweight, disadvantage  
19 from depooling, you're going to end up in the red. And  
20 you know that's the point I'm making.

21 DAIRY MARKETING BRANCH CHIEF IKARI: Okay. Let  
22 me ask you a different question. In terms of your  
23 analysis, you were talking about attracting producers.  
24 Would it make a difference if a majority of the cheese  
25 plant milk came from its own production?

1 DR. SCHIEK: In terms of depooling?

2 DAIRY MARKETING BRANCH CHIEF IKARI: Yes.

3 DR. SCHIEK: Yeah, I think --

4 DAIRY MARKETING BRANCH CHIEF IKARI: Because then  
5 you wouldn't have a consideration of trying to attract  
6 producers, would you?

7 DR. SCHIEK: That's true. You wouldn't. You  
8 wouldn't. In the case of a -- if a plant that owns its  
9 own milk supply, where they're one in the same, certainly  
10 they would be the ones most likely to have a strong  
11 attraction, if you will, to depooling.

12 But at the same time, as I think our analysis  
13 shows, they could end up -- I mean when they're in the  
14 pool, when the 4b price is below the overbase price, they  
15 get considerable advantage to being in the pool, because  
16 they draw money out of the pool. And I think what I'm  
17 saying is they could see a strong signal to depool in any  
18 given 1, 2, 3 month period. But if they depool, there's  
19 no guarantee that if they're required to be depooled for  
20 12 months that they're going to net anything positive out  
21 of that experience. And I think the history from 1995 to  
22 2003 would suggest that they won't, that their expected  
23 value of that activity is negative.

24 DAIRY MARKETING BRANCH CHIEF IKARI: The focus  
25 seems to be on the depooling issue. Let me ask a

1 different question, a fundamental question in terms of why  
2 should cheese plants who primarily receive all the milk  
3 from their own operations be able to enjoy the pool price?

4 DR. SCHIEK: In other words, why should any  
5 manufacturing plant be allowed to participate in the pool?

6 I don't know. I --

7 DAIRY MARKETING BRANCH CHIEF IKARI: Isn't one  
8 thing critical on that is the performance requirement, in  
9 terms of receiving the higher pool price versus a  
10 manufacturing price? Isn't the performance standard very  
11 critical in that?

12 DR. SCHIEK: Well, yeah. I mean Dairy Institute  
13 has historically believed that if you're going to  
14 participate in the pool, then you need to have some Class  
15 1 -- you know, you need to be able to serve the Class 1  
16 market when it needs to be served. That's why we've  
17 supported the call provisions in the past.

18 DAIRY MARKETING BRANCH CHIEF IKARI: Dr. Schiek,  
19 do you have any idea what these cheese plants who have  
20 depooled have contributed in terms of percentage of their  
21 milk?

22 DR. SCHIEK: No. As I said, these plants are not  
23 our members. And I only know who they are through  
24 hearsay. I mean that's not been revealed to me in any  
25 official manner.

1           So I have no idea what their performance  
2 requirements are, and how they performed in the past. I  
3 don't know that.

4           DAIRY MARKETING BRANCH CHIEF IKARI: Do you know  
5 what the minimum requirements are in the pool plan that  
6 they must satisfy in order to receive the pool price?

7           DR. SCHIEK: I understand it's pretty minimal in  
8 terms of just diverting milk to Class 1 or mandatory Class  
9 2 usage. There's no requirement that it be, you know,  
10 every day or it's just during the month they have to  
11 divert milk to those markets.

12          DAIRY MARKETING BRANCH CHIEF IKARI: If the  
13 cheese plants were providing the minimum, and with the  
14 recent run-up in prices beginning in July, isn't the milk  
15 needed for Class 1 plants more important in the fall and  
16 winter months?

17          DR. SCHIEK: Typically, yeah.

18          DAIRY MARKETING BRANCH CHIEF IKARI: So if the  
19 cheese -- what would your reaction be of your Class 1  
20 members if the cheese plant met the minimum requirements  
21 in the beginning of this year, and then depooled for the  
22 remainder part of this year when Class 1 usage requires  
23 more milk?

24          DR. SCHIEK: I think they would oppose it, which  
25 is one of the reasons why we've offered our alternative

1 proposal. I mean, we do think this idea of jumping in and  
2 out of the pool is not something that should be allowed to  
3 be continued. You know, part of the reason for having  
4 pooling is so that there aren't these ongoing differential  
5 issues with respect to the producers and getting different  
6 prices depending on where they ship their milk. I mean  
7 that was part of the genesis of milk pooling.

8           And so we think there ought to be limitations on  
9 that. We just feel like the language we've proposed is  
10 sufficient to discourage it.

11           DAIRY MARKETING BRANCH CHIEF IKARI: One of the  
12 things that we talked about or you testified to is equity.  
13 If most of the 4a milk has to be pooled, what about could  
14 you address that issue, the equity between 4b plants  
15 versus 4a plants and their ability to depool under the  
16 same terms or time period?

17           DR. SCHIEK: Well, yeah, I suspect that you have  
18 an issue there. And, again, I would say that's part of  
19 the reason why we're offering an alternative proposal that  
20 limits opportunistic depooling.

21           Should 4a plants be allowed to be depooled? I  
22 suspect if you have a proprietary 4a plant, it could  
23 depool. The issue is primarily related to the  
24 cooperatives, and the cooperative status as a pool  
25 handler. And I'm, you know -- I, at the pre-hearing

1 workshop, I kind of attempted to see if I could get some  
2 history as to why the pooling plan was written that way.

3 My speculation was that in the early days of  
4 pooling the idea was to allow for maximum participation of  
5 the pool. And so the plan was written liberally with  
6 respect to cooperatives so that they could pool their  
7 milk, pool their member milk, and so the cooperative  
8 members could participate in the pool.

9 The fact that they aren't able to get out of the  
10 pool now, you know, may have not -- I don't know whether  
11 that was by design or whether that was because no one ever  
12 conceived of the fact that they would want to get out of  
13 the pool. But, you know, I think that again, the basic  
14 issue here is the ability to jump in and out of the pool.  
15 And I think if you adopt the Dairy Institute alternative  
16 proposal, you won't find much of an incentive to the  
17 process to jump in and out of the pool, 4a or 4b.

18 DAIRY MARKETING BRANCH CHIEF IKARI: Doesn't the  
19 Alliance proposal put both the 4a plan and the 4b plan on  
20 the same basis in terms of time periods?

21 If the 4a plan could depool currently, doesn't  
22 the Alliance's proposal make them also have to declare on  
23 January 1, as well as the 4b plan?

24 DR. SCHIEK: Yeah, I'm sure that it does. I  
25 would say our proposal would provide a proprietary 4a plan

1 the same opportunity depending on the pricing they  
2 receive, and -- you know, they have the same opportunity  
3 to depool in any month that they choose to.

4           So I see them both as treating them the same. I  
5 don't see one treating 4a, 4b better than another.  
6 They're just different proposals.

7           DAIRY MARKETING BRANCH CHIEF IKARI: Thank you.

8           MILK POOLING BRANCH AUDITOR MANAGER RODERICK: I  
9 have a question on the -- you mentioned the federal order  
10 versus California pricing, and the ability to depool --  
11 the flexible ability to depool the federal order that that  
12 enjoys.

13           Do you see possible issues over pricing? You  
14 suggested that perhaps pooling should look at that pricing  
15 issue considerably?

16           DR. SCHIEK: Yeah. You know, I think we have a  
17 pool that does not allow for depooling on as liberal a  
18 basis as is true in many of the federal orders. And Dairy  
19 Institute is not advocating change in the pooling  
20 requirements. But what we are just saying is that when  
21 pricing decisions are made for 4b the ability of federal  
22 order plants in some areas to depool and get a cost  
23 advantage from that needs to be taken into account in  
24 making those decisions.

25           MILK POOLING BRANCH AUDITOR MANAGER RODERICK:

1 Another question. On the -- you made some clarification  
2 on what you suggest for the payments to direct shippers  
3 and producers. Did you have any specific proposal as to  
4 methodology or do you have any concern over moving from a  
5 very fixed and prescribed method as prior month prices?

6 DR. SCHIEK: No. I think the estimation -- the  
7 idea of employing an estimation procedure that does a  
8 better job of revealing the actual price of getting closer  
9 to the actual price is a win-win for everybody in the  
10 system.

11 So I think the language that the Department has  
12 proposed is good language. I don't have a problem with  
13 it. The discussion that came up in the pre-hearing  
14 workshop was concern about consistency, that somebody  
15 might try to play games with their estimation method, use  
16 one estimation method one month and then change it the  
17 next month. Then somehow get some kind of an advantage  
18 out of that. It's not really clear to me that in the end  
19 they were really able to, but since there was a fair bit  
20 of concern about that, I thought we could just add a  
21 sentence that the method used would be consistent from  
22 month to month, and that that would take care of that  
23 problem.

24 MILK POOLING BRANCH AUDITOR MANAGER RODERICK:  
25 And you don't see a concern perhaps that the Department is

1 going to do an enforcement action based on what's  
2 considered an acceptable methodology, and wouldn't the  
3 processor perhaps say that this is reasonable?

4 DR. SCHIEK: I don't think we're really all that  
5 concerned about that. I think, you know, the Department  
6 has very capable people who are willing to recognize a  
7 good argument. The estimation method makes sense. I  
8 think, you know, we don't expect there to be problems with  
9 the pool manager saying that a good estimation method  
10 can't be used. You know, and I think it is good that the  
11 pool manager has the right to say this is not a good  
12 estimation method because I think, you know, that's  
13 possible somebody could come up with something that  
14 produces crazy prices and that wouldn't be of anyone's  
15 interest. So I think we trust the Department on that.

16 MILK POOLING BRANCH AUDITOR MANAGER RODERICK:  
17 Thank you.

18 MILK POOLING BRANCH CHIEF LEE: One more  
19 question. I asked this question of Mr. Tillison when he  
20 testified.

21 How does the Institute feel about a handler that  
22 declares themselves to be non-pool for the year and then  
23 they receive approval to start processing market grade  
24 products, Class 1 and market grade required class  
25 products? How does the Institute feel about that, you

1 know, in terms of their proposal restricting movement of  
2 handlers from going from the pooling to non-pool or  
3 non-pool to pooling if this happens within that year's  
4 period?

5 DR. SCHIEK: I think I understand. Let me just  
6 make sure I understand what you're asking. A plant that's  
7 a pool plant elects to depool, and under our proposal we'd  
8 say they need to be out 12 months. But you're saying  
9 during that period they get -- they build a bottling pool  
10 plant and they get permission to start pooling because  
11 they now have mandatory usage.

12 I hadn't thought about that. I see a potential  
13 problem, perhaps inconsistency there. Although, I would  
14 think that once they're making mandatory Class 2 or Class  
15 1 usage and marketing it that everyone here would want  
16 them in the pool in that case, because of the contribution  
17 to the pool that a higher usage makes.

18 I mean one possibility would be that if they're  
19 in a non-pool status that they've elected that they can't  
20 get that certification to start shipping Class 1 milk  
21 until that 12 months is up. Maybe there's some  
22 coordination within the milk and dairy foods that needs to  
23 be done on that issue. But I hadn't given it a lot of  
24 thought to be honest with you.

25 MILK POOLING BRANCH CHIEF LEE: I brought this

1 question mainly because our concern about handlers jumping  
2 back and forth. That while the proposals do restrict to  
3 some degree, isn't there always, you know, a situation  
4 where a certain advantage can be had about it, pooling  
5 again because of the pricing issue. So thank you for your  
6 comments.

7 DR. SCHIEK: Yeah. I would think if the plant  
8 has made any investment in processing capacity for Class 1  
9 or mandatory Class 2 usage and it's going to start  
10 marketing those, there may be a long-term decision. And  
11 it's to the advantage of the pool that they be pooled. So  
12 I think in that case, you would want them pooled, even if  
13 they had only been in 6 months at their non-pool status.

14 MILK POOLING BRANCH CHIEF LEE: Thank you.

15 HEARING OFFICER ESTES: Do we have anymore panel  
16 questions for Dr. Schiek?

17 All right, thank you for your testimony today.

18 Members of the public may now testify with each  
19 speaker provided 20 minutes followed by questions from the  
20 panel. And the first witness that we have today from our  
21 sign-in sheet in the back that I described earlier is Joe  
22 Heffington of California Dairies Incorporated.

23 (Thereupon Mr. Joe Heffington was sworn by  
24 the Hearing Officer to tell the truth and  
25 nothing but the truth.)

1 MR. HEFFINGTON: I do.

2 HEARING OFFICER ESTES: Could you state your name  
3 and spell your last name for the record.

4 MR. HEFFINGTON: My name is Joe Heffington,  
5 H-e-f-f-i-n-g-t-o-n.

6 HEARING OFFICER ESTES: And could you identify  
7 the organization that you represent?

8 MR. HEFFINGTON: I'm representing California  
9 Dairies Inc. California Dairies Inc is a cooperative with  
10 approximately 700 dairy farm members all producing milk in  
11 the state of California.

12 HEARING OFFICER ESTES: How was your testimony  
13 developed and approved for presentation at today's  
14 hearing?

15 MR. HEFFINGTON: Our testimony was developed and  
16 presented and approved by our board of directors, which is  
17 comprised of 20 dairy farmer members elected by the 700.  
18 And it was approved at our October 28th board meeting.

19 HEARING OFFICER ESTES: Would you like your  
20 written statements here to be introduced in the record as  
21 an exhibit?

22 MR. HEFFINGTON: Yes, I would.

23 HEARING OFFICER ESTES: All right. It will be  
24 introduced as Exhibit number 46.

25 (Thereupon the above-referenced document was

1           marked by the Hearing Officer as Exhibit 46 for  
2           identification.)

3           HEARING OFFICER ESTES: And please proceed with  
4 your testimony.

5           MR. HEFFINGTON: Okay. Mr. Hearing Officer and  
6 members of the panel, my name is Joe Heffington. I'm  
7 Senior Vice President and Chief Financial Officer of  
8 California Dairies whom I'm representing here today.

9           California Dairies is a full service milk  
10 processing cooperative owned by approximately 700 dairy  
11 farmer members located throughout the state of California,  
12 and collectively producing 14.5 million pounds of milk per  
13 year or 40 percent of the milk produced in the state of  
14 California.

15           Our producer/owners have invested nearly \$200  
16 million in 5 large processing plants, which produce  
17 butter, powdered milk products, cheese, bulk processed  
18 fluid products. In addition, California Dairies provides  
19 farm milk to other processors located throughout  
20 California.

21           Our board of directors which is comprised of 20  
22 producer owner representatives elected from our dairy  
23 farmer members unanimously approved our testimony at the  
24 October 28th board meeting.

25           California Dairies supports the positions

1 presented today by the Alliance of Western Milk Producers.

2 First in regard to the depooling. We believe  
3 there is no justification for allowing non-pool plants the  
4 ability to jump in and out of the pool based on whether or  
5 not it is to their economic advantage.

6 This practice, if allowed to continue, could  
7 further erode the pool, while economically enhancing those  
8 non-pool plants supplied by dairies owned or with strong  
9 financial ties to those plants.

10 One of these plants claims in their letter to the  
11 Department that the Alliance's petition is attempting to  
12 force these non-pool plants to source their milk from  
13 Alliance members. To our knowledge, this plant owns the  
14 dairy supplying 100 percent of their milk and these  
15 dairies, and therefore the owner of the plant are  
16 benefiting from the depooling option. This economically  
17 unjustified benefit is why California Dairies supports the  
18 petition.

19 Additionally, we believe that a plant's decision  
20 to not be pooled should be made at the same time and for  
21 the same duration as is currently allowed any Grade A  
22 producer in the state, that is before January 1st of each  
23 year and for the full calendar year. To do otherwise  
24 would place plants who own dairies or have strong  
25 financial ties to the dairies at competitive advantage

1 over all other producers in California.

2           In regards to producer payments, California  
3 Dairies understands the need for and supports the  
4 technical amendment to the plan allowing for advanced  
5 payments to be made to producers based on estimated  
6 prices. In our opinion it is important that the  
7 Department not only review and approve the handler's  
8 method of payment, but also that the Department continue  
9 to review producer payments as it currently does to assure  
10 the method is consistently followed by the handlers. And  
11 if not, appropriate fines and penalties should be  
12 assessed.

13           In conclusion, California Dairies urges the  
14 Department to adopt the amendments proposed by the  
15 Alliance. We also request that we be allowed to file a  
16 post-hearing brief.

17           Thank you for your attention to my testimony.

18           HEARING OFFICER ESTES: Your request for a  
19 post-hearing brief is granted. Please have that brief to  
20 the Department by this Friday at 4 P.m. on November 7th at  
21 the milk and -- at the milk and -- my mind is spacing out  
22 on me here -- at the milk dairy marketing branch. That's  
23 at 560 J Street, Room 150 here in Sacramento.

24           Do we have a fax number at that location? Are we  
25 going to receive those via fax?

1           The fax number, for those of you who have already  
2 post-hearing briefs granted, that would be Dr. Schiek and  
3 Mr. Tillison, is (916)341-5995, if you don't have that  
4 number already.

5           So it will be at 560 J Street, room 150, if you  
6 want to have it hand delivered or mailed there. And  
7 341-5995 if you want to have it faxed. Do we have any  
8 panel questions for Mr. Heffington?

9           MILK POOLING BRANCH CHIEF LEE: Just a question,  
10 Mr. Heffington. On page 2 of your testimony, 3 lines  
11 down, this is a discussion regarding the timing of the  
12 election of pooling or depooling. You say, "To do  
13 otherwise would place plants who own dairies, or have  
14 strong financial ties to the dairies at a competitive  
15 advantage over all other producers in California." Would  
16 you mind explaining that for us?

17           MR. HEFFINGTON: Sure. Currently, any Grade A  
18 producer in California has the opportunity to elect  
19 annually on January 1st and doesn't have the benefit of  
20 timing the depooling as producers -- or as non-pool  
21 handlers would have, if the Dairy Institute proposal were  
22 accepted.

23           MILK POOLING BRANCH CHIEF LEE: Are you trying to  
24 be consistent?

25           MR. HEFFINGTON: Well, it's the timing issue.

1 You get into a situation, as presented by the Alliance, by  
2 Jim Tillison, the timing of January 1st you don't have the  
3 same information as you might have later on in the year  
4 where the cheese price far exceeds the overbase price and  
5 plants can attempt to time rather than make the decision  
6 annually on January 1st.

7 MILK POOLING BRANCH CHIEF LEE: Thank you.

8 MILK POOLING RESEARCH MANAGER SHIPPELHOUTE: Mr.  
9 Heffington, Dr. Schiek presented some testimony indicating  
10 that if plants had tried to time their depooling, if you  
11 will, they, as often as not, would end up losing over a  
12 12 month time period.

13 Accepting that, would that change your concerns  
14 about floating an anniversary date, if you will?

15 MR. HEFFINGTON: I think any time you -- the key  
16 here is that there is risk being taken by these plants  
17 now. As it stands right now, there is no risk on a  
18 monthly basis. You know whether you're going to make  
19 money or not and you elect to depool.

20 The idea here is do you have more information by  
21 being able to depool at any month during the 12-month  
22 period as opposed to just January 1st. And so I would  
23 still have concerns because any producer in the state only  
24 can depool on the 1st of the year. Whereas, a plant and  
25 the producers associated with that plant under the Dairy

1 Institute proposal would be able to depool any month  
2 during the year for a 12-month period. There's still an  
3 advantage.

4 MILK POOLING RESEARCH MANAGER SHIPPELHOUTE:

5 Thank you.

6 HEARING OFFICER ESTES: Do we have any additional  
7 panel questions?

8 Thank you very much, Mr. Heffington. Our next  
9 witness is David Larsen of Imperial Valley Cheese of  
10 California.

11 (Thereupon Mr. David Larsen was sworn by  
12 the Hearing Officer to tell the truth and  
13 nothing but the truth.)

14 MR. LARSEN: Yes, I do.

15 HEARING OFFICER ESTES: And could you please  
16 state your name and spell your last name for the record.

17 MR. LARSEN: My name is David Larsen,  
18 L-a-r-s-e-n.

19 HEARING OFFICER ESTES: And could you identify  
20 the organization you represent.

21 MR. LARSEN: I represent Imperial Valley Cheese  
22 of California.

23 HEARING OFFICER ESTES: And what is the process  
24 by which your testimony was developed and approved for  
25 presentation here today.

1 MR. LARSEN: It was developed and approved  
2 through a meeting process with the owners of Imperial  
3 Valley Cheese.

4 HEARING OFFICER ESTES: And I see you have a  
5 letter here that you've submitted. Would you like to have  
6 that introduced in the record as an exhibit?

7 MR. LARSEN: Yes, I would.

8 HEARING OFFICER ESTES: Okay. It will be  
9 introduced as Exhibit number 47.

10 (Thereupon the above-referenced document was  
11 marked by the Hearing Officer as Exhibit 47 for  
12 identification.)

13 HEARING OFFICER ESTES: And go ahead and proceed  
14 with your testimony.

15 MR. LARSEN: Mr. Hearing Officer and members of  
16 the panel, my name is David Larsen and I represent  
17 Imperial Valley Cheese of California, LLC. We are a small  
18 cheese manufacturing plant located in California's  
19 Imperial Valley and producing Swiss and Muenster cheese.

20 Our milk supply comes from one dairy farm, a  
21 producer of Imperial Valley Cheese of California, located  
22 near our plant and from other outside sources. We have  
23 used the ability to pool or depool milk in our plant in  
24 order to return a higher milk price for our dairy  
25 producers.

1           The amount of milk we have pooled or depooled  
2 each month is less than one-tenth of 1 percent of the  
3 California's total monthly milk production.

4           Imperial Valley Cheese does not oppose the  
5 recommended changes to the pooling plan as submitted by  
6 the Alliance of Western Milk Producers with the exception  
7 of the proposed changes being made retroactive.

8           Our decision to depool milk was made following  
9 the current rules and regulations as written in the  
10 pooling plan for market milk. Any changes made by the  
11 Secretary and the Department should be made going forward  
12 not retroactive.

13           We request to file a post-hearing brief and thank  
14 you for the opportunity to testify.

15           HEARING OFFICER ESTES: Mr. Larsen, your request  
16 for a post-hearing brief is granted. That should be  
17 presented to the Milk Pooling Branch or the Dairy  
18 Marketing Branch, both located at 560 J Street, Suite 150.  
19 The fax number there is (916)341-5995. And if you want a  
20 mailing address -- I think it's unlikely that anyone would  
21 be mailing it. But if you do want to mail it, it can be  
22 mailed to 1220 N Street, Sacramento, California, 95814.  
23 And that would be attention Dairy Marketing Branch or Milk  
24 Pooling Branch.

25           You might want to also specifically note that

1 it's in relation to today's hearing.

2 Do we have any questions for Mr. Larsen from the  
3 panel?

4 DAIRY MARKETING BRANCH CHIEF IKARI: I just have  
5 a couple questions.

6 Mr. Larsen, on average on a monthly average how  
7 much milk do you supply to a participating -- or a Class 1  
8 or a mandatory Class 2 plant?

9 MR. LARSEN: If we were a pool plant?

10 DAIRY MARKETING BRANCH CHIEF IKARI: In order to  
11 qualify as a pool plant?

12 MR. LARSEN: We send one truckload of milk a  
13 month.

14 DAIRY MARKETING BRANCH CHIEF IKARI: One truck  
15 load a month. Okay.

16 MR. LARSEN: About 50,000 pounds.

17 DAIRY MARKETING BRANCH CHIEF IKARI: You  
18 indicated in your testimony that you depool so that your  
19 producer can get more revenues. Dairy Institute testified  
20 about their involvement in pooling is so that the pool  
21 revenues are shared equitably. In your mind, is that  
22 equitable with the other producers that don't ship to your  
23 cheese plant?

24 MR. LARSEN: Probably not.

25 DAIRY MARKETING BRANCH CHIEF IKARI: Thank you.

1 SENIOR AGRICULTURAL ECONOMIST ERBA: I just have  
2 one question, Mr. Larsen. You said you used the ability  
3 to pool or depool to return a higher milk price to your  
4 producers. But yet you're not opposed to this change that  
5 would essentially take that ability away.

6 MR. LARSEN: That's correct.

7 SENIOR AGRICULTURAL ECONOMIST ERBA: I'm trying  
8 to reconcile the apparent inconsistency.

9 MR. LARSEN: We have used the ability to pool and  
10 depool because we have had the ability to do that.  
11 Although, we do understand the reasoning as to why it  
12 should not be allowed. Just as was mentioned is it  
13 equitable for everyone.

14 SENIOR AGRICULTURAL ECONOMIST ERBA: Thank you.

15 MILK POOLING RESEARCH MANAGER SHIPPELHOUTE: Mr.  
16 Larsen, you answered a question regarding whether or not  
17 it was equitable. And I'm not entirely certain what was  
18 meant by the question and your answer. When you refer to  
19 "is it equitable", are you referring to pooling and  
20 depooling of your producer's milk?

21 MR. LARSEN: Yes.

22 MILK POOLING RESEARCH MANAGER SHIPPELHOUTE:  
23 Thank you.

24 HEARING OFFICER ESTES: Do we have any other  
25 panel questions for Mr. Larsen?

1 I see Mr. Ikari looking off toward the lunch  
2 room, so I assume the answer to that question is no.

3 DAIRY MARKETING BRANCH CHIEF IKARI: I have no  
4 questions.

5 (Laughter.)

6 HEARING OFFICER ESTES: Thank you very much for  
7 your testimony.

8 We have Joe Paris of Joseph Gallo farms.

9 (Thereupon Mr. Joe Paris was sworn by the  
10 Hearing Officer to tell the truth and  
11 nothing but the truth.)

12 MR. PARIS: Yes.

13 HEARING OFFICER ESTES: And could you please  
14 state your name and spell your last name.

15 MR. PARIS: My name is Joe Paris. My last name  
16 is spelled P-a-r-i-s, just like Paris, France.

17 HEARING OFFICER ESTES: I see. Would you please  
18 identify the organization that you represent and the  
19 process by which your testimony today was developed and  
20 approved for presentation.

21 MR. PARIS: I'm representing Gallo Cattle Company  
22 doing business as Joseph Gallo Farms. And this testimony  
23 was developed by discussions with myself, Mr. Michael  
24 Gallo, who is the CEO of Joseph Gallo farms, and Carl  
25 Morris the general manager.

1 HEARING OFFICER ESTES: I see you have a written  
2 statement here you presented to myself and the panel.  
3 Would you like that introduced into the record?

4 MR. PARIS: Yes, sir.

5 HEARING OFFICER ESTES: It will be introduced as  
6 Exhibit number 48.

7 (Thereupon the above-referenced document was  
8 marked by the Hearing Officer as Exhibit 48 for  
9 identification.)

10 HEARING OFFICER ESTES: And please proceed with  
11 your testimony.

12 MR. PARIS: As stated just previously, my name is  
13 Joe E. Paris and I'm a consultant representing Gallo  
14 Cattle Company doing business as Joseph Gallo Farms. We  
15 are grateful for this opportunity to express our position  
16 on the proposals that are being heard today.

17 This testimony is based on discussions that I've  
18 had with Mr. Michael D. Gallo, CEO of Joseph Gallo farms  
19 and Mr. Carl Morris, general manager. This testimony has  
20 been endorsed by Mr. Michael D. Gallo.

21 First, we want to applaud the Secretary for  
22 denying the Alliance's request to use his emergency powers  
23 to immediately require plants and producers to whose milk  
24 was pooled prior to June of 2003 to resume being pooled  
25 and remain pooled until a hearing is held and a decision

1 rendered. We do regret that the hearing was called before  
2 the Secretary had received our letter asking for a denial  
3 of the entire hearing request.

4           Joseph Gallo Farms(Gallo) is a family owned dairy  
5 and cheese plant with its principal offices located at  
6 10561 West Highway 140, Atwater, California.

7           Gallo produces and markets farmstead cheese for  
8 the retail markets in primarily the western states. It  
9 also sells some of its milk to other pool and non-pool  
10 plants on a periodic basis.

11           Joseph Gallo Farms is opposed to the adoption of  
12 all the proposals submitted by the Alliance of Western  
13 Milk Producers and the proposal submitted by Dairy  
14 Institute of California.

15           The pooling plan has been in effect since 1969.  
16 And since that time, plants that do not have Class 1 or  
17 mandatory Class 2 usage have had the ability to enter or  
18 leave the pool by notifying the Department in writing  
19 prior to the 1st of the month in which they wish to enter  
20 or leave the pool.

21           They must also meet the performance requirement  
22 of shipping producer milk to a Class 1 or mandatory Class  
23 2 pool plant each if they wish to participate in the pool.  
24 The main incentive for a plant with non-mandatory Class 2  
25 3, 4a and 4b to be part of the pool is to protect the

1 quota of their independent producer supply. As long as  
2 this is the case, very few plants will ever request to  
3 leave or remain outside of the pool.

4           According to data from the hearing workshop and  
5 dairy statistics published by CDFA, there were 173.61  
6 billion pounds of market milk produced in California from  
7 January 1998 through June of 2003. There were 12 months  
8 in that same period of time in which there was an economic  
9 incentive for 4b plants to leave the pool. This amount of  
10 milk that has been estimated -- the amount of milk that  
11 has been estimated to have left the pool in some months  
12 was 17 to 25 million pounds, or an average of 21 million  
13 pounds per month.

14           If that amount of milk had actually left the pool  
15 in each of these 12 months, it would only amount to a  
16 minuscule .145 percent of the market milk produced in that  
17 entire 6-month period. Gallo believes that the Alliance  
18 and the Dairy Institute proposals are much ado about  
19 nothing.

20           It has occurred to Gallo that the Alliance  
21 proposal is an attempt to force a few remaining  
22 independent cheese plants in California to either pool  
23 their plants and milk permanently or to buy their milk  
24 supply and pool their producers through one of the giant  
25 cooperatives such as members of the Alliance. If those

1 proposals were adopted, it could force Gallo and others to  
2 elect non-pool status for its cheese plants annually.

3           That would mean that Gallo produced market milk  
4 would not be pooled -- let me go back. That would mean  
5 that Gallo produced market milk would not be pool milk on  
6 January 1. Consequently, Gallo's market milk produced on  
7 its own 5 dairies would not be pooled. If Gallo elected  
8 to sell some of its producer milk to a pool plant, that  
9 milk, according to the Alliance proposal to 2a and b,  
10 would not be considered as pool milk.

11           Gallo has not been able to ascertain how that  
12 milk would be priced. It would appear that Gallo, under  
13 the California minimum pricing laws, would be required to  
14 charge the plant the full class price and would retain the  
15 total amount as Gallo income with no obligation to the  
16 pool. This would provide quite an incentive to non-pool  
17 plants with producers to ship excess milk to higher class  
18 usage plants reducing proceeds to the pool.

19           The Alliance proposal 2a addresses non-pool  
20 plants, which had previously been a pool plant, but not  
21 non-pool plants which have never been a pool plant. Are  
22 these plants allowed to pool in any month they elect to  
23 pool?

24           It is Gallo's position that these proposals are  
25 not only unnecessary but poorly written. The Dairy

1 Institute proposal only changes the January date to any  
2 single month date to elect pool or non-pool status. Gallo  
3 opposes this proposal also.

4           It is Gallo's position that plants without Class  
5 1 or mandatory Class 2 usage should continue to have the  
6 right to enter or leave the pool on a monthly basis.  
7 Plants electing to do so are very few in number and small  
8 in comparison to a large cooperative members of the  
9 Alliance of Western Milk Producers or the proprietary  
10 members of Dairy Institute. The amount of milk that is  
11 pooled or depooled on a monthly basis is extremely small  
12 in comparison to the entire pool over time.

13           Producers should be pooled based on their  
14 association with a pool handler, plant or cooperative and  
15 not on a specified date. There are no instances of  
16 pooling in the federal orders where pooling is determined  
17 only by a set date. Pooling status in both State and  
18 federal milk orders have historically been determined by  
19 performance requirements and association with a pool  
20 handler.

21           I'm going to vary from my written testimony at  
22 this point.

23           From the information in this hearing, Gallo has,  
24 on a monthly basis for the last 12 months, sent to Class 1  
25 or mandatory Class 2 plants, somewhere between 200,000 per

1 month or 4 million pounds per month in each of the months.  
2 Gallo elected in July to depool their milk and they have  
3 remained depooled to this point.

4           However, we still have supported the market with  
5 milk sales into both Class 1 and mandatory Class 2 plants  
6 during that period of time.

7           The way its accounted for has changed. We  
8 believe that pooling should be determined by election of  
9 deciding to pool or not pool and by performance to that  
10 pool handler.

11           Joseph Gallo Farms respectfully requests that the  
12 Secretary and this hearing panel reject all of the  
13 proposals from both the Alliance of Western Milk Producers  
14 and California Dairy Institute. Gallo does support the  
15 technical changes to the pool plan submitted by the  
16 Department, and we would like to request a post-hearing  
17 brief.

18           I also have a couple of comments to make on the  
19 testimony given by Mr. Tillison.

20           On, I believe it was, the second page, top  
21 paragraph of his testimony, he makes the statement,  
22 "...have the ability to entice producers to ship to their  
23 plant with the promise of receiving the higher of the  
24 overbase or the Class 4b price."

25           Joseph Gallo Farms receives in their plant only

1 their own producer milk from their 5 dairy farms they  
2 operate between Atwater and Livingston, California. There  
3 is a reason for that. We have on our retail package an  
4 emblem that says, "No artificial hormones are used in  
5 producing this cheese." We use no artificial hormones on  
6 our cattle. And therefore, we cannot go on the open  
7 market and buy additional milk.

8           We have looked at that option. We have in place  
9 a program where that might be a possibility if a  
10 cooperative could isolate some producers that would not  
11 use artificial hormones. We would not want to commit to  
12 milk on a long-term basis that way, and so we would never  
13 buy it from an independent producer. It would be bought  
14 through a cooperative.

15           Then on the last page of his testimony, he talks  
16 about cooperatives not being able to depool. That is  
17 correct, but cooperative plants can depool and some of the  
18 Alliance members have plants that are non-pool plants,  
19 such as Golden Cheese in Southern California and Turlock  
20 Cheese Association in Turlock, California. And there may  
21 be others that I'm not aware of.

22           So that concludes my testimony.

23           HEARING OFFICER ESTES: Mr. Paris, your request  
24 for a post-hearing brief is granted. Did you get the  
25 information that I presented earlier about how to have it

1 submitted to the Department?

2 MR. PARIS: Yes.

3 HEARING OFFICER ESTES: Seeing that you have,  
4 does the panel have any questions for Mr. Paris?

5 DAIRY MARKETING BRANCH CHIEF IKARI: I have a  
6 couple.

7 You indicated I think in your testimony, I was  
8 writing furiously, I'm not sure I got it, that Gallo  
9 delivers between 200,000 or sometimes 4 million. Is  
10 there --

11 MR. PARIS: If you check the records for this  
12 last year through the pooling branch, you'll see that  
13 Gallo has sold milk to either Class 1 or mandatory Class 2  
14 plants I think every month in the last year.

15 DAIRY MARKETING BRANCH CHIEF IKARI: Of at least  
16 200,000?

17 MR. PARIS: I think the minimum was about 200,000  
18 pounds in a given month, and the maximum was real near,  
19 maybe over 4 million pounds.

20 DAIRY MARKETING BRANCH CHIEF IKARI: Can you give  
21 me more information? Is the maximum more frequent or is  
22 the 200,000 more frequent?

23 MR. PARIS: Well, last month we -- for September  
24 I think we had like 365,000 into a mandatory Class 2  
25 plant. Back in August through one of the cooperatives --

1 through 2 cooperatives we had milk that went in, I'm going  
2 to say, over 3 million close to 4 million into southern  
3 California, in the Class 1 plants.

4           DAIRY MARKETING BRANCH CHIEF IKARI: We can look  
5 at the pooling records?

6           MR. PARIS: The pooling records will have it.

7           DAIRY MARKETING BRANCH CHIEF IKARI: Okay. You  
8 testified about some questions that were raised if these  
9 amendments went in. But hasn't Gallo depooled before?

10          MR. PARIS: Yes.

11          DAIRY MARKETING BRANCH CHIEF IKARI: And when  
12 you've depooled, I understood from your testimony that you  
13 still sold milk to a Class 1 plant.

14          MR. PARIS: Or mandatory Class 2.

15          DAIRY MARKETING BRANCH CHIEF IKARI: Okay. How  
16 is that milk treated by the pool?

17          MR. PARIS: If it went into the Class 1, chances  
18 are it went through a milk cooperative. That milk was  
19 pooled, but the milk going to the Gallo cheese plant would  
20 not be pooled. That cooperative acted as a handler and  
21 paid Gallo as a producer.

22          DAIRY MARKETING BRANCH CHIEF IKARI: Is there  
23 anything that suggests that if the amendment would be made  
24 effective that that would not -- what happened in the past  
25 when Gallo depooled would not continue in the future?

1 MR. PARIS: In my opinion, in these proposals it  
2 says that that milk could not be pooled by any other pool  
3 handler if it is elected and not pooled on January 1. And  
4 I think that's one of the problems with the proposal.

5 For example, let's say that Gallo decided January  
6 1 to depool. And Gallo decided on January 1 to continue  
7 to supply Class 1 or mandatory Class 2 markets. What  
8 would be the status of that milk?

9 Gallo has the right under the law to sell milk to  
10 anybody they want to provided they make the regulatory  
11 health requirements as such.

12 So let's say we move that milk into a producer's  
13 dairy in Fresno. If that milk cannot be pooled because of  
14 this proposal, does Gallo then bill producer's dairy the  
15 Class 1 price under the minimum pricing law? And then  
16 they retain that money rather than that money going to the  
17 pool. That's the question we have. We don't know what  
18 the answer is.

19 DAIRY MARKETING BRANCH CHIEF IKARI: Did I  
20 understand correctly that most of the milk that Gallo uses  
21 comes from its 5 farms?

22 MR. PARIS: Yes, sir. All of it. All of it for  
23 the last -- since -- back in the early nineties they  
24 bought some milk from a cooperative. I think that ended  
25 probably in '93 or '94. And since that time they have

1 purchased no milk from any outside handler or producer.

2           DAIRY MARKETING BRANCH CHIEF IKARI: Why is it  
3 equitable to producers outside of Gallo that Gallo  
4 participates in the pool and gets a pool price?

5           MR. PARIS: One of the theories on allowing  
6 somebody to pool or depool would be the fact that they  
7 have milk that would be available for sale during any  
8 time. That milk could go into a Class 1, could disrupt  
9 those markets, and so there is an incentive to allow a  
10 non-pool plant, such as Gallo that's designed like Gallo,  
11 to pool whenever they desire to pool and pull out of the  
12 pool when they desire to pull out.

13           DAIRY MARKETING BRANCH CHIEF IKARI: Would Gallo  
14 support a higher performance requirement?

15           MR. PARIS: As long as it was an attainable one,  
16 yes, we would. We believe that it should be based on  
17 performance. And I think in most instances we have met a  
18 fairly substantial performance requirement.

19           DAIRY MARKETING BRANCH CHIEF IKARI: What's that?

20           MR. PARIS: Well, 200,000 to 4 million pounds of  
21 milk to service that market is a pretty good chunk of  
22 milk.

23           DAIRY MARKETING BRANCH CHIEF IKARI: What  
24 percentage of -- well, I don't -- okay, thank you.

25           MILK POOLING RESEARCH MANAGER SHIPPELHOUTE: Mr.

1 Paris, you indicate that you think a weakness of the  
2 petition is that milk that was depooled or non-pooled milk  
3 at the farm level on January 1 could not be pooled at a  
4 later date. Is your concern primarily at the farm level  
5 or is it at the plant level as well?

6 MR. PARIS: Our position is that we feel that we  
7 ought to have the right to pool or non-pool or depool on a  
8 monthly basis. My concern is the way this petition is  
9 written, if the plant elects to depool, what happens to  
10 any milk that's outside, if it cannot be pooled, because  
11 the milk won't be pooled if the plant's not pooled?

12 MILK POOLING RESEARCH MANAGER SHIPPELHOUTE: So  
13 your concern is not just at the producer level or at the  
14 farm level?

15 MR. PARIS: Well, we won't have the ability to  
16 pool or depool the plant. The farm level certainly is the  
17 one that gets the benefit of any pooling. So it would be  
18 a concern.

19 MILK POOLING RESEARCH MANAGER SHIPPELHOUTE: On  
20 the second page of your testimony you indicate that it  
21 occurred to Gallo that the Alliance is trying to either  
22 force plants either to buy their milk permanently through  
23 independent contracts or buy their milk supply through a  
24 giant co-op. Can you explain what makes you believe that  
25 they're trying to force you into that agreement?

1 MR. PARIS: Certainly. Let's say that Gallo  
2 decided that on January was the one they were going to  
3 depool the plant, and it would be depooled for the next 12  
4 months. Down the road if it gave them a very big  
5 incentive to be in the pool, Gallo then would have the  
6 option of taking their producers, joining their producers  
7 into a cooperative, and letting that cooperative then pay  
8 them that overbase price.

9 That would be done on -- it might be a year  
10 contract, it might be something less than that. But it  
11 could put us in that kind of a position.

12 MILK POOLING RESEARCH MANAGER SHIPPELHOUTE:  
13 Thank you.

14 HEARING OFFICER ESTES: Do we have anymore  
15 questions for Mr. Paris?

16 All right, thank you for your testimony today.

17 MR. PARIS: Thank you.

18 HEARING OFFICER ESTES: Our next witness is  
19 Sharon Hale, from Crystal Cream and Butter Company.  
20 Please come forward.

21 (Thereupon Ms. Sharon Hale was sworn by  
22 the Hearing Officer to tell the truth and  
23 nothing but the truth.)

24 MS. HALE: Yes.

25 HEARING OFFICER ESTES: And could you please

1 state your name and spell your last name.

2 MS. HALE: Sharon Hale, H-a-l-e.

3 HEARING OFFICER ESTES: And could you identify  
4 the organization that you represent and the process by  
5 which your testimony was developed and approved for  
6 presentation today.

7 MS. HALE: Crystal Cream and Butter Company. The  
8 testimony was developed by myself and approved by our  
9 president.

10 HEARING OFFICER ESTES: I see you've provided  
11 myself and the panel with a written statement. Would you  
12 like that introduced into the record as an exhibit?

13 MS. HALE: Yes, please.

14 HEARING OFFICER ESTES: It shall be entered into  
15 the record as Exhibit number 49.

16 (Thereupon the above-referenced document was  
17 marked by the Hearing Officer as Exhibit 49 for  
18 identification.)

19 HEARING OFFICER ESTES: And please start with  
20 your testimony.

21 MS. HALE: Thank you, Mr. Hearing Officer and  
22 panel members. My name is Sharon Hale, and I'm Vice  
23 President of Dairy Policy and Procurement for Crystal  
24 Cream and Butter Company. Our Administrative offices are  
25 located at 1013 D Street, Sacramento, California.

1           We operate 2 production facilities in Sacramento  
2 that have among their product lines Class 1 and mandatory  
3 Class 2 dairy products, thus requiring inclusion in the  
4 pool.

5           Our third facility, a frozen novelty plant, is  
6 exempt from the pool. Crystal's milk supply is primarily  
7 obtained from independent producers under contract with  
8 the company and supplemented on an as-needed basis by  
9 cooperatives.

10           Pool Entry and Departure.

11           Whether one thinks the pooling is a good thing, a  
12 bad thing or something in between it is the umbrella under  
13 which we, in the California dairy industry, operate.  
14 There are benefits that accrue from pooling and there are  
15 disadvantages. At any time during the past 34 years,  
16 various parties have considered themselves advantaged or  
17 alternately disadvantaged by the existence of the pool.

18           Today, we're talking about producers and  
19 processors who want to follow their advantage and move in  
20 or out of the pool depending on where the greatest benefit  
21 lies.

22           While you cannot fault someone for exercising  
23 their options under the current pooling plan, we agree  
24 with the petitioners that the practice should be curbed in  
25 the future. Allowing someone to decide on a

1 month-to-month basis whether to remain in the pool or  
2 operate outside the pool, based on where their highest  
3 individual benefit can be obtained, is fundamentally  
4 unfair to all participants of the pool. We already have  
5 the P/D exemption with fluid milk. Why allow another  
6 competitive inequity to grow, generating discontent that  
7 may ultimately jeopardize the pool.

8           As members of the Dairy Institute of California,  
9 we support their proposal to curtail this option by virtue  
10 of a moving, mandatory 12-month election period. The  
11 option of operating in or out of the pool is retained, but  
12 pluses of those elections are likely to be offset with  
13 some minuses, thus creating a more level playing field and  
14 lessening the negative impact on both competitors and on  
15 the pool as a whole.

16           Estimated Advance Prices.

17           We would like to thank the staff of the  
18 Department for bringing this subject to a hearing. The  
19 use of estimated quota, base and overbase prices for  
20 making advance payments instead of using the previous  
21 months' announced prices has been a practice within the  
22 industry for almost 20 years and perhaps more. Yet the  
23 pooling plan has never been updated to reflect the  
24 practice.

25           Crystal uses estimated prices for making advanced

1 payments, because they result in prices that are much  
2 closer to the actual monthly prices than if one uses the  
3 previous months' announced prices.

4 I have attached 3 exhibits which illustrate this  
5 point. Exhibit A compares the advance price for quota  
6 milk using the previous months' price, which is the  
7 requirement of the current pooling plan, to the actual  
8 quota price announced for that month. The chart covers  
9 the years 2001, 2002 and through September of 2003.

10 As you can see using the previous months'  
11 announced prices to calculate advanced payments would have  
12 resulted in significant under and overpayments to  
13 producers. During this period the largest overpayment  
14 would have occurred in October 2001 and \$2.24 per  
15 hundredweight. And the greatest underpayment would have  
16 occurred this past July at \$1.55 per hundredweight.

17 Exhibit B is the same type of comparison, but  
18 uses an estimated quota price based on a fairly simple  
19 method I use to make advanced payments. As you can see,  
20 the deviation from the actual announced price is  
21 significantly less than in Exhibit A. The largest  
22 overpayment occurred October 2001 at .22 cents per  
23 hundredweight, and the largest underpayment was .15 cents  
24 per hundredweight in April of 2002.

25 Exhibit C combines, in a graphic format, the 2

1 methods described above. The blue squares represent the  
2 difference using the previous month prices and the red  
3 diamonds represent the estimated prices.

4 In each case, it's the difference between the  
5 advance price and the actual price that's depicted.  
6 Clearly, the estimated price comes much closer to the  
7 actual price and does so year in and year out.

8 Crystal has a long history of purchasing milk  
9 from independent producers. We began utilizing an  
10 estimated price in an attempt to get as close as possible  
11 to the actual price, so as not to underpay nor overpay  
12 producers on their advances. Underpayments result in the  
13 producers wondering what you've done with their money.  
14 And overpayments must be deducted from future payments  
15 causing the same problem only a month later. In addition,  
16 if a producer is overpaid and moves to a new handler the  
17 following month, or even worse goes out of business, you  
18 may never get the overpayment back.

19 I do not believe the Department has received much  
20 in the way of complaints about the use of estimated prices  
21 even though they are used extensively. In addition to  
22 being somewhat self-regulating, i.e. complaints about  
23 abuses would have surfaced by now.

24 The Milk Pooling Branch has done a good job of  
25 monitoring the use of estimated prices. In our case,

1 we've been routinely audited and the calculations for the  
2 estimated prices used during the audit period are reviewed  
3 by the auditor. We would recommend the Branch continue  
4 this practice.

5           Similar to the depooling issue, there is a  
6 potential for jumping back and forth between using  
7 estimates and using previous month prices. Obviously, a  
8 job for someone who has more desire than I possess, but in  
9 today's world it may appeal to someone.

10           In the past, I believe the Department took a hard  
11 line against such a practice. Now, that we're looking to  
12 formally authorize the use of estimated prices for making  
13 advanced payments, we would recommend that the language be  
14 amended in such a way as to allow people to make a choice,  
15 but then require them to live with their decision.

16           Thank you for the opportunity to express our  
17 views on these subjects. That concludes my written  
18 statement.

19           I would like to request the opportunity to file a  
20 post-hearing brief.

21           HEARING OFFICER ESTES: You may do so. Did you  
22 get the information earlier about sending it to the  
23 Department?

24           MS. HALE: Yes, I did.

25           HEARING OFFICER ESTES: Are there any panel

1 questions for Ms. Hale?

2 MILK POOLING RESEARCH MANAGER SHIPPELHOUTE: Ms.  
3 Hale, could you explain why your third plant, your novelty  
4 plant, is exempt from the pool?

5 MS. HALE: That plant is solely supplied by one  
6 or the other of the 2 plants we have right now. So all  
7 the milk we receive is actually pooled at one of those two  
8 plants and then it receives no raw milk.

9 MILK POOLING RESEARCH MANAGER SHIPPELHOUTE:  
10 Thank you.

11 SENIOR AGRICULTURAL ECONOMIST ERBA: Ms. Hale,  
12 were you here this morning when the Alliance spoke on  
13 their petition?

14 MS. HALE: I was.

15 SENIOR AGRICULTURAL ECONOMIST ERBA: Mr. Tillison  
16 offered some further amendments to the Department's  
17 proposed language for the changes on the producer payments  
18 issue. He suggested changing what the Department put  
19 forth and discussed in the pre-hearing workshop. Do you  
20 have any comments on the changes that the Alliance  
21 suggested?

22 MS. HALE: As I understood that, the Alliance  
23 proposal would totally eliminate the opportunity or  
24 perhaps totally eliminate the opportunity to use the  
25 previous months' announced prices. It mentions estimated

1 prices.

2           Now, I would think that through the pool  
3 manager's ability to decide what that estimate process  
4 might be, may be they could authorize that. My only  
5 concern is perhaps there's someone in the industry, and I  
6 suspect that the Department would know better than I, that  
7 is new and does not know how to estimate prices, and  
8 perhaps they would need to use something more basic, such  
9 as the previous months'.

10           But other than that, that would not affect what  
11 we are doing.

12           SENIOR AGRICULTURAL ECONOMIST ERBA: Right.  
13 Thank you.

14           HEARING OFFICER ESTES: Any other panel  
15 questions?

16           Thank you very much for your testimony today.

17           MS. HALE: Thank you.

18           HEARING OFFICER ESTES: Next we have Tiffany  
19 LaMendola from Western United Dairymen.

20           (Thereupon Ms. Tiffany LaMendola was sworn  
21 by the Hearing Officer to tell the truth and  
22 nothing but the truth.)

23           MS. LaMENDOLA: I do.

24           HEARING OFFICER ESTES: Could you please state  
25 your name and spell your last name for the record.

1 MS. LaMENDOLA: Tiffany LaMendola,  
2 L-a-M-e-n-d-o-l-a.

3 HEARING OFFICER ESTES: And could you describe  
4 the method by which your testimony was developed and  
5 approved for presentation today?

6 MS. LaMENDOLA: It was approved by our Dairy  
7 Programs Committee on October 14th and our Board of  
8 Directors on October 17th.

9 HEARING OFFICER ESTES: And would you like to  
10 have your written statement introduced into the record as  
11 an Exhibit?

12 MS. LaMENDOLA: Yes, please.

13 HEARING OFFICER ESTES: It will be introduced  
14 into the record as Exhibit 50.

15 (Thereupon the above-referenced document was  
16 marked by the Hearing Officer as Exhibit 50 for  
17 identification.)

18 HEARING OFFICER ESTES: And you may proceed with  
19 your testimony.

20 MS. LaMENDOLA: Mr. Hearing Officer and members  
21 of the hearing panel, my name is Tiffany LaMendola and I'm  
22 the director of economic analysis for Western United  
23 Dairymen. An elected board of directors governs our  
24 policy. Our association is the largest dairy producer  
25 trade association in California, representing

1 approximately 1,100 of California's 2,000 dairy families.  
2 We are a grass roots organization headquartered in  
3 Modesto, California.

4 An extensive process was used to arrive at the  
5 position we will present here today. Western United  
6 Dairywomen starts a process with a committee of dairy  
7 leaders from around the state. They ship milk to all  
8 types of plants and many effectively serve the industry on  
9 other boards. The committee conducts long and thoughtful  
10 discussions of all sides of the issue at hand.

11 The committee recommendations are presented to  
12 the Board of Directors for review, modification and  
13 approval. The Committee met October 14th, 2003 and the  
14 Board of Directors met October 17th to approve the  
15 position we will present here today.

16 Petition Submitted by the Alliance Of Western  
17 Milk Producers.

18 Western United Dairywomen is in support of the  
19 elements contained in the Alliance petition that are under  
20 consideration at this hearing, i.e. everything except the  
21 request for retroactive application of a rule change.

22 The changes, if implemented, would close a  
23 loophole in the regulation that is currently being  
24 exploited by a few manufacturers to their exclusive  
25 benefit. The changes would also curtail similar

1 occurrences from happening in the future.

2           The Merriam-Webster dictionary defines the word  
3 pool as to combine as resources in a common fund or  
4 effort. This definition obviously fits the intentions of  
5 producers who participate in the pool and combine their  
6 resources to reap mutual benefit. The strength of the  
7 California pooling system rests in the fact that most of  
8 the producers and processors in the state participate.

9           Producers receive uniform price based on their  
10 allocation of overbase and quota and processors pay based  
11 on the use of the raw milk they acquire. The system is  
12 intended to create a level playing field amongst producers  
13 and a level playing field amongst processors.

14           The concept of pooling is currently under serious  
15 challenge in federal orders with the act of depooling  
16 leading the attack. Though depooling is not as severe  
17 here in California as it has recently been in federal  
18 orders, it is still an imminent threat. The ability of  
19 some plants and producers shipping to those plants to  
20 participate in the pool when it benefits them, but to  
21 leave the pool when it doesn't, goes completely against  
22 the concept of pooling. In particular, depooling  
23 eliminates the level playing field the pooling plan was  
24 intended to create.

25           Information from the Department indicates that

1 the incentive for a cheese plant to depool has not  
2 occurred frequently in California over the past 6 years.  
3 Luckily our quota system, which is unique to California,  
4 greatly reduces the incentive for plants to depool even  
5 when prices indicate they should.

6           The fact that plants are still required to pay  
7 minimum prices to producers, even if they depool is an  
8 additional disincentive.

9           Finally, further protection to the pool occurs  
10 because cooperative milk must be pooled. However, despite  
11 these disincentives to depool, 2 plants in California have  
12 taken advantage of recent price relationships. In the  
13 last three months, July through September, these cheese  
14 plants have gained a minimum of \$1.57, \$1.77 and \$1.50 per  
15 hundredweight respectively, monthly advantage over cheese  
16 manufacturers participating in the pool.

17           Though some may argue the impact to the pool from  
18 these plants depooling is insignificant, they can hardly  
19 make the same argument for the competitive advantage that  
20 these plants gain by depooling in certain months. The  
21 Alliance's petition does not eliminate a plant's ability  
22 to withdraw from the pool; it simply eliminates their  
23 ability to jump in and out on a monthly basis in order to  
24 take advantage of certain circumstances.

25           In order to protect the integrity of the pool and

1 establish a level playing field for those participating,  
2 we respectfully request the Department to adopt the  
3 changes put forth by the Alliance in their petition.

4 Dairy Institute Alternative Proposal.

5 As stated previously, we are in support of the  
6 Alliance petition, which indicates that a pool plant, not  
7 processing Class 1 or mandatory Class 2 products shall be  
8 a pool plant for an entire calendar year, unless it  
9 notifies the Department prior to January 1st of the coming  
10 calendar year.

11 Though the Dairy Institute agrees that once a  
12 plant depools, it does so for a 12-month period, they have  
13 proposed that the notification to depool could be made at  
14 any point during the year. Though it is possible, certain  
15 contractual arrangements may make January 1st undesirable.  
16 We feel it is the appropriate notification date.

17 A January 1st notification date bases the plant's  
18 decision to depool on other fundamentals, aside from the  
19 desire to take advantage of price relationships in any  
20 given month or period.

21 A January 1st designation also places the plant  
22 at greater risk due to the difficulty of being able to  
23 accurately forecast prices for the following 12 months.  
24 If prices, as of January 1st, do not provide an economic  
25 signal for the plant to depool, greater consideration as

1 to whether to be a pool plant or not will likely be  
2 fostered.

3 California, Department of Food and Agriculture  
4 Technical Adjustment.

5 We support the technical adjustment proposed by  
6 the Department. The issue at hand seems to be the need to  
7 bring the Regulation in align with current practices of  
8 estimated advanced payments. It is obvious that these  
9 alternative methods of estimation, though contrary to  
10 current regulation, have been used for some time and are  
11 likely more effective for all parties.

12 As suggested at the pre-hearing workshop, the  
13 substitution of "shall" for "may" does seem appropriate if  
14 the Department desires plants to move away from using the  
15 previous months' announced prices as estimates for  
16 advanced payments.

17 A reservation we have is that the obvious intent  
18 of the current regulation was to provide a uniform and  
19 publicly accessible method of estimation. Current  
20 practices have moved away from the predetermined  
21 estimation method to one that varies by plant. This has  
22 reduced the ability for those outside plant management,  
23 primarily producers to know the procedures used by the  
24 plant to estimate advanced payments.

25 Is there any means by which to encourage the

1 plants to use a predetermined estimation method provided  
2 by the Department?

3 If not, we hope the plants acquiesce to providing  
4 their estimation procedure to their producers. This would  
5 give producers a better way to forecast their cash flow  
6 for any given month.

7 We thank you for the opportunity to testify and  
8 we request the option to submit a post hearing brief.

9 HEARING OFFICER ESTES: The request to file a  
10 post-hearing brief is granted.

11 Did you get the information about the method of  
12 filing?

13 MS. LaMENDOLA: Yes.

14 HEARING OFFICER ESTES: Are there any panel  
15 questions for Ms LaMendola?

16 Well, thank you for your testimony today.

17 MS. LaMENDOLA: Thank you.

18 HEARING OFFICER ESTES: Unless there are any  
19 additional individuals wishing to sign up to testify, our  
20 last witness today will be Dr. Jim Gruebele of Land O'  
21 Lakes.

22 I see that we have 2 other individuals who have  
23 signed up, and we'll certainly allow both of these to  
24 testify after Dr. Gruebele.

25 (Thereupon Mr. James Gruebele was sworn by

1 the Hearing Officer to tell the truth and  
2 nothing but the truth.)

3 DR. GRUEBELE: I do.

4 HEARING OFFICER ESTES: And could you please  
5 state your name and spell your last name?

6 DR. GRUEBELE: James Gruebele, G-r-u-e-b-e-l-e.

7 HEARING OFFICER ESTES: And could you please  
8 describe how your testimony was developed and approved for  
9 presentation today?

10 DR. GRUEBELE: It was approved by management and  
11 board of directors and delegates.

12 HEARING OFFICER ESTES: And would you like your  
13 written statements to be introduced into the record?

14 DR. GRUEBELE: Yes, I would.

15 HEARING OFFICER ESTES: It will be introduced  
16 into the record as Exhibit 51.

17 (Thereupon the above-referenced document was  
18 marked by the Hearing Officer as Exhibit 51 for  
19 identification.)

20 HEARING OFFICER ESTES: And you may present your  
21 testimony.

22 DR. GRUEBELE: My name is James W. Gruebele,  
23 dairy industry consultant, 7196 Secret Garden Loop,  
24 Roseville, California, 95747. I am testifying on behalf  
25 of Land O' Lakes, which handles about 14 million pounds of

1 milk per day and has a California membership of about 225  
2 producers. There are 10 producers that operate dairies in  
3 southern California that are members of our cooperative.  
4 Our testimony today reflects our recommendation for  
5 amendments to the milk pooling plan.

6 Dairy Institute's Proposal.

7 We support the alternative proposal offered by  
8 the Dairy Institute. We agree that changes should be made  
9 to the milk pooling plan to curtail opportunities for  
10 plants to depool for purposes of taking advantage of  
11 short-lived pricing opportunities.

12 The Dairy Institute proposed that plants should  
13 be allowed to change their pool status only once in any  
14 given 12-month period. We agree that there's no  
15 particular reason to restrict the changes to pool status  
16 to January 1. However, the plant should be required to  
17 notify the Department prior to the 1st month that is  
18 chosen for changing their pool status.

19 Dairy Institute opposes mandatory pooling of milk  
20 for Class 4a or 4b and Class 3 and non-mandatory Class 2  
21 products. We agree with that.

22 We agree with the addition of subsection (d) to  
23 Section 106 as proposed by the Dairy Institute. We agree  
24 with the Dairy Institute that the addition of subsection  
25 (d) to Section 106 of the pooling plan would remove the

1 incentive to depool milk based on short-term price  
2 changes.

3 Land O' Lakes is concerned about the fact that  
4 cooperatives, whether 105(b) or 105(c) do not have the same  
5 opportunities as those firms in many federal order markets  
6 to depool milk that is used for non-mandatory Class 2,  
7 Class 3, Class 4a, Class 4b milk. It is true, of course,  
8 that plants owned by a cooperative can be depooled, but it  
9 really does not change the fact that the milk is pooled  
10 even if it is delivered into a non-pool plant, if it comes  
11 from a cooperative.

12 Up to this point, proprietary firms have been  
13 able to jump into and out of the pool. And by doing so,  
14 the milk, if obtained from an independent shipper, was  
15 also pooled or depooled on a monthly basis.

16 The amendments proposed by the Dairy Institute  
17 would limit such pooling or depooling to an annual basis.  
18 But again, cooperatives do not have the same option. This  
19 raises the questions about equity. Land O' Lakes is also  
20 concerned about the fact that milk used for other than  
21 Class 1 uses can be depooled in federal order markets.

22 Land O' Lakes plants in California do not have  
23 that option. We compete with cheese operations and  
24 federal order markets. They have the option to depool,  
25 and we do not. Furthermore, plants that depool are not

1 required to pay minimum class prices for milk that is  
2 depooled. This raises a serious equity issue.

3 A basic objective of the legislation, that is  
4 California's legislation, to regulate the dairy industry  
5 in California was the, "production and maintenance of an  
6 adequate supply of healthful market milk..." One of the  
7 by-products of automatic mandatory pooling of milk in a  
8 cooperative is that there is no performance standard to  
9 supply milk to Class 1 distributing plants.

10 Milk in a cooperative under current rules are  
11 pooled even if the cooperative does not market milk with a  
12 Class 1 distributing plan. How does this rule ensure that  
13 adequate amounts of milk will be supplied to Class 1  
14 distributing plants in California?

15 Why should a cooperative supply milk to a Class 1  
16 distributing plant if there are opportunities to enhance  
17 profits by utilizing such milk in their own manufacturing  
18 operations? Opportunity costs can be even large in  
19 instances where there is excess manufacturing capacity in  
20 plants owned by the cooperative.

21 My analysis clearly shows that Land O' Lakes  
22 would have been better off if the milk supplied to Class 1  
23 distributing plants in the past year were utilized in  
24 their butter-powder operations. If that situation  
25 persists, there's no way that makes economic sense to

1 sacrifice potential earnings to serve Class 1 accounts.

2           No performance standards, there is no reason to  
3 worry about being pooled because it is automatic.

4           I would just add that I do agree with the  
5 Department's addition to the matter of how milk prices are  
6 estimated for quota, base or overbase purposes.

7           That concludes my testimony.

8           HEARING OFFICER ESTES: Thank you, Dr. Gruebele.

9           Are there any panel questions?

10          SENIOR AGRICULTURAL ECONOMIST ERBA: Dr.  
11 Gruebele, can you kind of reconcile what seems to be some  
12 inconsistencies here.

13          You speak in support of Dairy Institute's  
14 proposal, that you have a 12-month declaration to be in or  
15 out of the pool. Yet most of your testimony is about  
16 cooperatives should have the same opportunity as  
17 proprietary plants to depool, which is sort of the  
18 opposite.

19          DR. GRUEBELE: Well, I'm assuming that that issue  
20 continues. That unless that issue is addressed in a milk  
21 hearing to undo that cooperative requirement, then I do  
22 support the Dairy Institute proposal that we have this  
23 12-month opportunity for the other plants to pool or not  
24 pool.

25          I think that it makes it more equitable with the

1 Dairy Institute proposal with the cooperative rules as  
2 they exist now, to at least require them to do it on an  
3 annual basis rather than jump in and out of the pool on a  
4 monthly basis. That makes it even more inequitable  
5 between the plants that are proprietary and the plants  
6 that are part of a cooperative.

7 SENIOR AGRICULTURAL ECONOMIST ERBA: Do you  
8 suggest that even if one of these proposals could have a  
9 12-month declaration be put in place that the cooperatives  
10 are still at a disadvantage and they would still need to  
11 have something looked at in the future?

12 DR. GRUEBELE: That is a possibility, yes.

13 SENIOR AGRICULTURAL ECONOMIST ERBA: Thank you.

14 HEARING OFFICER ESTES: Do we have any other  
15 questions for Dr. Gruebele?

16 Thank you for your testimony today.

17 Mr. Feenstra, from the Milk Producers Council.

18 (Thereupon Mr. Bob Feenstra was sworn by the  
19 Hearing Officer to tell the truth and nothing  
20 but the truth.)

21 MR. FEENSTRA: As always, yes, sir.

22 HEARING OFFICER ESTES: And would you please  
23 state your name and spell your name.

24 MR. FEENSTRA: Bob Feenstra, F-e-e-n-s-t-r-a,  
25 executive director of the Milk Producers Council, based in

1 Ontario, California. Our comments and testimony today  
2 were approved by the actions of the board of directors at  
3 their October board meeting.

4 HEARING OFFICER ESTES: Did you have a written  
5 statement that you would like to present.

6 MR. FEENSTRA: I'm going to give a verbal  
7 statement, Mr. Hearing Officer.

8 HEARING OFFICER ESTES: That's fine. Please  
9 proceed with your testimony.

10 MR. FEENSTRA: Thank you. Milk Producers Council  
11 strongly supports the Alliance's pooling proposal that is  
12 the subject of this hearing today. I'd like to take it  
13 just a little bit further. We support not only his  
14 comments but the answers to the questions by the panel  
15 during the time of his testimony.

16 The integrity of the pooling program is of the  
17 most importance to Milk Producers Council's processors of  
18 non-Class 1 and mandatory Class 2 products may opt out of  
19 the pool. But that decision should be made on an annual  
20 basis at the beginning of the year as it is for producers  
21 who decide to opt out of the pool.

22 If you remember, that was happening quite  
23 regularly many years ago and we even had producers that  
24 took Grade B status and shipped milk. And, of course,  
25 that was changed and corrected by the Department as we

1 support it today.

2 Milk Producers Council opposes the Dairy  
3 Institute alternative proposal because it would still  
4 allow processors to game the system. We would prefer to  
5 have everybody on the same page on the same level. On the  
6 Department's proposed technical changes, again we support  
7 the Alliance and Mr. Tillison's testimony in as far as how  
8 that is handled in the process.

9 Thank you very much, Mr. Hearing Officer. I'd  
10 also like to request to have the opportunity to file a  
11 brief, if necessary by our organization.

12 HEARING OFFICER ESTES: Your request is granted.  
13 You heard the method for the presentation of that brief?

14 MR. FEENSTRA: Yes.

15 HEARING OFFICER ESTES: Are there any panel  
16 questions for Mr. Feenstra?

17 Okay. Thank you for your testimony.

18 MR. FEENSTRA: Mr. Hearing Officer, I'd also like  
19 to present a copy of our October 3rd, 2003 MPC market  
20 update, which refers to this process of depooling, just to  
21 have it in the record.

22 HEARING OFFICER ESTES: Do you have a copy of  
23 that for me?

24 MR. FEENSTRA: Yes, I do.

25 HEARING OFFICER ESTES: Please bring that

1 forward. We will introduce that into the record as  
2 Exhibit number 52.

3 (Thereupon the above-referenced document was  
4 marked by the Hearing Officer as Exhibit 52 for  
5 identification.)

6 HEARING OFFICER ESTES: Thank you very much for  
7 your testimony today.

8 Next, we have Linda Lopes from the California  
9 Dairy Women Association.

10 (Thereupon Ms. Linda Lopes was sworn by  
11 the Hearing Officer to tell the truth and  
12 nothing but the truth.)

13 MS. LOPES: I do.

14 HEARING OFFICER ESTES: Would you please state  
15 your name and spell your last name.

16 MS. LOPES: Linda Lopes, L-o-p-e-s.

17 HEARING OFFICER ESTES: And could you identify  
18 the organization that you represent and the method by  
19 which your testimony was developed and approved for  
20 presentation today.

21 MS. LOPES: California Dairy Women, and at our  
22 least meeting on October 21st.

23 HEARING OFFICER ESTES: Okay. Was that a board  
24 meeting?

25 MS. LOPES: A membership meeting.

1 HEARING OFFICER ESTES: Okay. All right. I see  
2 we have a written statement here that you provided myself  
3 and the panel. Would you like that introduced as an  
4 exhibit into the record?

5 MS. LOPES: Yes.

6 HEARING OFFICER ESTES: It will be introduced as  
7 Exhibit number 53.

8 (Thereupon the above-referenced document was  
9 marked by the Hearing Officer as Exhibit 53 or  
10 identification.)

11 HEARING OFFICER ESTES: And please proceed with  
12 your testimony.

13 MS. LOPES: I am Linda Lopes, President of the  
14 California Dairy Women Association, and also a dairy  
15 producer from Turlock, California.

16 At the October 21st membership meeting of the  
17 California Dairy Women Association, a unanimous position  
18 was taken in support of the petition on depooling filed by  
19 the Alliance of Western Milk Producers.

20 All producers have suffered due to the extremely  
21 low milk prices for the past 18 months. Now, that the  
22 milk prices have started to rise, all producers who had  
23 been pooled should benefit equally. Due to the dramatic  
24 rise in cheese prices in July of 2003, at least 2 large  
25 cheese manufacturing plants have left the pool. CDFA data

1 indicates that between 17 million and 22 million fewer  
2 pounds of milk were pooled this year compared to July and  
3 August 2002.

4           The producers remaining in the pool have lost  
5 nearly \$700,000 in just 2 months. This condition must not  
6 be allowed to continue. Pooling was put in place in 1969  
7 to create equality between producers and between plants.  
8 The option of pooling and depooling on a monthly basis has  
9 created imbalance in the milk pooling system. Plants  
10 should not be allowed to depool for the purpose of taking  
11 advantage of short-term pricing changes. If actions like  
12 these are allowed to continue, the California pooling  
13 system will be in jeopardy. This would be a step  
14 backward.

15           The Secretary, Bill Lyons, needs to correct the  
16 situation by changing the pooling plan to allow pool  
17 plants to depool for the entire calendar year and market  
18 milk being delivered to a non-pool plant may not be pooled  
19 by any other plant prior to January 1.

20           The California Dairy Women Association would like  
21 to thank the Alliance of Western Milk Producers for the  
22 call of this hearing. I know you are very knowledgeable  
23 on the dairy situation. I leave this problem in your very  
24 capable hands, and I thank you for your time.

25           HEARING OFFICER ESTES: Do we have any panel

1 questions for Ms. Lopes?

2           Seeing that we have none, thank you for your  
3 testimony today.

4           And finally I believe we have some additional  
5 exhibits to be introduced into the record by Cheryl  
6 Gilbertson of the Department.

7           HEARING OFFICER ESTES: You've already been  
8 sworn.

9           STAFF ANALYST GILBERTSON: Yes. I have a letter  
10 dated October 31, 2003 from California Dairy Campaign  
11 signed by Xavier Villa, President. I'd also like to ask  
12 the opportunity --

13           HEARING OFFICER ESTES: Unfortunately, we were  
14 denied his dynamic presence here today.

15           STAFF ANALYST GILBERTSON: Yes, we have been.

16           HEARING OFFICER ESTES: Well, please present this  
17 letter forward. And we will introduce it into the record  
18 as exhibit number 54.

19           (Thereupon the above-referenced document was  
20 marked by the Hearing Officer as Exhibit 54 for  
21 identification.)

22           HEARING OFFICER ESTES: Do we have any additional  
23 information or materials to be presented for the record.

24           STAFF ANALYST GILBERTSON: No. I'd just like the  
25 opportunity to file a post-hearing brief on behalf of the

1 Department.

2 HEARING OFFICER ESTES: Okay, certainly.

3 Is there anyone else that --

4 DAIRY MARKETING BRANCH CHIEF IKARI: We've got  
5 one more.

6 HEARING OFFICER ESTES: What's that?

7 DAIRY MARKETING BRANCH CHIEF IKARI: One more.

8 HEARING OFFICER ESTES: Oh, we have additional  
9 materials. We have one more person who wants to testify?

10 DAIRY MARKETING BRANCH CHIEF IKARI: No.

11 HEARING OFFICER ESTES: Oh, we have a letter to  
12 introduce into the record. Let me go ahead and stamp this  
13 one.

14 STAFF ANALYST GILBERTSON: This letter is from  
15 Humboldt Creamery, signed by Rich Gillarduchi, President  
16 and CEO.

17 HEARING OFFICER ESTES: We will introduce that  
18 into the record as Exhibit number 55.

19 (Thereupon the above-referenced document was  
20 marked by the Hearing Officer as Exhibit 55  
21 for identification.)

22 HEARING OFFICER ESTES: Do we have any additional  
23 materials to introduce for the record?

24 STAFF ANALYST GILBERTSON: I believe that's it.

25 HEARING OFFICER ESTES: Okay. And are there any

1 other witnesses? Is there anyone here in attendance that  
2 would wish to provide additional testimony?

3           Okay, seeing none, we will now close the hearing.  
4 As has already been stated, those who have requested  
5 post-hearing briefs should submit them to the Department  
6 in accordance with the information provided to you earlier  
7 in the hearing today.

8           (Thereupon the Milk Marketing Public Hearing  
9 adjourned at 11:30 a.m.)

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## 1 CERTIFICATE OF REPORTER

2 I, JAMES F. PETERS, a Certified Shorthand  
3 Reporter of the State of California, and Registered  
4 Professional Reporter, do hereby certify:

5 That I am a disinterested person herein; that the  
6 foregoing Department of Food and Agriculture Milk  
7 Marketing public hearing was reported in shorthand by me,  
8 James F. Peters, a Certified Shorthand Reporter of the  
9 State of California, and thereafter transcribed into  
10 typewriting.

11 I further certify that I am not of counsel or  
12 attorney for any of the parties to said hearing nor in any  
13 way interested in the outcome of said hearing.

14 IN WITNESS WHEREOF, I have hereunto set my hand  
15 this 6th day of November, 2203.

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23

JAMES F. PETERS, CSR, RPR

24

Certified Shorthand Reporter

25

License No. 10063