1315 K STREET
MODESTO, CALIFORNIA 95354-0917
TELEPHONE (209) 527-6453
FAX (209) 527-0630

EXHIBIT 62

TESTIMONY

California Department of Food & Agriculture
Hearing on California Stabilization and Marketing Plans for Market Milk
Northern & Southern California
May 3 & 6, 2005

Western United Dairymen

Presented by

Michael Marsh, CPA
Chief Executive Officer

Tiffany LaMendola
Director of Economic Analysis

Mr. Hearing Officer and members of the hearing panel:

My name is Michael Marsh. I am the chief executive officer of Western United Dairymen. I am also a Certified Public Accountant licensed to practice in the State of California. With me today is Tiffany LaMendola, Director of Economic Analysis. An elected board of directors governs our policy. Our association is the largest dairy producer trade association in California representing approximately 1,100 of California's 2,000 dairy families. We are a grass roots organization headquartered in Modesto, California. The board of directors met March 18, 2005 and April 15, 2005 to approve the position we will present here today.

Opposition to the Petition Submitted by the Dairy Institute of California

We are opposed the petition submitted by the Dairy Institute that seeks to dramatically lower Class 1 prices in California. There is no justification at this time for such action.

The Dairy Institute has filed three petitions prior to the call of this Class 1 hearing. While each petition is different, it is clear the main impetus for a reduction in the Class 1 price is to deal with competitive issues surrounding out-of-state milk. While the most recent petition submitted by the Dairy Institute provides alternative reasoning for their request, their first two petitions clearly outline their true motivations.

Explained by the Dairy Institute as "reasons why changes are needed" in their first petition:

> Dairy Institute's members believe that an adjustment to Class 1 prices is necessary to ensure that bulk milk produced by California producers remains competitive with milk supplied by producers from outside the state. Currently, a producer from outside California has an incentive to ship milk to a California processor if the price he receives for his milk is greater than his local "blend" milk price plus the additional cost of shipping milk to a California plant. Likewise, a California processor has an economic incentive to procure milk from outside the state when the price it is charged is less than the applicable California Class 1 price for its plant. Plants in Southern California have an especially strong incentive to procure milk from outside the state because of the close proximity of the Arizona milk supply, much of which is located in Maricopa County, and because of the relatively lower blend price, as compared to California's Class 1 price, paid to producers in Arizona.

CDFA, in their denial of the first petition, stated:

> California may not adopt regulations, the motivation of which is to handicap out-of-state shipments of milk into California. Although the decision has been appealed, at the present time CDFA cannot even adopt regulations aimed squarely at in-state processors for the purpose of preventing the practice of "round tripping" to avoid California's pooling obligation. The regulation of interstate commerce in milk is not within CDFA's jurisdiction.

With a *slightly* different approach than the first, the Dairy Institute lists the following as "reasons why changes are needed" in their second petition:

> Unless the Class 1 price level is reduced to make California milk more competitive, processing plants in California will have a continuing incentive to both leave California and to purchase

> milk from more competitive sources. In turn, this will undermine the Legislature's goal of promoting, fostering, and encouraging "...intelligent production and orderly marketing of commodities necessary to its citizens, including market milk..." and will ultimately deprive California producers of their ability to continue benefiting from the higher-valued Class 1 market.

CDFA, in their denial of the second petition, stated:

> Although we must wait for the December data to complete the analysis, it appears that California Class 1 prices for 2004 will be below surrounding state prices. At this time, it would be premature to call a hearing to consider adjustments to the current Class 1 pricing formulas.
>
> Other factors considered in this decision:
> 1. As we stated in a reply to Dairy Institute's September 24th petition, CDFA has appealed a recent court ruling that prevents California from adopting regulations to handicap out-of-state shipments of milk into California. CDFA is mindful of adopting regulations that are consistent with the court's determinations. CDFA is concerned about the references to out-of-state shipments of milk in light of those determinations.
> 2. Federal legislation appears to be the appropriate solution to bring about a level playing field regarding regulatory "holes" outside California. CDFA is supportive of this type of federal solution.

With yet another approach (which eliminates any reference to out-of-state milk) than the first or the second, the Dairy Institute lists the following as "reasons why changes are needed" in their third petition:

> Dairy Institute's members believe that an adjustment to Class 1 prices is necessary to "enable the dairy industry, with the aid of the state, to develop and maintain satisfactory marketing conditions..." (Section 61085(d)). Unnecessarily high Class 1 prices will continue to erode Class 1 use and Class 1 utilization, and violate Section 62062(b) of the Food and Agricultural Code which requires that the formulas result in "prices to consumers which, when considered with relevant economic criteria are fair and reasonable." Maintaining high Class 1 prices denies consumers the potential savings in milk costs that could be realized if Class 1 prices were set at economically appropriate levels.

Astonishingly, the Secretary granted a hearing of this third petition.

Given the appropriate reasoning provided by CDFA for the denial of the first two petitions, it is inconceivable that the third petition was even considered. It is impossible to ascertain what has changed to make the Dairy Institute's motive of regulating interstate commerce more acceptable now than they were in the first two petitions. Isn't the petition currently being considered an attempt to address the Dairy Institute's real concerns clearly outlined in their first two petitions? If so, the Department has made their choices clear.

Out-of-State Milk Implications

Really, at issue here is the "incentive to purchase milk from more competitive sources" which is not a direct effect of California's Class 1 prices being to high, but rather the way this more "competitive" milk was, and is currently, handled in the California pool. This is a direct link to the current "*Hillside Ponderosa*" litigation and the fact that out-of-state milk used for Class 1 purposes is credited at the Class 1 price and therefore essentially exempt from pool obligations. It is this situation, which was actually **supported by the Dairy Institute in their filing of an amicus brief** in support of the *Hillside Ponderosa* plaintiffs that makes this milk more "competitive," not the fact that California's Class 1 prices are too high. Dairy Institute's support of the *Hillside Ponderosa* position against the Secretary in effect supported giving out-of-state producers an unfair regulatory advantage that they now claim as justification for reducing California's Class 1 prices. Ironically, the Dairy Institute now seeks to use the situation it helped to maintain as a basis for lowering a Class 1 price already lower than Class I prices in neighboring areas.

The Dairy Institute, with their contention that Class 1 prices must be lowered in order to address a declining Class 1 usage asserts that it is high Class 1 prices in the past that have led to the reduction of Class 1 utilization and to the increase of out-of-state bulk milk shipments. This simply isn't true.

While the 1997 amendments to the Pooling Plan were designed to "level the playing field," the amendments still provided a substantial regulatory advantage in favor of out-of-state milk over milk from California dairy farms. Milk purchased from California dairy farmers was reported to the pool at the classified prices applicable to the milk's usage. California processors then received a credit against their obligation to the pool equal only to the prices they paid California dairy farmers. Those prices (and hence the processor's credit) depended on the amount of pool quota held by the selling producers. For example, if a dairy farmer held no quota, the price paid to the farmer (and hence the credit received by the processor) would only be the overbase price. If 100% of the selling California dairy farmer's production was covered by quota, the price paid and the credit received would be the quota price. Since very few California dairymen held 100% quota (generally less than 2.0%), the prices paid (and hence the credits received by processors) generally ranged from the overbase price to a price somewhere between the overbase price and the quota price. In contrast, under the 1997 amendments, if the milk was purchased from out-of-state sources, a California processor would receive a credit of the "modified quota price," a price which actually exceeds the California quota price (the highest price any California producer could receive). As a result, California processors still were provided an incentive to purchase out-of-state milk over California milk. Even with respect to purchases from the tiny minority of California producers who held 100% quota, the "out-of-state incentive" still existed because the processor's credit in the amount of the modified quota price would always be greater than the quota price. In so much, it is obvious that this case is simply not the same and is easily distinguishable from that presented to the Court in *West Lynn Creamery v. Healy*.

Fundamental to plaintiffs' position on the merits of the *Hillside Ponderosa* case is the contention that the effect of the challenged Pooling Plan amendments was to "take money out of their pockets." This contention is based on a faulty premise that out-of-state producers had a right to be paid the Class 1 price (even though plaintiffs argued at the same time that it would be illegal to require California handlers to pay them that price) and that, absent the amendments, they would have received the Class 1 price from California processors.

In an amicus brief filed in U.S. District Court by the Dairy Institute on August 23, 2004, its position completely undermines the *Hillside Ponderosa* plaintiffs' premise: the only "right" out-of-state producers have is to be paid a negotiated price which California processors were willing to pay. The Institute's brief indicates that its members are not willing to pay the Class 1 differential to out-of-state producers because the processors consider those monies to be their own "working capital."

A declaration filed the same day in the *Hillside Ponderosa* case by Pete Olsen, a member of Dairy Farmers of America (DFA), confirms that out-of-state producers were, in fact, not receiving the Class 1 price. Olsen states, "…DFA inexplicably departed from the terms of our arrangement and only paid us a portion of our milk revenue. Even though our processor customers in California paid the plant blend DFA withheld a portion of our milk revenue equal to the amount of the pool obligation that would have been paid to the California pool if this Court's injunction had not been in place." From these statements it is clear that lowering the Class 1 price will not put an end to out-of-state milk purchases or implement the regulation of interstate commerce promoted by the Dairy Institute. The processors purchasing this milk will continue to benefit from the treatment of such milk in the California pool and will simply lower their "negotiated" price to out-of-state producers in order to maintain their financial benefit or, as characterized by the Dairy Institute, "working capital."

Western United's position should be clear. We do not contend that California has the right to regulate interstate commerce or that California producers have a right to protection against competition from out-of-state milk, that is, so long as that competition is based on economic factors, or in other words, true economic competition. What Western United does oppose, as stated in its amicus briefs filed in the *Hillside Ponderosa* actions, is the regulatory treatment of out-of-state milk that gives that milk an artificial and unfair regulatory advantage and provides California processors an incentive to purchase out-of-state milk, particularly for Class 1 purposes. This unfair treatment of California milk (which the 1997 Pooling Plan amendments attempted to address, at least in part) has caused a significant problem for the California milk industry, and, we submit, in the long run to California consumers by destabilizing the industry.

But the problem's solution is not to "throw out the baby with the bath water." As we have demonstrated above, lowering the Class 1 price will not result in any solution. This regulation created incentive for California processors to purchase out-of-state milk will still exist; they will simply be able to do so at a lower price than at present, which, of course, redounds to their financial benefit. A lower Class 1 price will also reduce the pool price paid to California producers, again to the substantial benefit of California processors. History teaches us that, predictably, little, if any of these benefits will be passed on to California consumers, but rather such benefits remain in processors' pockets.

Competition from an Unregulated Processor

Furthermore, the Dairy Institute sees a reduction in the Class 1 price as a means to address competition with an unregulated processor in Arizona who has predatorily captured market share in Southern California. We too desire to find a means to eliminate the artificial regulatory incentive provided to this unregulated handler. However, a reduction in the Class 1 price is not the appropriate or effective means. The unregulated status of this handler is a loophole that gives the unregulated plant a substantial raw product cost advantage. Because he can avoid paying a regulated price for his milk, he will <u>always</u> beat the competition. The more own-farm milk the plant uses, the greater his cost advantage. A reduction in the California Class 1 price to address this issue results in only a race to the bottom. A $0.90 per hundredweight or $0.08 per gallon reduction in the Class 1 price will not make Southern California plants competitive with a handler who may average around a $0.20 per gallon raw product cost advantage; especially considering the fact that capturing a retailer's business may be the result of fractions of a penny.

Clearly, the only way to adequately address this regulatory loophole is through federal legislation that imposes regulation on this handler and, to this end, Western United Dairymen is working collaboratively with the Dairy Institute at the federal level. The Department recognized this in their second denial of the Dairy Institute's petition.

Western United Dairymen's (WUD) Alternative Proposal

We have submitted an alternative proposal that is fair and fully justified. While there may very well be justification for the complete elimination of the Class 1 area differential, our proposal seeks to reduce the current $0.27 per hundredweight differential between Northern and Southern California. From what we can tell, the differential was last changed in 1996 when three marketing areas in California were consolidated into the current two.

In researching the justification for an area differential between Northern and Southern California, the following emerged as the primary historical rationale:

1. Use as a tool for the interchange of milk between areas
2. Cost of Production differences between marketing areas
3. Differences in production and marketing between marketing areas

A tool for the interchange of milk between areas

The $0.27 per hundredweight Class 1 differential between Northern and Southern California has historically been used as a factor in setting the transportation credit rate between the areas. We argue that a reduction in this factor has merit. At recent transportation hearings the Department has moved away from its historical means of setting transportation credit rates. From 1983 through 1996, the Department adjusted the transportation credit by taking the cost to haul milk from a South Valley plant to Southern California Class 1 plants, subtracting the area differential, and providing for a modest shortfall. In the June and July 2001 hearings, this historical approach came into conflict with the realization of dynamic industry changes by the Department:

> "Likewise, a processor who has historically received a transportation credit may have a competitive advantage created by the current regulatory framework that was unintended at the time the transportation credit was implemented. The panel recognizes that the current market structure evolved, in part, from regulations that were established many years ago. However, with marketing conditions being so dynamic, a regulatory structure that historically served its purpose adequately may not continue to do so in the future."[1]

Because of this realization, alternative analysis was conducted by the Department that focused on the cost of hauling ranch-to-plant versus plant-to-plant. The analysis revealed that the cost to the pool of the transportation credits for shipping milk via plant-to-plant

[1] CDFA, "Summary of Proposals with Policy Considerations," May 15, 2003.

shipments greatly outweighed the cost to the pool for the comparable transportation allowances for ranch-to-plant shipments. Therefore, in 2001, the Department implemented an increase in the transportation allowance into Southern California but maintained the same transportation credit. The result was an unprecedented shortfall in the credit, however, the shortfall was needed in order to level the playing field so that the "comparative advantages of ranch-to-plant v. plant-to-plant movement would determine which is used." In 2003, contrary to the hearing panel recommendations, the Secretary implemented an increase in transportation credits, thereby shifting the scales back into favor of more costly ranch-to-plant movements.

So, in using analysis similar to that of the Department, we can look at adjusting the Class 1 area differential in order to level the playing field between credits and allowances once again. Currently, a $0.58 to $0.62 transportation allowance is in place between the South Valley and Southern California/San Diego receiving areas for ranch-to-plant milk movements. Assuming a 99% average Class 1 utilization of receiving plants in Southern California and movement of only 85% of as much milk under plant-to-plant shipments, we ascertain that an area differential of $0.10 per hundredweight is appropriate for plant-to-plant shipments of milk from Northern to Southern California. This differential, when added to the credits currently established, makes the incentive to move milk plant-to-plant comparable to that for ranch-to-plant movements.

	Transportation credit plus $0.10 area differential	**Avg. S. CA receiving plants Class 1 utilization**	**Amount milk moved under credit v. allowance**	**Calculated transportation allowance**
Tulare to LA, Orange, Ventura	$0.70	99%	85%	**$0.59**
Tulare to Riverside or San Diego	$0.78	99%	85%	**$0.66**
Fresno/Kings to LA, Orange, Ventura	$0.73	99%	85%	**$0.61**
Fresno/Kings to Riverside or San Diego	$0.81	99%	85%	**$0.68**

While this is a useful analysis, the reasoning behind a lower area differential when analyzing transportation issues extends even further.

In the past it has been implied that the Class 1 area differential could be used to fund the transportation allowances, credits and Regional Quota Adjusters. While this argument has not been sustained in past hearings, it is worth mentioning that the revenues derived from the $0.27 area differential far exceed the cost of the transportation credit system in any given month. This leads to a very important question: Why is a $0.27 area differential required on all Class 1 milk in California; if an incentive is needed to insure the movement of milk to Southern California, shouldn't we pay a credit only on the amount of milk that actually moves? In our view the answer is yes. There has been a significant reduction in the amount of milk moving on a plant-to-plant basis from Northern to Southern California. In fact, nearly a 98% reduction in plant-to-plant movement from Northern to Southern California occurred in November 2004. Clearly, the need for such a large area differential on all Northern California Class 1 milk, in terms of moving that milk, is excessive.

It is interesting to note that the Federal Class 1 price structure clearly supports our claim. If California were part of a Federal Order, a $1.60 Class 1 differential in Tulare and $2.10 differential in Los Angeles would exist. The $0.50 per hundredweight difference would serve three functions:

1. Setting the Class 1 price or processor pool obligation in each county
2. Providing transportation allowances on ranch-to-plant shipments. A producer shipping to a pool plant in Los Angeles County would receive $0.50 more than a producer shipping to a pool plant in Tulare. This $0.50 incentive is comparable to the current $0.43 to $0.58 transportation allowance currently in place.
3. Providing transportation credits on plant-to-plant shipments. A pool plant in Tulare county shipping to a pool plant in Los Angeles County would have a $0.50 raw product advantage to help cover hauling costs. This $0.50 incentive is far lower than the current $0.87 to $0.98 (transportation credit plus area differential) currently in place.

As you can see, under the above scenario, the $0.70 to $0.81 incentive for plant-to-plant shipments we are supporting is far in excess of what would be provided under a federal system.

Cost of Production Differences between Marketing Areas

At one time there were 37 different marketing areas in California. Apparently, the Class 1 price in each area was set primarily based off the cost of production in that given area. Today, there are only two marketing areas in the state. A cost of production approach to setting the Class 1 price (essentially the area differential) seems inappropriate given the large variations between cost of production that exist within the two marketing areas. We argue that the differences *within* marketing areas are likely higher than the differences *between* the areas. A higher Class 1 price in Southern California seems to imply (given historical rationale) that the cost of production is higher than in Northern California. Looking at cost comparison figures 1999-2004, there are some interesting trends to note. First, though there has been a significant increase in costs for all regions, the increase witnessed for the North Bay area stands out. Nearly a 20% increase in costs has been witnessed during the time frame 1999-2004.

Production Cost Comparison

	Del Norte, Humboldt	North Bay/Coast	North Valley	South Valley	Southern California
1999 Average	12.32	11.77	11.8	11.7	11.53
2000 Average	11.56	11.82	11.57	11.46	11.8
2001 Average	12.10	12.85	12.27	11.98	12.78
2002 Average	12.36	13.62	12.52	12.62	12.57
2003 Average		13.59	12.57	12.11	12.71
2004 Average		14.10	12.95	12.53	12.80
2004 Increase over 1999		19.80%	9.75%	7.09%	11.01%
2003 Production %		3.21%	36.57%	45.81%	14.41%

Also interesting is that the cost comparison for the North Valley, though historically below that of Southern California, surpassed Southern California in 2004. Finally, a weighted average cost of production in Northern California (using 2004 cost comparison and 2003 production shares) would be approximately $12.77 per hundredweight while the Southern California cost figure is $12.80. Clearly, as stated previously, the cost of production variance between the two current marketing areas has declined.

Differences in Production and Marketing between Marketing Areas
The $0.27 per hundredweight area differential seems to imply that Northern California processors ought to have a raw product cost advantage. We asked ourselves whether or not this is necessary. Because we are not privy to all the details surrounding competitive relationships between processors, we can only analyze the information readily available to us.

In reviewing the Statement of Determination from hearings in October 1996 dealing with the consolidation of the Northern California and South Valley marketing areas, a statement contained within the report caught our eye. The Department states, "Variations and differences in production, processing and marketing *between* the current South Valley and current Northern California Marketing Areas are small compared to variations and differences *within* the two marketing areas." The same argument could be made that the differences *between* the current Northern California and Southern California marketing areas are small compared to variations and differences *within* the marketing areas. Both marketing areas contain rural and urban areas. Both marketing areas contain processing capacity. Both areas have higher and lower cost of production regions.

Though there is no reliable information on interregional packaged milk movement between the areas there has been sufficient anecdotal evidence in the past that suggests its occurrence. Also, pooling data indicates that pool utilization of Class 1 milk is split approximately 50-50[2]. However, data on Class 1 sales by marketing area suggest about 60% of total beverage milk sales takes place in the Southern California marketing area.[3]

We know a great deal of bulk milk moves between regions. In February 2005, 153 million pounds of bulk milk moved from Northern California ranches to Southern California plants. There was even some movement (440,135 lbs) of milk from Southern California ranches to Northern California plants. We have, unfortunately, seen a decline in the pounds supplied to Southern California plants from Southern California ranches.

So, in considering this rather large movement of milk (presumably packaged and undoubtedly bulk), is there really still a definable boundary between the two milk supply areas? With such a large shift of milk between the areas, it seems as though processors in both marketing areas are competing for the same milk supply.

---

[2] This is utilization at point of pricing.
[3] These are the location of the first sale. Therefore, if the first sale is to a distributor, it is likely the product ended up in a different location. Whether or not the product would travel as far as to enter a different marketing area is unknown.

In the 1996 Department Determinations regarding consolidation, the Department states:

> Consolidation should tend "to promote...intelligent production and orderly marketing...and to eliminate economic waste, destructive trade practices, and improper accounting; and should result in "prices... (that) shall endeavor under like conditions to achieve uniformity of cost to handlers. The Department finds that "...in and for each particular marketing area under consideration for consolidation, that conditions of production and handling are reasonably uniform..." All competing processors should be included in the same marketing area with the same minimum Class 1 farm price.

So, it is for all the aforementioned reasons that we feel a lower Class 1 area differential is appropriate between Northern and Southern California.

Why not lower the Southern California price to the Northern California price?

It is clear that to achieve the goal of a lower area differential, the Northern California Class 1 price should be increased. There is no justification for lowering the Southern California Class 1 price at this time. Section 62062.1 of the Food and Agricultural Code states that:

> Any designation of a class 1 price by any method or formula that is used to develop prices paid to producers in various marketing areas, shall provide, ***on a calendar year basis***, a statewide weighted average minimum price level for a hundredweight of milk testing 3.5 fat and 8.7 solids not fat that is in reasonable relationship with minimum class 1 milk prices paid to producers in contiguous states. If the statewide weighted average class 1 prices paid to producers are not in a reasonable relationship with the class 1 prices paid to producers in contiguous states, the secretary shall immediately hold a hearing to consider adjustments to the class 1 prices ***(emphasis added).***

A review of the 2004 Class 1 prices below shows clearly that both Northern and Southern California Class 1 prices are <u>not in reasonable relationship</u> with minimum Class 1 milk prices paid to producers in contiguous states.

Area	**12-month Average (Jan 04- Dec 04)**
Arizona Central, Phoenix, Tucson	$17.33
Oregon, Western – Medford, Portland	$16.88
Southern CA- Los Angeles	$16.70
California-Statewide Average	$16.56
No. CA – S.F., Nevada, Northwest, Reno, Winnemucca	$16.43
Nevada, Southern – Las Vegas	$16.38

According to Department data, the Southern California Class 1 price has lagged the Arizona Class I price by an average of $0.29 per hundredweight during the period 2000-2004. Likewise, the Northern California Class 1 price has lagged the Oregon Class I price by $0.11 per hundredweight during that time period. The averages for 2004 alone are even larger, with a $0.68 cwt disadvantage for producers in Southern California and $0.50 cwt for producers in Northern California. Clearly, given the Secretary's role outlined in Section 62062.1, Class 1 prices should be ***increased***, not lowered.

As an additional comparison, the Department has in the past relied on data which compares the Southern California Class 1 price to what would have been in effect if California were a federal order. "Under federal order reform, Class 1 differentials were established for all counties in California. If the differentials for all the counties in Southern California are averaged based on their Class 1 utilization, the resulting weighted average Class 1 differential is approximately $2.07."[4] Though California was exempt from federal reform, if this comparison were to be used as a basis to adjust Class 1 prices in California, it should be noted that, on average, 2004 Southern California prices have been below the price that would have been established under federal reform. In fact, January-December 2004, the Class 1 differential, when compared to the federal order Class 1 base price, averaged approximately $1.72, far below the estimated $2.07 that would be in place under federal orders.

Rebuttal to Additional Dairy Institute Arguments

The Dairy Institute provides additional arguments as support for lowering the Class 1 price and regulating interstate commerce. We would argue that they fall short of providing justification for such action. First, they argue that if "milk production continues to grow at current rates, the supply of milk will exceed the capacity of the state's dairy product plants in the near future." It is highly unlikely that we will see the California dairy industry grow at the same rates in the past as cumbersome environmental regulation will greatly dampen the growth rate of both existing and new dairies. Everyday we hear of more and more dairies considering relocation out of the state of California. But, even if the same growth rates were realized, we cannot see how lowering the Class 1 price would provide additional plant capacity when there are larger issues (as discussed above) involved. Secondly, the Dairy Institute argues that "Maintaining high Class 1 prices denies consumers the potential savings in milk costs that could be realized if Class 1 prices were set at economically appropriate levels." While we will not delve into this issue too far, it is easy to point out the growing margins between farm level (Class 1) and retail fluid milk prices to rebut this hollow claim. History has proven that retailers do not always respond to a decrease in the Class 1 price by passing savings on to their customers. There is no reason to believe that a decrease in the Class 1 price paid to producers will translate to into any significant savings for consumers. Once again, lowering the California Class 1 price is not the solution to these concerns.

Finally, the Dairy Institute argues, "Class 1 use is lower today than it was more than a decade ago, despite the fact that California's population has grown substantially." It must be noted that a main reason for the large drop in Class 1 utilization is the fact that out-of-state milk is no longer included in California pool utilization figures and a large percentage of this milk is used for Class 1 purposes. In fact, when adding other source and exempt producer-distributor milk back in, the Class 1 utilization has only declined 3% from 2000 to 2004. A look at **total pounds** used as Class 1 in California shows that actual usage has increased 0.43% from a total of 6.73 billion pounds in 2000 to 6.76 billion pounds in 2004. The Class 1 utilization percentage has dropped due to its smaller share when compared to growing usage in other classes.

---

[4] Memo from Dairy Marketing Branch Dated August 30, 2001 explaining analysis conducted in the May 31, 2001 "Hearing Panel Report."

Clearly, action by the Department to lower Southern California Class 1 prices would be exclusively to address concerns over increased out-of-state bulk milk shipments into the area or the beginning of a race to the bottom to address unregulated competition. We once again reiterate our support for the lowering of the area differential by the increase of the Northern California Class 1 price. It is the only action justified at this time.

Other Alternative Proposals

The Western United board of directors took no position on the alternative proposal submitted by the Alliance of Western Milk Producers. However, they are opposed to the alternative proposal submitted by the California Dairy Campaign as it will result in lower prices paid to producers over a period of time. CDFA analysis has not been made available on CDC's latest (third) revision.

Thank you for the opportunity to testify. We would like to request the opportunity to file a post-hearing brief.