

September 17, 2013

Hearing Panel
Dairy Marketing Branch
California Department of Food and Agriculture
1220 N Street
Sacramento, CA 95814

RE: September 12, 2013 Consolidated Stabilization Plan Hearing on Temporary Price Adjustments and Whey Valuation -- Post Hearing Brief

Mr. Hearing Officer and Members of the Panel:

Dairy Institute appreciates the opportunity to submit the following post-hearing brief to respond to hearing panel questions and to amplify portions of our testimony presented in Sacramento on September 12th, 2013. The paragraphs that follow build on the propositions that we put forth in our testimony.

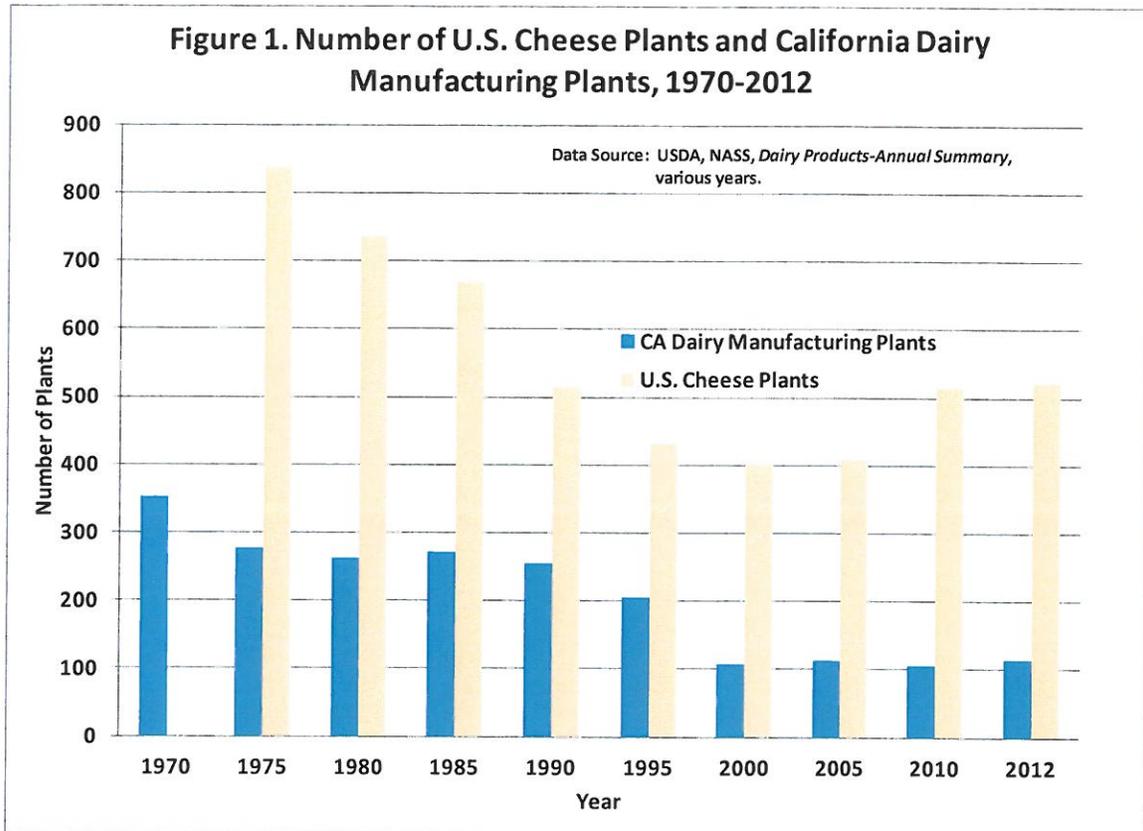
Milk Supply and Demand in the State are in Balance

I testified that milk supply and demand in the state were in balance. There was some testimony at the hearing which indicated that processors were looking for more milk. When pressed as to the question of whether additional premium dollars were being charged, the witness said that they were not. Processors at times might have an interest in acquiring more milk at prevailing prices for a variety of reasons. These include securing additional supplies for the purpose of pursuing new customers, building greater working inventories, speculative inventory building, or servicing a customer who is interested in doing any of the above. However, if plants are truly unable to meet their product sales commitments, i.e. short of needs, they will voluntarily offer premiums for additional milk. The fact that plants are unwilling to pay more to secure additional supplies suggests that milk is not short. At the same time, we are not hearing reports that milk suppliers are offering reduced-over order charges to encourage plants to take additional milk (as was the case in early 2012). The lack of any "deals" on premium levels suggests that milk is not long either. Hence, we are left with the conclusion that milk supply and demand are in balance.

Consolidation is Ongoing and has been Characteristic of the Dairy Industry for Decades.

I testified that producer consolidation has been an ongoing trend in both the U.S. and California dairy industries and noted that California's rate of consolidation has been slower, in percentage terms, than the U.S. as a whole and slower than the next largest dairy states, Wisconsin and Idaho. I went on in my testimony to note that consolidation, in isolation, is not an indicator of disorderly marketing or of a dairy pricing policy that is

in need of adjustment. Panel member Hyrum Eastman asked me if consolidation was inevitable and ongoing in the dairy processing sector in general, or among cheese plants specifically. I have plotted the number of cheese plants in the U.S. and the number of all dairy manufacturing plants in California in Figure 1 below.

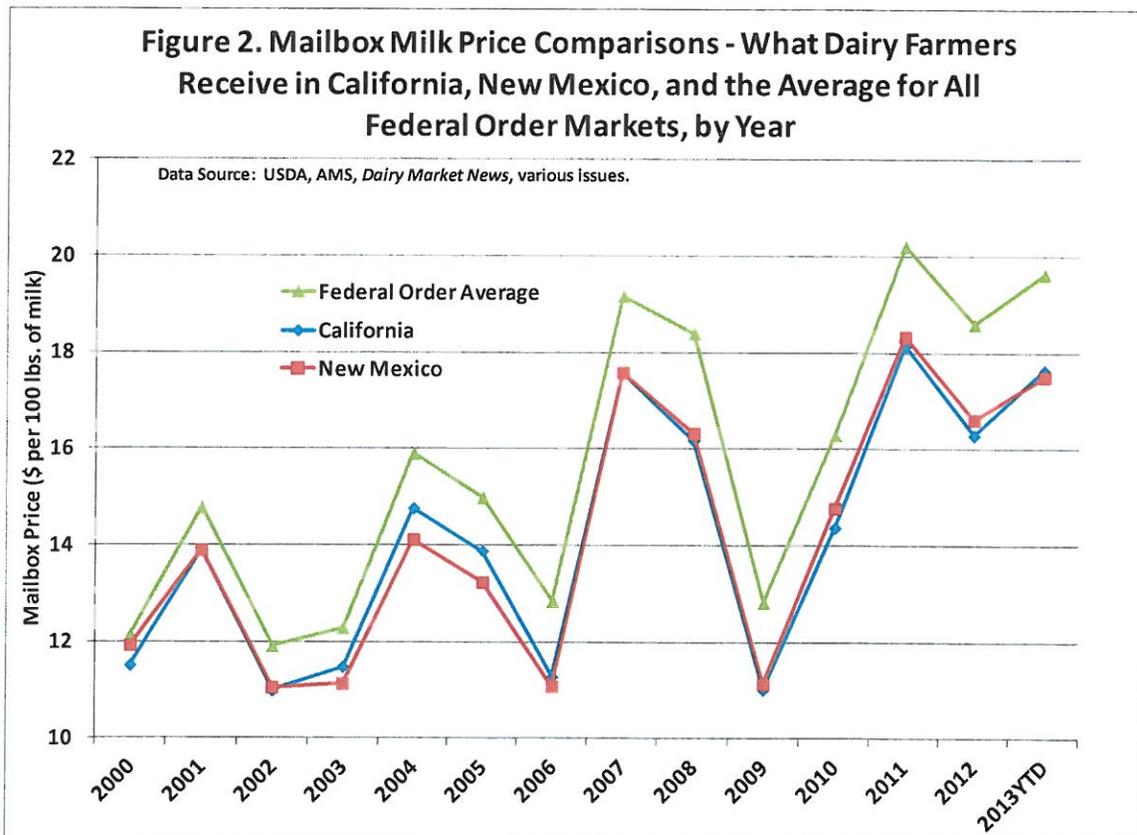


As illustrated in the graph, there has been a consolidation trend in both California dairy manufacturing and in U.S. cheesemaking. So, consolidation happens in both the milk production and dairy product manufacturing sector, but should the Department be concerned about how its pricing formulas impact cheesemaker viability? Here again, the answer to the question depends upon whether setting a regulated price too high for some cheese plants, thereby forcing them out of business, results in uneconomic movements of milk and disorderly marketing. If setting regulated prices too high will result in milk supply growing and total plant capacity shrinking, leading to disorderly marketing, the Department should set regulated to ensure that there is adequate available plant capacity in the state to handle the state's milk supply in order to maintain orderly marketing.

Prices for Milk in California are Appropriate and Consistent with Actual Mailbox Prices Paid to Producers in Other Regions Where Milk Supply is Abundant and Plant Capacity is Limited.

In my testimony, I stated that milk in California is not undervalued. The notion that milk is undervalued has been advanced by the petitioners, who cite the difference between regulated prices for Class III milk in the Federal orders in comparison the California's

Class 4b prices as evidence. However, I argued that Federal orders do not place any pricing requirements on milk that is not pooled. As such, processors in Federal order marketing areas are able to play below class for milk that is not pooled. The state of New Mexico is part of the Southwest Federal Milk Marketing Order, and like California, New Mexico utilizes much of its milk for manufacturing purposes. The milk supply in New Mexico has grown rapidly over the past two decades like it has in California. Not surprisingly, the prices dairymen in New Mexico receive is not much different from prices received by California producers, despite the fact that New Mexico is part of a Federal order. This similarity of pay prices is illustrated in Figure 2 below, and highlights the fact that simply comparing the Class 4b price to the Class III price fails to recognize the major pricing structure differences between the two systems and the different utilization patterns and supply/demand balances in the various Federal order markets. These differences among Federal orders lead to higher prices in some orders and lower prices in others. In terms of industry structure, California resembles New Mexico much more than place like Wisconsin, New York, or Florida where prices are higher.



No evidence was submitted at the hearing that would provide a reasonable basis for the Secretary to increase the whey factor contribution to the Class 4b milk price.

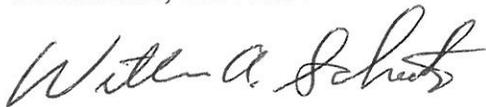
I have attached a letter from Dairy Institute's General Counsel, John Lemmon, in which he calls attention to the important point that no evidence was submitted by any witness with respect to manufacturing costs, yields, or prices applicable to California cheese plants that manufacture dry whey. Mr. Lemmon points out that because it does not have such data in the hearing record, the Department does not have a reasonable basis for making the changes to the whey factor as requested by the petitioners. Indeed, the entire whey factor is without legal foundation.

Thank you for the opportunity to submit this post-hearing brief.

Sincerely,

William A. Schiek, Economist

Dairy Institute of California
1127 11th Street, Suite 718
Sacramento, CA 95814

A handwritten signature in cursive script that reads "William A. Schiek". The signature is written in black ink and is positioned above the word "Attachment".

Attachment