STATE OF CALIFORNIA

DEPARTMENT OF FOOD AND AGRICULTURE

MILK POOLING BRANCH

CONSOLIDATED PUBLIC HEARING TO CONSIDER AMENDMENTS TO THE MILK POOLING PLAN FOR MARKET MILK AND STABILIZATION AND MARKET PLANS FOR MARKET MILK FOR THE NORTHERN AND SOUTHERN CALIFORNIA MARKETING AREAS

CALIFORNIA DEPARTMENT OF GENERAL SERVICES

AUDITORIUM

707 THIRD STREET

WEST SACRAMENTO, CALIFORNIA

THURSDAY, APRIL 4, 2013

9:00 A.M.

A P P E A R A N C E S

CDFA Panel

John Rowden, Hearing Officer
Emergency Management Coordinator, Dairy Marketing Branch

John Lee, Branch Chief
Milk Pooling Branch

Hyrum Eastman, Dairy Economic Advisor
Division of Marketing Services

Donald Shippelhoute, Research Manager II
Milk Pooling Branch

CDFA Staff

Steven Donaldson, Research Analyst II
Milk Pooling Branch

Luz Alcala
Milk Pooling Branch

Karen Dapper
Dairy Marketing Branch

A P P E A R A N C E S

Petitioner

Claudia Suh
Wallaby Yogurt Company

Alternative Proposals

Eric Erba, PhD
California Dairies, Inc. (CDI)

Gary M. Stueve
Dairy Farmers of America, Western Area (DFA)

Also Present

Rob Vandenheuvel
Milk Producers Council

Annie AcMoody
Western United Dairymen

William Schiek, PhD
Dairy Institute of California

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P R O C E E D I N G S

9:05 a.m.

HEARING OFFICER ROWDEN: Before we start the hearing I'd like to go over a couple of important details to help ensure that this hearing will be as productive as possible.

First, please turn off your phones so they don't disrupt the hearing.

Second, anyone planning to testify must sign in on the Hearing Witness Roster located at the table at the entrance of the Auditorium.

You will be testifying from the chair with the microphone over here. And I caution you, in going up the stairs, be careful. That's probably the most dangerous thing about this hearing this morning.

Post-hearing briefs will be due by 4:00 p.m. on Thursday, April 11th. They may be submitted via e-mail to pooling@cdfa.ca.gov or by fax at 916-900-5340 or in person at 2800 Gateway Oaks Drive, Sacramento.

This hearing will now come to order. The California Department of Food and Agriculture has called this public hearing at the Department of General Services' Ziggurat Building Auditorium, 708 Third Street, West Sacramento, California, on this day, Thursday, April 4th, 2013, beginning at 9:00 a.m.

My name is John Rowden. I am the Emergency Management Coordinator for the Department and I have been designated as the Hearing Officer for today's proceedings. I have no personal interest in the outcome of this hearing and will not be personally involved in any decision that may result from this hearing.

On January 14th, 2013, the Department received a petition from the Wallaby Yogurt Company requesting proposed amendments to the transportation allowance system in the Pooling Plan.

This hearing will consider the proposed changes to the transportation allowances as provided in the Milk Pooling Plan for Market Milk, we'll call it "Pool Plan" and the changes in the transportation credits as provided in the Stabilization and Marketing Plans for Market Milk, the "Stab Plans."

Further, this hearing will also consider any other aspect of transportation allowances and credits that were raised by alternative proposals received by the March 1, 2013 deadline.

Finally, this hearing will also consider the factual basis, evidence and the legal authority upon which to make any and/or all of the proposed amendments to the plans.

The Department received two alternative proposals in response to the Call for Hearing. The alternative proposals are from California Dairies, Inc. and Dairy Farmers of America.

The petitioner, Wallaby Yogurt Company, will have 60 minutes to submit testimony and relative material to support their proposal, which then will be followed by any questions from the panel.

Those submitting alternative proposals will each be provided 30 minutes to give testimony and evidence, followed by any questions from the panel.

Anyone else wishing to testify must sign in on the Hearing Witness Roster located at the table at the entrance to the Auditorium and will be allowed 20 minutes to give testimony and evidence. Witnesses will be called in the order they signed up.

Please note that the only individuals who have testified under oath during the conduct of the hearing may request a post-hearing brief period to amplify, expand or withdraw their testimony. Only those individuals who have requested to submit a post-hearing brief may file a post-hearing brief with the Department.

As a courtesy to the panel, the Department staff and the public please speak directly to the issues presented in the petitions and avoid personalizing disagreements. Such conduct does not assist the panel.

The hearing panel has been selected by the Department to hear testimony, receive evidence, question witnesses and make recommendations to the Secretary.

Please note that questioning of the witnesses by anyone other than the members of the panel is not permitted.

The panel is composed of members of the Department's Marketing Services Division and includes John Lee, Branch Chief, Hyrum Eastman, Dairy Economic Advisor, and Don Shippelhoute, Research Manager II. I, again, am not a member of the panel and will not be taking part in any of the discussions relative to the hearing.

The hearing is being recorded by the firm of Accelerated Business Group located in Sacramento. A transcript of today's hearing will be available for review at the Dairy Marketing Branch Headquarters located in Sacramento at 2800 Gateway Oaks Drive and on the Department's website following the hearing decision announcement.

Testimony and evidence pertinent to the call of the hearing will now be received. At this time Steven Donaldson, a Research Analyst II with the Milk Pooling Branch, will introduce the Department's exhibits. The audience may ask questions of Mr. Donaldson as it relates to these exhibits.

At this time, Mr. Donaldson, will you please state your full name and spell your last name for the record.

MR. DONALDSON: My name is Steven with a V, Donaldson; that's D-O-N-A-L-D-S-O-N, and I am a Research Analyst with the Milk Pooling Branch of the Department of Food and Ag.

Whereupon,

STEVEN DONALDSON

Was duly sworn.

HEARING OFFICER ROWDEN: Please proceed.

MR. DONALDSON: Good morning, Mr. Hearing Officer. My name is Steven Donaldson, I am a Research Analyst II with the Milk Pooling Branch of the Department of Food and Ag. My purpose here today is to introduce the Department's Composite Hearing Exhibits numbered 1 through 39. Relative to these exhibits, Exhibits 9 through 39 are also hereby entered by reference.

The exhibits entered here today have been available for review at the offices of the Milk Pooling Branch since the close of business on March 28th, 2013.

A copy of the exhibits is available for inspection on the witness sign-in table at the back of the room.

And I ask at this time that the composite exhibits be received.

MR. DONALDSON: I'll just watch my step.

HEARING OFFICER ROWDEN: Mr. Donaldson was our test case to see if he could fall off the stage.

(Laughter.)

Thank you. Thank you for not falling off the stage.

MR. DONALDSON: Mr. Hearing Officer, I would also like to enter in the following written testimony received by the Department. It is a letter from the California Dairy Campaign received on April 2nd, 2013, to be entered as Exhibit number 40.

HEARING OFFICER ROWDEN: All right, thank you.

MR. DONALDSON: And I would also request the opportunity to provide a post-hearing brief and that concludes my testimony.

HEARING OFFICER ROWDEN: Are there any questions from the audience for Mr. Donaldson?

Any questions from the panel?

Thank you.

(Exhibits 1 through 40 were received into evidence.)

MR. DONALDSON: Thank you.

HEARING OFFICER ROWDEN: At this time I'd like to call the petitioner, Wallaby Yogurt Company. You will have a total of 60 minutes to submit your testimony.

The testimony is numbered Exhibit 41.

(Exhibit 41 was received into evidence.)

HEARING OFFICER ROWDEN: Please state your name for the record, spell your last name, and again for the record, your affiliation.

MS. SUH: Claudia Suh, I'm with Wallaby Yogurt Company. The last name is spelled S-U-H.

Whereupon,

CLAUDIA SUH

Was duly sworn.

HEARING OFFICER ROWDEN: Please.

MS. SUH: I just want to start by saying I was telling my husband last night that I was a little nervous about speaking this morning and he advised me to pretend like I was reading a bedtime story to my children, so I'm going to try to refrain from starting off as "Once upon a time."

(Laughter.)

Mr. Hearing Officer and Members of the Hearing Panel:

My name is Claudia Suh. I am the Vice President of Operations at Wallaby Yogurt Company.

On behalf of my company, I requested this hearing so the CDFA may consider revising its Polling Plan for Market Milk to recognize Napa County as part of the North Bay receiving area in order to be eligible for transportation allowances. The position of Wallaby Yogurt, as will be presented through my testimony, was authorized by the senior management team of Wallaby Yogurt Company. On behalf of our entire team, we sincerely appreciate the CDFA granting us this opportunity to present our case.

Since 1999, Wallaby Yogurt Company has made its home in the city of American Canyon on the south end of Napa County. The primary focus of our business is to make organic, non-frozen yogurt in both traditionally blended and Greek varieties. We also produce organic sour cream and organic raw cream in bulk. Our retail products are sold nationwide in premium and natural food stores like Whole Foods Market and Trader Joe's.

Wallaby started in the Bay Area in the mid '90s in a small production facility in Santa Rosa. After quickly reaching capacity at our original plant we relocated our operations to American Canyon, where it continues to this day as a turnkey dairy processing facility. We've grown a lot since the days when our founders personally delivered and stocked our yogurt throughout the stores in Northern California. In 2002, we expanded to nationwide distribution. Since then, we've steadily increased our product offerings year after year, which has allowed us to extend the reach of our California milk producers into the national market.

And then on the next page is a condensed time line of our company's growth.

Ours is a privately run company that began with two employees and is now approaching 70. We receive milk on a daily basis from eight producers located throughout Sonoma and Marin Counties. Milk from each of these producers is typically transported about 50 miles to our plant. We began working with our producers back in 2006 and have since established strong relationships with them. In fact, two of our most recently added dairies are those started by the children of our original group of producers. We see the success of our producers as closely tied to our own success and vice versa. To that end, the availability of transportation allowances bears directly on our ability to source milk competitively and grow markets for our producers.

Since 2008, the following counties have been recognized by the CDFA as those in the North Bay region as eligible for transportation allowances: Marin, Solano, Sonoma.

Wallaby Yogurt Company is located in Napa County, which you can see is sandwiched within the three counties that currently make up the North Bay receiving area.

We believe the only reason Napa County is not included as part of the North Bay receiving area is that until now there has been no vested interest in the form of a

Napa County producer or processor to make this request.

As it currently stands, Wallaby is the only milk processor in the Napa County region. Yet we are located amongst several competitors, both in terms of milk processors, and more directly, yogurt manufacturers. Some of the milk processors in adjacent counties that benefit from milk transportation allowances include: Clover Stornetta in Sonoma, Redwood Hill Farm in Sonoma, Straus Family Creamery in Sonoma, Superstore Industries in Solano, Brown Cow in Contra Costa, Berkeley Farms in Alameda.

Wallaby's products are in direct competition with those produced by these neighboring manufacturers. Given our proximity to one another, it is reasonable to assume that we are under similar economic challenges in terms of operating as Northern California processors. And yet, these neighboring processors maintain a distinct economic advantage over us in the form of a transportation allowance. This discrepancy is especially striking given that some of these processors exist in closer proximity to their dairy producers than Wallaby does to its producers.

Again, Wallaby does not believe the omission of Napa County as part of the North Bay receiving area was ever an intentional exclusion on the part of the CDFA but rather a previously unconsidered matter, given the relative absence of producers and processors in our area.

Wallaby believes that correcting the disparity between Napa County and surrounding counties in terms of access to transportation allowance would be a reasonable and fair decision on the part of the CDFA. Therefore, we respectfully ask that the current Pooling Plan for Market Milk be amended to include Napa County as part of the North Bay receiving area.

And that concludes my testimony. Thank you.

HEARING OFFICER ROWDEN: Questions?

MR. SHIPPELHOUTE: I have a quick question. You indicate that you're expanding your product line in 2013.

MS. SUH: Um-hmm.

MR. SHIPPELHOUTE: Do you anticipate or have you tried to attract other producers to ship to you?

MS. SUH: Actually it's been a little bit more of the opposite issue, we have producers approaching us on a regular basis. We need to gauge our growth pretty strategically. We are not ready to take on more on immediately but we definitely have plans to take more on in the coming years.

MR. LEE: Good morning.

MS. SUH: Good morning.

MR. LEE: Do you think that if Napa County isn't given a transportation allowance as a deficit county that your ability to grow would be diminished?

MS. SUH: I think so, definitely. I think anybody doing business in California is already under a lot of restrictions and regulations and anything that can help ease that to a certain extent will certainly play a part in, you know, extending the longevity of that business surviving. So in short, yes.

MR. LEE: Thank you.

HEARING OFFICER ROWDEN: Any other questions?

Thank you very much.

MS. SUH: Thank you.

HEARING OFFICER ROWDEN: I will now call up California Dairies, Inc., who submitted an alternative proposal. The organization will be granted a 30 minute period to testify. Again, please be careful going up the stairs.

For the record, please state your name and spell your last name and state your affiliation.

DR. ERBA: My name is Eric Erba, E-R-B-A. I am with California Dairies, Inc.

Whereupon,

DR. ERIC ERBA

Was duly sworn.

HEARING OFFICER ROWDEN: Mr. Erba presented an exhibit prior to his testimony, that is going to be Exhibit 42.

(Exhibit 42 was received into evidence.)

Please.

DR. ERBA: Thank you. Mr. Hearing Officer and members of the Panel:

Good morning. My name is Eric Erba and I hold the position of Senior Vice President and Chief Strategy Officer for California Dairies, Inc., whom I am representing here today. California Dairies is a full-service milk processing cooperative owned by 430 producer-members located throughout the state of California and collectively producing almost 18 billion pounds of milk per year, or about 46 percent of the milk produced in California. Our producer-members have invested over $500 million in large processing plants at six locations, which are projected to produce about 400 million pounds of butter and 800 million pounds of powdered milk products in 2013.

California Dairies submitted its alternative proposal in response to the Notice of a Consolidated Public Hearing issued February 6, 2013. The Call of the Hearing establishes that the petitioner's proposal to amend the transportation allowances for moving milk into Napa County will be considered, in addition to other proposals to amend provisions that address transportation allowances and transportation credits. At it's March 26, 2013 meeting, the Board of Directors for California Dairies approved the cost-justified transportation subsidy proposals that are contained in the testimony that I will be presenting today.

We thank the Department for calling this transportation hearing and allowing us the opportunity to present our alternative proposal for changes to the transportation subsidies provided by the pool. Transportation allowances are an important milk movement incentive to ensure more orderly marketing of milk to qualified plants in designated receiving areas.

Almost four years have elapsed since the last hearing was held to consider changes to transportation allowances and transportation credits. Fuel costs were extraordinary at that time, and they are, once again, at astonishing levels. And I'd refer you to Figure 2 of the Department's background material for a chart on that. When the cost of diesel fuel rises, it typically causes California Dairies to have hauling cost shortfalls in two areas of the state where we service the Class 1 market, the Bay Area and Southern California. Our alternative proposal and testimony focuses strictly on Southern California where we have been incurring the greatest shortfalls. It is important to understand that CDI's proposal for a selected and targeted increase in transportation allowances and credits has an additional dimension, consideration and recognition of the changing landscape of the milk shed.

Undeniably, the cost of diesel fuel is a large contributor to our daily costs of moving milk. However, our proposal also addresses the fact that milk has to be moved longer distances to accommodate customers in Southern California as the milk production base in the southern part of the state continues to shrink. California Dairies carries the largest responsibility to supply and balance the Southern California Class 1 market and we are very aware of the milk movement challenges and costs to supply that market.

Our proposal has two components to it, a transportation allowance component and transportation credits. I'll start with the transportation allowance component of it.

We continue to believe that producers should be responsible for the cost of local hauls and that transportation allowances should be based on the difference between the cost of the local hauls and the cost of longer hauls to deficit markets. Consequently, California Dairies proposes that changes be made to Section 921.5 of the Milk Pooling Plan for Market Milk.

I'll skip over the formal changes to the language and just go right to the description.

The proposed changes correct the transportation subsidy program in two specific areas within Southern California. First, we have dairies located in San

Bernardino County whose hauls fall within the range of zero to 93 mile bracket; the hauling rates for those dairies are in the $0.65 to $0.75 per cwt range. The Department's hauling cost summary shows that the average cost of the hauls that are from 50 to 100 miles away from qualifying plants is $0.69 per cwt. Clearly, the $0.15 per cwt subsidy provided today leaves those dairies with an effective hauling rate much higher than the local rate. Therefore, we propose separating the zero to 93 mile bracket into two separate brackets, a zero to 45 mile bracket and a 46 to 93 mile bracket. The closer-in bracket retains the $0.15 per cwt transportation allowance and the new bracket would have a $0.30 per cwt subsidy associated with it.

Second, Southern California is the largest deficit market in the state. California Dairies finds it must send more and more milk from the South Valley to meet customer needs as its member dairies operating in Southern California exit the area. Today we are sending an average of 135 loads of milk per day from Kern and Tulare Counties into Southern California. On peak days we send 160 loads from the Central Valley into Southern California. At the July 2008 transportation hearing, California Dairies testified that there was sufficient milk in Kern and Southern Tulare Counties to service Southern California customers. That statement is no longer accurate. Our milk production available in Southern California has decreased by 20 percent since 2008 and our milk production in Kern County and Southern Tulare County has been relatively flat since 2008 and is insufficient to compensate for the lost milk production in Southern California. Our testimony from 2008 also stated that disincentives should be applied to discourage milk from being shipped from areas north of Southern Tulare County. However, we now routinely have to ship milk from north of our Visalia facility to service customers in Southern California. Therefore, we propose adjusting the mileage established for hauls of more than 119 miles so that it is limited to hauls between 120 and 139 miles. The $0.84 per cwt subsidy would continue to apply to that mileage bracket. Furthermore, we propose that an additional mileage bracket be added to capture those hauls in excess of 139 miles and that the associated rate be established at $1.00 per cwt. The subsidy is arrived at by applying the same principle as was used in this and many previous hearings, and that is to say, the transportation allowance should reflect the difference of the cost of haul less the local hauling rate. An acceptable guideline for the haul rate from Tulare County -- the acceptable haul rate would be the haul rate from Tulare County to Los Angeles County, which is $1.35 per cwt and the local haul rate for Tulare County, which is $0.33 per cwt. Again, the

Department's exhibit verifies that those costs and mileage brackets are representative and not theoretical.

The second part of our proposal addresses transportation credits; I'll address that now.

California Dairies proposes that Section 300.2 of the Stabilization and Marketing Plans for Market Milk for the Northern California and Southern California Marketing Areas be adjusted to align transportation credits with actual plant-to-plant hauling costs that are being incurred. We propose that the deduction for shipments of market milk, market skim and condensed skim milk from Los Angeles County to Orange, Riverside, San Bernardino, San Diego or Ventura Counties be increased from $0.45 per cwt to $0.54 per cwt.

The Department's data shows that there is no one deduction that can be taken to cover the costs of all of the hauls originating from California Dairies' Artesia facility. The increase from $0.45 to $0.54 per cwt will cover the interplant hauls that are closest to the Artesia plant but will heave a shortfall for the more distant hauls into Riverside County. We believe this to be consistent with the intent of the transportation subsidy program.

We are mindful of the increasing cost of maintaining the transportation allowance and credit system. We are, however, also mindful of our increasing hauling costs as we attempt to service our customers that are more distant from the milk supply. The proposed modifications will help to correct our hauling cost imbalances and achieve better adherence to the principle that producers should bear the cost of the local haul. We have a good understanding that actual and regular milk movements are increasing in distance traveled and the cost of moving milk appears to be going in only one direct, up. Our proposed changes correct the most egregious hauling cost shortfalls in the current banding structure in Southern California and recognize that more and more milk must come from areas north of Kern county to service the customer needs in Southern California.

Thank you for your attention and I request the opportunity to file a post-hearing brief.

HEARING OFFICER ROWDEN: Your request is granted. Questions from the panel?

MR. EASTMAN: I have a couple of questions. On the bottom of page -- well actually on the top of page three you mention the number of loads per day that you're shipping into Southern California from Kern and Tulare Counties in the Central Valley.

DR. ERBA: Yes.

MR. EASTMAN: Are those the number of loads of milk that qualified under the allowances or was that the total amount of milk going to all types of plants in Southern California?

DR. ERBA: That's the total amount of milk. And what we try to do is direct the local milk in Southern California to the non-qualifying plants and the milk sent over the hill we try to get to qualified plants. So it's the total milk but it's not that far off from what the qualifying number would be.

MR. EASTMAN: Okay. And the second question I had was it appears that, based on your testimony, that really your changes to the brackets in Southern California and those rates are primarily based on the longer distances that milk is having to travel in Southern California rather than, say, increased diesel costs or the actual increases of the hauling rate itself. Is that an accurate assumption? Or is it a mixture of both?

DR. ERBA: Well, the fuel costs that we have today are approximately in line with where they were last time we had a hearing about four years ago. It's the distance traveled and distance traveled is a major impact on what the hauling cost is. A load of milk going from Southern Kern County is not going to be given the same rate as a load of milk coming from Northern Tulare County. It's just the miles traveled and it goes up. It doesn't go up exactly my mileages, it tends to go by zones, which makes it kind of fuzzy math here. Typically our rates are quoted from county to county. So from Tulare County, anywhere in Tulare County to anywhere in Los Angeles County. And you don't get a really great idea of what that mileage is but you can kind of approximate it.

MR. EASTMAN: But based on your testimony it appears that you quote the Department's hauling survey and you feel that that's an accurate representation of actual hauling costs?

DR. ERBA: I think it does a pretty good job of showing what the trend is banding and where we are today. Although that was done from October data and things have changed quite a bit since October. We had significant changes in hauling rates after January 1st. Part of it was from fuel, fuel has gone up substantially since October and that has been reflected in the new rates. But also our haulers tend to give us once a year increases for insurance and labor costs and that generally hits in January so it's not all fuel.

MR. EASTMAN: The other question I had was related to the dynamics of milk moving in Southern California now. As you've mentioned there's obviously been changes to the milk that's actually produced in Southern California, that moves around within Southern California. We know that there's less ad less milk in Southern California.

DR. ERBA: Right.

MR. EASTMAN: But I noticed right about four or five years ago there was a major cheese plant, the Golden Cheese plant, that used to be a major piece of milk moving in Southern California. It stopped cheese production and so that manufacturing plant disappeared.

DR. ERBA: Yes.

MR. EASTMAN: And so the question I have is what effect has that had on Southern California-produced milk moving within Southern California?

DR. ERBA: Well that's starting to get a little bit before my time with California Dairies but when I started there we did send a substantial number of loads of milk to that cheese plant in Corona. I don't know if it was always that way or not and you probably should ask the DFA representatives about that, they were operating that plant at that time.

But that definitely changed our dynamics and how we move milk around because we counted on that at the time. It was a time when we had not put together our Visalia plant yet, it was not operating, and we needed additional outlets for the milk. So we used that as an outlet for milk. Even though it was expensive to get the milk there we did use that for a time. And then when it shut down we had to come up with another way of doing it. And there was a period between the Corona shutdown and when Visalia started up that we were scrambling pretty desperately to place milk.

MR. EASTMAN: When it comes to that plant, as you look at just Department data, some of that was released at the prehearing workshop, you can see that with Golden Cheese shutting down then there's a large amount of milk that gets freed up from going into a manufacturing plant and to plants that would qualify for allowances, the high-value usages.

Do you feel that within Southern California, for milk produced there and shipped to Southern California plants, that the same need or incentive needs to be given to get that milk to get into plants that qualify now that there may be less manufacturing options there?

Sort of my question, what I'm wondering is, how -- maybe it's possible that the amount of qualified plants relative to manufacturing plants are actually higher, maybe there's not a great incentive necessary. Or does the current rates for what would call maybe local Southern California milk, they still need that same allowance rate to make sure that the incentive is there for them to ship to high-value clients?

DR. ERBA: Yeah. I see where you're going with this question and basically what you're asking me is, with that cheese plant not there, there are really fewer alternatives to put that milk and so do we still need the same incentives?

MR. EASTMAN: Um-hmm.

DR. ERBA: From our point of view, from the milk that we have down there, I would say the answer is yes, that we still need to have the ability to move that milk into the higher class usage plants. And it has to travel quite a bit further. That cheese plant in Corona was pretty, pretty aptly located relative to our milk supply down there.

A lot of the customers that we have are not close for our milk supply. And we do continue to service some of the cheese plants down there, three major cheese plants down there, and they receive no transportation subsidy whatsoever. They just have -- we just have to put the milk there and we bear the cost entirely. So it does help to have those other incentives out there to get our milk drawn into those other plants in San Diego, Riverside, places where we don't have typically a lot of milk.

MR. EASTMAN: Those are my questions.

MR. SHIPPELHOUTE: You talk about the three major cheese plants that you service. Are those plants located in the general area where the farms are located or are some of those located more in the downtown LA area where --

DR. ERBA: Some of those are downtown LA. The milk has got to travel quite a ways to get there.

MR. SHIPPELHOUTE: So it's traveling to the same area that the milk is for the bottling plants.

DR. ERBA: True.

MR. SHIPPELHOUTE: And so just thinking back to the original intent of transportation allowances, it was for milk that was needed to -- needed to be attractive to the higher class usages.

DR. ERBA: Right.

MR. SHIPPELHOUTE: And you think that that local allowance is important to track that milk into those higher class users, even though the processing plants or the manufacturing plants are located in the same geographic areas as the bottling plants?

DR. ERBA: Yeah, I think so, I think you still have that. I mean, I think you're example is actually a good one. If you have two plants in the same area how do you, how do you ensure that that Class 1 plant, or Class 2 plant in some cases, gets the milk before the cheese plant. And if there is no allowance system there then you're really leaving it up for grabs to say, whatever plant gives you the least hauling cost. That may be the cheese plant. With the incentive there, the allowance there, you encourage that milk to go to that other plant, the higher use plant.

MR. LEE: I have a couple of small questions. Speaking about hauling charges that CDI incurs now. How often do you revisit those costs with your haulers? Is there a time frame that's in place or --

DR. ERBA: Yeah, we've got contracts set up with all the haulers that we do business with and we allow them to submit changes for labor and insurance twice a year, every six months. And we make the fuel adjustments based on the Department of Energy information and that may be as often as every month. And we have a system in there that tracks that and specifies at what levels does that trigger a potential change. So we don't often do it every month but we may do it, you know, with -- let's put it this way, since January 1st we have already done it twice, we've already made adjustments twice; upward adjustments, unfortunately.

MR. LEE: Was it in the fuel area?

DR. ERBA: Yes, it was -- it was -- well, we had -- there was one for fuel and one for labor and insurance.

MR. LEE: And so you saw increases in both?

DR. ERBA: Yes, they were both increases.

MR. LEE: Do you foresee, do you foresee any major changes the next six months to a year in those areas?

DR. ERBA: Well the general trend has been for hauler costs to go up; I said that in my testimony. And I didn't mean to be facetious or flippant about it but that's kind of what happened. I mean, look at the information that was provided and the material that the Department put forth in the prehearing workshop. You know, except for the -- kind of downturn that we had a couple of years ago it's been a general trend upward. We have some days or some weeks where it goes maybe down a little bit but the, you know, the general trend line says everything is going up. And fuel is a huge part of what costs us money for transporting milk around. I don't see that changing anytime soon. Right now we are in a little bit of a downturn but it is not significant compared to where we were, say, a month ago or two months ago.

MR. LEE: Do you think the labor costs are going to be more, more than fuel costs in terms of increases?

DR. ERBA: No, no. The labor costs tend to be relatively small. It only takes about a, oh, maybe a $0.50 increase in the fuel cost to completely cover what we would experience in one year for our labor cost increase. Those come fairly predictably at a fairly predictable level. The timing, you can kind of gauge where that is going to come in, because most of the work is done through unions and they have contracts so we know what those contracts kind of look like. We know when to expect them and we know about what those amounts are going to be. And the fuel, when the fuel takes a big jump up it can easily swallow up what we'd experience for our labor and insurance charges.

MR. LEE: Thank you.

MR. SHIPPELHOUTE: One follow-up question on my prior question on the allowances encouraging local milk to go into those bottling plants. You indicated in your testimony that you send -- or actually it was in your answer to Hyrum -- you send the local milk into the plants that are non-qualifying first and then --

DR. ERBA: Right.

MR. SHIPPELHOUTE: Could you maybe expand a little bit on the thought process there?

DR. ERBA: Sure. That was something that was started before I started at CDI under a different transportation manager. The idea is that we don't have enough milk in Southern California to service all the customers so some of it has got to come from the Valley. If you send local milk from Southern California to the fluid plant you do get a small transportation allowance, which is good. That helps to get that milk moved to the right areas but then you're moving milk from the south valley to a manufacturing plant at the maximum cost and we don't want to do that. And we'd probably choose not to service those customers if that was the case. It's just too expensive to do that.

MR. SHIPPELHOUTE: You would choose not to serve the bottling plants?

DR. ERBA: No, we would choose not to serve the manufacturing plant. A cheese plant in Southern California that needs milk out of the Valley is going to have a tough time convincing us that that's a good deal for us; it's not.

MR. SHIPPELHOUTE: So just trying to think through your answer that you use the local milk to supply those cheese plants but the allowances are important to encourage that milk to go to the bottling plants. But it sounds like the allowances now are not encouraging that local milk to go to bottling plants but rather it's encouraging that local milk to go to the marketing -- to processing plants and then encouraging the distant milk to go to bottling plants.

DR. ERBA: Our local milk is not sufficient even to service all the cheese plant customers that we have so we still have to bring milk in to do that. So even if we didn't have any local -- how do I want to say this? We still use some of the local milk to go to -- I'm sorry, I said that wrong. We still use some of the local milk to go to non-cheese plants in Southern California. Our milk supply is greater than our cheese customer needs so some of that milk does go to Class 1 plants down there. But it is not sufficient to cover all the -- so that milk has got to come from the Valley. In fact, quite a bit of it has got to come from the Valley. And we don't expect that trend to continue as far as our ability to produce milk in Southern California and send it to the right customers. We're going in the opposite direction; we're losing dairies at a very rapid rate down there.

HEARING OFFICER ROWDEN: Any more questions?

MR. LEE: One last question. You know, with the Security Milk Producers closing their operations and from our understanding many of the members joined CDI; is that correct?

DR. ERBA: Yes, that's correct.

MR. LEE: Did those new members joining CDI affect any of your milk movements? Did that help assist in some of the discussion that we're having today?

DR. ERBA: To some degree. We did -- those members that were formerly with Security Milk Producers Association, they had dairies mostly in Southern California, Kern County and Tulare County. They also had some large contracts that were much further away than our former contract customers were, fluid contracts. And to service those we have to bring in milk from the Valley to do that. Just don't have enough milk down there to take on our current customers plus their customers and have enough milk to Southern California.

And that's why it's gone from -- you know, it used to be when I started working at CDI, 100 loads a day was pretty standard; 120 loads a day is kind of on the low side now. And we may be seeing 160 loads a day now to service all of those contracts. So the numbers keep going up. Our ability to supply milk out of Southern California is just not what it used to be.

MR. LEE: Thank you.

HEARING OFFICER ROWDEN: More questions? Thank you very much.

Now I ask Dairy Farmers of America. Dairy Farmers of America have also submitted an alternative proposal and they will have 30 minutes to testify.

And for the record please state your name, spell your last name and again repeat your affiliation.

MR. STUEVE: My name is Gary Stueve, the last name is spelled S-T-U-E-V-E, and I'm with Dairy Farmers of America.

HEARING OFFICER ROWDEN: And Mr. Stueve's testimony is Exhibit 43.

(Exhibit 43 was received into evidence.)

Whereupon,

GARY M. STUEVE

Was duly sworn.

HEARING OFFICER ROWDEN: Please.

MR. STUEVE: Mr. Hearing Officer and Members of the Hearing Panel:

Thank you for the opportunity to testify here today. My name is Gary Stueve; I am Vice President of Operations for the Western Area of Dairy Farmers of America. We currently market the milk of 300 member-producers in California as well as the milk from 33 non-members. Because nearly 30 percent of our milk enters non-Class 4 plants and qualifies for transportation allowances, we are well qualified to submit an alternative proposal dealing specifically today with transportation allowances. My testimony relates to necessary adjustments in rates and mileage brackets to four of the receiving areas currently in use in the transportation allowance program. These changes are necessary to more accurately reflect milk movements and related costs. In a meeting on March 19th, 2013, the Western Area Council of DFA approved this proposal and testimony and the resulting potential changes to the Pooling Plan. Again, I appreciate the opportunity today to provide comments as well as an explanation of our alternative proposal.

Costs.

Among other considerations, our overall transportation costs are determined by three primary factors. The first is the cost per cwt of milk, for delivering milk from point A to point B, the second is fuel surcharges, which are costs in addition to the hundredweight rate, and the third is the overall mix of dairy locations relative to plant locations.

While we have done everything we can to hold down haul costs, from the time of the last hearing in 2008 to present we have experienced general haul rate increases on more than one occasion. These rate changes range from $0.01 to $0.07 per cwt.

Although diesel fuel prices have demonstrated significant volatility over the past five years, the general trend line for fuel costs remains in an upward direction. According to the U.S. Energy Information Administration, EIA, the California On-Highway diesel fuel price was $0.31 per gallon higher, on average, in 2012 than in 2008, the year of the last hearing. Because all of our contracted transportation carries with it a fuel adjuster, the effects of fuel price increases are very real and directly affect our overall hauling costs. Table 1 in our written testimony which you have in front of you illustrates the reduction of milk production in and around plants and the growing reliance on imported milk from the higher producing but often more distant valley areas.

I'd like to spend just a moment going through the table that you have in front of you. The left hand column indicates Supply Counties, the middle column has the Relevant Receiving Area that would apply to that supply county and then the production in 2008 and 2012 and the difference from 2008 to 2012. And this production data is DFA production, it's not statewide, and reflects 4th Quarter milk production.

And as you can see, in the supply counties that supply the Bay Area and the North Bay receiving areas, that would be Marin, San Joaquin, Solano, Sonoma and Sacramento, the differences in production from 2008 to 2012. In Marin County we were down 86 percent. Granted, it was a small number to begin with. San Joaquin County, we were up 27 percent, Solano County down 72 percent, Sonoma County down 58 percent. For the Sacramento receiving area, we looked at Sacramento County, we were up 24 percent during that time period. For Southern California our Kern County production was up 32 percent but our Riverside and San Bernardino County production was down 20 percent.

Again, the point of the table is to illustrate that milk production is decreasing in those areas that are more closely geographically related and affiliated to these receiving areas but stronger, to some degree, than in the valley areas.

We have provided in our attachments as Exhibit 1 the changes that we feel are necessary and justified for the four specific receiving areas. That Exhibit 1 in our testimony attachments would reflect our alternative proposal.

Beginning with the Bay Area Receiving Area.

As detailed on Exhibit 1, we are requesting an increase of $0.12 per cwt from the current $0.36, revising it to the $0.48 per cwt on the first mileage bracket of zero through 78 miles. We are requesting a change to the second mileage bracket revising it to read "over 78 miles through 139 miles" with a corresponding change to the rate from $0.45 per cwt to $0.55 per cwt. We are then revising the last mileage bracket to read "over 139 miles" with a corresponding rate of $0.72 per cwt.

The most recent California Department of Food and Agriculture CDFA Transportation Allowance Areas hauling survey as shown in our Exhibit 2, would seem to support our proposed changes in rates and mileage brackets.

A factor that may not be entirely exclusive to the Bay Area but is most visible, in our eyes, in this area is the very direct draw of milk out of areas where manufacturing plants operate for placement then into a transportation allowance qualifying plant. Since there is no milk produced in local proximity to the Bay Area, all milk must be imported. The majority of this milk comes from the north San Joaquin Valley via Interstates 205 and 580. A large manufacturing plant sits directly alongside Interstate 205 as shown in our Exhibit 3. Nearly all milk from the north San Joaquin Valley and delivering to the Bay Area must pass by or near this manufacturing plant. By designating the closest milk for delivery to the Bay Area, that milk must then be replaced for delivery to the manufacturing plant. This creates a secondary haul cost for replacement milk for the manufacturing plant. By removing milk that is local to the manufacturing plant, which itself competes for local milk, and then moving it to the Bay Area, requires consideration of the costs of replacing this milk.

For the zero through 78 miles bracket we are requesting an increase of $0.12 per cwt. The CDFA haul survey would suggest this additional $0.12, indicating a cost $0.8058 per cwt for deliveries from an average of 67 miles. Subtracting out a local haul of $0.32 leaves a need for a $0.48 per cwt transportation allowance.

Our current haul costs for milk within 78 miles ranges from $0.6923 to $0.8951 per cwt with our average cost being somewhat lower than the CDFA haul survey. When adding the secondary costs of $0.10 per cwt, the actual need is greater than the $0.12 that we are requesting. DFA Exhibits 4d and 4e illustrates the costs above a local haul rate associated with replacing the milk that delivers to the Bay Area by making longer distance deliveries to the manufacturing plant in Tracy. Without consideration of the secondary haul costs we have a reduced incentive to move this milk directly out of local manufacturing and into a qualifying plant.

For the second bracket, we identified a need to reduce the upper end of the mileage range from the current 199 miles down to 139 miles due to a clear split in milk supply mileage and hauling costs. It should be noted that in January 2013, 98 percent of the milk we delivered to the Bay Area originated within 139 miles. The CDFA haul survey, which approximates our costs, indicated an average cost of $0.8671 per cwt at an average of 97 miles. When considering a local haul cost of $0.32, a $0.10 adjustment from $0.45 to $0.55 for "78 miles through 139 miles" is warranted.

Under the current mileage bracket little if any milk is delivered from beyond 199 miles as there is little incentive or reason to do so. By changing the third bracket from over 199 miles to over 139 miles, there will be a better alignment with costs. The CDFA haul survey indicates a cost of $1.1545 for deliveries to the Bay Area from 151 to 200 miles. Our actual costs were somewhat lower at $1.0363. Considering the difference between a local haul and our actual costs warrants a $0.72 transportation allowance for milk delivers over 139 miles. With a clear geographic split at 139 miles we see no need to identify in a mileage bracket any other specific mileage beyond 139 miles.

Sacramento Receiving Area.

As detailed again on Exhibit 1, we are requesting a modest $0.02 rate change to the first mileage bracket, raising it from $0.15 per cwt to $0.17 per cwt. We are not requesting any change to the second mileage bracket.

Relatively small volumes of milk are delivered to qualifying plants in the Sacramento receiving area. According to CDFA's haul survey and our own actual haul costs, the milk that does deliver to a qualifying plant carries with it a cost of nearly $0.50. A $0.17 per cwt transportation allowance rate would bring the rate more in line with the local haul rate of approximately $0.32. Since little or no milk currently moves to this receiving area from greater than 59 miles we are not recommending any change to the second mileage bracket. Our Exhibit 4h is a copy of our hauling costs for that particular area.

The CDFA haul survey indicates a haul cost of $0.4978 for the zero to 59 miles, while our actual cots were $0.4949. Both would merit a $0.02 increase in the zero to 59 mile bracket.

North Bay Receiving Area.

As detailed on Exhibit 1, we are recommending no changes to mileage brackets but are requesting changes to the rates in two of the brackets. For the second mileage bracket we are requesting a change from $0.35 to $0.37 per cwt and for the third bracket a change from $0.44 per cwt to $0.52 per cwt. Our actual costs for the over 45 miles through 96 miles is $0.6811. The CDFA haul survey indicates an average cost of $0.7814 per cwt. Using $0.32 as a basis for a local haul, both our costs and the CDFA haul survey costs would warrant a $0.37 transportation allowance for this bracket. For the over 96 miles bracket our actual average costs are $0.839, while the CDFA haul survey indicates $0.958. This warrants an increase in the transportation allowance rate from $0.44 to $0.52.

Southern California Receiving Area

As detailed in Exhibit 1, we are requesting a change to the mileage brackets of Section 1 of the Southern California receiving area that specifically deals with shipments originating in Riverside and San Bernardino Counties. We are requesting that the first milage bracket, currently "from zero through 93 miles" be split into two distinct mileage brackets. The first, a bracket "from zero to 45 miles" that will remain at the current $0.15 per cwt. The second mileage bracket to be inserted would read "over 45 miles through 93 miles" with a corresponding rate of $0.30 per cwt. The remaining bracket of "over 93 miles" and current corresponding rate would remain unchanged.

The reason for this change is to simply recognize, as CDFA does in Exhibit 5, the San Jacinto milk shed, separating it from the Chino milk shed. Our costs of hauling milk to qualifying plants from the 45 to 93 mile bracket are approximately $0.62 per cwt. This is also supported by the CDFA haul survey where the costs from 51 through 100 miles is $0.6938 per cwt at an average of 80 miles.

While we have not requested additional changes to the Southern California receiving area, we are supportive of CDI's alternative proposal calling for a break in the "over 119 miles" bracket with the insertion of an additional bracket for the "over 139 miles" for milk originating "from California's other 56 counties."

Conclusion.

In this testimony we have not asked for anything more than is warranted. We did not shoot high with the expectation that we land in the middle. What we have asked for is modest and necessary to provide an incentive to serve the market and to meet the original intent of the program.

I would like to thank you again for the opportunity to testify today. I do request the opportunity to submit a post-hearing brief and I would be happy to try to answer any questions the panel may have.

HEARING OFFICER ROWDEN: Your request for a post-hearing brief is granted.

Panel?

MR. EASTMAN: I have a couple of questions for you. On page 2 on Table 1, I just wanted to clarify. You mentioned that this table shows just DFA production. And these figures represent all three of the months of the last quarter then?

MR. STUEVE: Yes.

MR. EASTMAN: It's not an average of any sort, it's just the total amount?

MR. STUEVE: Right, yes. The last quarter versus the last quarter of 2008.

MR. EASTMAN: Okay, great. And so when I look at the table, you do mention that you have milk in the Riverside and San Bernardino areas, counties, that you supply, probably, to Southern California. How much milk are you shipping approximately from the Valley into Southern California?

MR. STUEVE: Well we are not shipping on the magnitude that Dr. Erba mentioned that CDI does but we do probably about 50 loads a day or so into Southern California.

MR. EASTMAN: And then I wanted to ask you a couple of the same questions that I asked Dr. Erba with regards to what's happened over the last four or five years as milk production has decreased in Southern California and the Golden Cheese, as it closed. I'm curious how that's affecting moving Southern California milk into plants in Southern California.

MR. STUEVE: Well, I think there's a couple of important things to know when we talk about Golden Cheese in Corona. It closed in 2008, early 2008. The volume at the plant had already been ramped down significantly. It was operating probably at a third of the volume that it had been operating in at one time in anticipation of a closure.

And the other significant factor related to the plant in Corona was that significant volumes of the milk that supplied that plant were already coming from the Valley, from the San Joaquin Valley, without any, obviously any transportation allowance attached to it.

So the effect of closing it on local milk was probably not nearly as great as you might think because, again, the volume was lower and a portion of that milk already came from the Valley. Our own customers in Southern California have grown some during that time period as well, combining -- so for us, a growth in our volume in Southern California. Not a huge effect related to Coronia and then a pretty significant drop in local milk supplies has still created a situation where we're pulling more milk from the Valley now than we were then.

MR. EASTMAN: Do you feel that the magnitude of the rates that are currently available for the shorter distances, the shorter mileage brackets for milk that is going into Southern California, are those still justified? Do you still think that incentive is necessary to assure that Southern California-produced milk will make it to the plants that qualify for the allowance?

MR. STUEVE: I do. While Corona certainly at one time was a, was a major manufacturing operation in Southern California there still is, as Dr. Erba mentioned, manufacturing plants in Southern California. We supply some on a smaller scale than does CDI but we do supply some manufacturing there. We likewise have to bring in for our Class 1 sales a lot of milk from the Valley. We see the local milk supply continuing to decline. So I would say it still is, it still is a necessary incentive for the local milk to supply our Class 1 plants.

MR. EASTMAN: Do you think that -- so you're stating that you don't have enough milk in Southern California to supply your Class 1 customers?

MR. STUEVE: That's correct.

MR. EASTMAN: And so does the vast majority of your Southern California milk go to Class 1 plants or qualifying plants? Does some of that go into, say, the manufacturing plants down there?

MR. STUEVE: Some goes into manufacturing but probably the majority does go into Class 1.

MR. EASTMAN: That's all I had for right now.

MR. SHIPPELHOUTE: A couple questions. On the local milk that you're putting into manufacturing plants. is it going into manufacturing plants out in the Chino area or is it going into manufacturing plants located in the LA area?

MR. STUEVE: We have limited volumes that go into manufacturing but I'd say they go in more closely into the LA area. Certainly the LA County area is closer to bottling plants than actually where the milk is produced.

MR. SHIPPELHOUTE: And reading through your rates. It looks like you're asking that the allowances cover the entire difference between the distant haul compared to the local haul. Have you considered the concept of a shortfall at all or do you think that concept is not warranted?

MR. STUEVE: We did consider it. Now, most of our calculations, as you've correctly established, did not take into account, it did not build in a shortfall. That doesn't mean that there aren't shortfalls within these four areas that we talked about but the specific calculations that, that we provided, we did not build in a shortfall.

And there were reasons for that. The milk supplies for these areas is becoming more and more -- it is more and more defined. At one point, either 10 or 20 or 30 years ago when transportation allowances began, there was a lot more milk spread geographically. I think we now know precisely where the milk comes from to serve these areas and we rely more and more on Valley milk. So as these milk supplies becomes more defined, in our estimation the need for a shortfall becomes less necessary because we know the limited options that we have available to supply that milk.

That's one observation we made regarding shortfalls.

The other -- the other one is that if -- if you believe, as I do and I think Dr. Erba testified as well, that the general trend line for costs is up, and we do firmly believe that. Over the course of time there may be ups and downs within that but over the course of time the general trend line is up. The increases in haul costs for whatever reason will create shortfalls.

We could -- we could establish new rates without shortfalls and implement them in 60 days. As soon as we have a cost increase we're going to create a shortfall, particularly on the longer distance hauls. When we experience either a fuel-related haul cost or a labor-related haul cost, the longer distance hauls go up on a hundredweight basis higher than the local hauls do. So any, any increase in costs will also create a shortfall.

And then the last observations I have on shortfalls really is that if you use the CDFA haul survey numbers then clearly there are shortfalls built into, into the system. And given the fact that we are not the only one that supplies these different areas I think there clearly, even using our calculations, would be shortfalls.

MR. SHIPPELHOUTE: No other questions.

MR. LEE: I have a couple of questions. Regarding our hauling costs, how often do you revisit these costs with your supplier, your providers?

MR. STUEVE: We don't have a set time period, for us it's almost a -- and I think our haulers would probably concur -- it's a continuous process. Milk hauling is very specialized. I'm going to take a shot at saying that I think that if you were to list all of the contract haulers, generally available contract haulers, we probably use the majority of them. And it may be a simple majority but I think we probably use most of the haulers. We move milk between haulers and we negotiate rates on a continuous basis but we don't have a set time period, say an annual time period. Fuel adjusts for us on all of our haulers, it adjusts monthly, so fuel has an automatic monthly adjuster in it.

MR. LEE: In Dr. Erba's testimony he mentioned about the labor costs that are involved as part of the function of determining such costs. Is there such a factor in your negotiations as well?

MR. STUEVE: There is and certainly labor plays a key role in it. It's not as, not as volatile and it's not as direct as fuel but it does have a factor. We actually currently are in the middle of negotiating with one of our larger haulers a potential rate increase that revolves around labor. So labor is a factor but I would say to a less extent than fuel.

MR. LEE: One last question. DFA is building a large plant in Nevada, a powder ingredients operation. Do you anticipate any effect to the California milk supply because of that once the plant goes into place?

MR. STUEVE: There will be -- it will be relatively modest. The plant itself is not, not an enormous project, it's not an enormous sized powder plant. But the milk that we bring in currently from Nevada that goes primarily into a North Bay qualifying, transportation allowance qualifying plant, will stay in Nevada. So the one direct effect it will have, whether it's measurable or not I don't know, but the one direct effect it will have is that we will place more California milk into this North Bay qualifying plant. And obviously those shipments would qualify for transportation allowances. But the Nevada milk that supplies this plant now will stay in Nevada.

MR. LEE: Thank you.

MR. EASTMAN: I just have one quick clarifying question. On the front page of your testimony you mention that your costs are associated with three general type of categories, a basic foundational-type haul cost and then you have fuel surcharges and then distance-type considerations. In that second paragraph under costs where you mention that your costs have increased anywhere from $0.01 to $0.07 per cwt, does that reflect just the increase for the basic haul cost, that first category?

MR. STUEVE: Yes, it reflects just that first category.

MR. EASTMAN: Okay.

HEARING OFFICER ROWDEN: Thank you very much.

And now we will have public testimony. First I'd like to call up Mr. Vandenheuvel. Public testimony will be limited to 20 minutes.

For the record please state your name, spell your last name and let us know your affiliation again for the record.

MR. VANDENHEUVEL: My name is Rob Vandenheuvel, that's V-A-N-D-E-N-H-E-U-V-E-L, I'm the General Manager of the Milk Producers Council.

HEARING OFFICER ROWDEN: Mr. Vandenheuvel's testimony will be Exhibit 44.

(Exhibit 44 was received into evidence.)

Whereupon,

ROB VANDENHEUVEL

Was duly sworn.

HEARING OFFICER ROWDEN: Please.

MR. VANDENHEUVEL: Mr. Hearing Officer and Members of the Panel, my name is Rob Vandenheuvel and I am the General Manager of Milk Producers Council. MPC is a nonprofit trade association with office locations in

Ontario, Bakersfield and Turlock, California. We represent a voluntary membership of dairy families throughout Southern and Central California. My testimony today is based on positions adopted by the MPC Board of Directors.

The Humble Beginning to this Hearing Process.

This hearing process began with the Department responding to a very narrow request: modify the transportation allowance provisions in the Pooling Plan to incorporate the addition of Napa County into the North Bay receiving area. CDFA's analysis indicates the requested addition would have resulted in an estimated increase in the cost of the transportation allowance program of $9,739 in 2012.

However, through alternative proposals that have been submitted, the Department is now asked to consider more significant modifications to the transportation subsidy programs.

The Hauling Survey.

Much of the basis of the proposed changes discussed today come from the hauling surveys conducted by the Department. In examining the most recent report covering April 2011 to October 2012, one thing that jumps out is some unexplained irregularities in the reported figures.

There was a significant increase in the reported cost of hauling milk into Southern California from long distances. Specifically, the survey indicated that milk hauled 151 to 200 miles into Southern California cost an average of $1.26 per cwt in October 2012. That rate is up 18 percent from the published estimate of $1.06 a cwt just six months earlier. The hauling survey shows that the weighted average miles traveled for that sample of milk, 174 miles, is only 2 miles longer than the weighted average from the previous report, 172 miles. So what caused the costs for roughly the same weighted average haul to escalate from $1.06 to $1.26 in just six months, with no increase in fuel costs during that time to explain it?

Perhaps the Department has more direct information that can explain this drastic increase in the report. But in the meantime, it's difficult to properly analyze any proposal to increase the available transportation allowances for this long-distance milk without answers to this basic question.

The Goal of the System: Attracting the Nearest Milk to Class 1, 2 and 3 Markets.

One of the key goals of the transportation allowance program is to incentivize the milk closest to the Class 1, 2 and 3 plants to move first. Milk Producers Council strongly supports this policy, not only because it makes good economic sense but also because it helps ensure that the funds that are pulled out of the producer pool and spent under the transportation subsidy programs are kept as low as possible.

In light of this policy, I would like to take some time to look at some examples from the data made available for this hearing. The proposed amendment with the largest expected financial impact on the cost of the transportation allowance program is a proposal to create a new mileage bracket for the Southern California receiving area for milk hauled at least 139 miles. That process would set the transportation allowance rate for that milk at $1.00 per cwt.

In order to put this and other requests into context, we need to cross-reference the hauling survey data, the analysis of the proposals published by CDFA for this hearing and the current transportation allowance rates published in the Pooling Plan. From those documents we learn a few things:

First, the data show that a significant portion, more than 70 percent of the milk traveling greater than 139 miles, or the milk that would fit under that category, is in the 141 to 200 mile range.

Second, looking at the top portion of that range, 151 to 200 miles, the data indicate in 2012 the estimated costs range from $1.06 to $1.26, as I mentioned. Again, with no real explanation for why there was such a large increase in a six month period.

Applying the current $0.84 per cwt transportation allowance rate, the estimated net hauling cost averages $0.22 to $0.42 a cwt. A big gap but I am not going to beat that dead horse anymore.

Applying the proposed $1.00 a cwt transportation allowance rate, the new estimated net hauling cost would be anywhere from $0.06 to $0.26, so pick a middle number, $0.16 in there.

How does this compare to other milk being hauled into the Southern California receiving area? Let's examine another proposal that would create a new mileage bracket for milk from Riverside/San Bernardino Counties hauled into the Southern California receiving area. The proposal would establish an allowance rate of $0.30 per cwt for milk hauled 46 to 93 miles.

Again, cross-referencing the available data we see that:

The hauling survey indicates that this new mileage bracket would likely cover the milk hauled from the San Jacinto area, with that milk traveling an estimated 55 to 87 miles into the LA area.

The estimated hauling costs for that milk ranged from $0.52 to $0.54 per cwt.

Applying the current $0.15 per cwt transportation allowance rate, the estimated net hauling cost for that milk would be $0.37 to $0.39.

Applying a new $0.30 per cwt transportation allowance rate, the new estimated hauling cost would be $0.22 to $0.24.

While I recognize that there are other considerations, such as the alternative hauling costs to a local manufacturing plant, MPC encourages CDFA to consider these potential imbalances, where it may make more sense to haul milk from 150 to 200 miles away than to bring it in from 55 to 87 miles away, when reviewing -- we ask you to keep this in mind when you're reviewing the available data and establishing the official transportation allowance rates.

And before I move on, an additional thought. You know, these costs, these transportation allowance rates have continued to escalate through, you know hearings. I mean, it's been a number of years since we've had one. And now we are being asked to consider $1.00 a cwt transportation rate -- transportation allowance rate.

And I guess the fundamental question is, if it is now going to start costing us $1 a cwt out of the pool to fund these transportation subsidies, I submit to you that perhaps the $0.27 that the Southern California plants are paying extra on the Class 1 price is not enough. That it's costing significantly more than the $0.27 to service that market.

You know, really when you look at the cost to the pool of taking these transportation subsidy dollars out of the pool and using them back to producers and co-ops as a subsidy, we'd probably be better off manufacturing all our fluid milk in the Central Valley and hauling down finished product into LA. They wouldn't pay the extra $0.27 into the pool but we'd save a lot of money on these transportation subsidies. These plants have built in LA, we get it, they've got their investment there. But they're not -- I would submit that they are not putting near enough into the pool to attract the milk that they need to attract. The producers are making up the difference.

Continued Concern about Erosion of the Class 1, 2 and 3 Revenues.

Milk Producers Council has strong concerns about the continued erosion of pool producer revenues. A document published by CDFA in -- I wrote "May" there, it's actually March of 2013 entitled *Orderly Movement of Milk to California's Fluid Markets* outlines some of the history of our transportation subsidy programs. Included in that document is a chart showing that from 1997 to 2007 the annual cost of our transportation allowance program exploded from less than $6 million a year to more than $30 million a year. In 2012 that cost was more than $34 million. And in CDFA's analysis for the hearing -- for this hearing, the estimated impact of both the alternative proposals submitted for this hearing would push that then to more than $36 million a year.

In that same publication there is a recognition that this trend is going to continue. As stated on page 8 of the document, "It should be clear that the use of the current policy alternatives, i.e., transportation allowances and credits, will only further reduce pool prices as more money is distributed to producers in more distant locations who service the Class 1 market." The document goes on in a later section to state that, "It may be appropriate for the industry to consider alternatives to facilitate the movement of milk to fluid milk plants in light of the changes in the market structure. Potential solutions may require fundamental changes in the pricing and pooling provisions. It should be clear that consumers and Class 1 plants stand to benefit the most from the adoption of these approaches to managing milk movements."

MPC appreciates these comments published by the Department and wholeheartedly agrees. To that end, we presented the Department with an alternative proposal for this hearing that would retain the transportation allowance and credit system while mitigating the growing costs currently borne entirely by dairy farmers. Our proposal would modify the Class 1, 2 and 3 formulas to incorporate a "transportation surcharge" that would be set to generate additional pooled revenue to cover a portion of the funds needed for the transportation subsidy programs.

Our proposal was denied due to the fact that it required changes to the Stabilization Plans, but we continue to believe that this is a fair and equitable solution to what CDFA already recognizes is a growing problem.

Conclusion.

This is an incredibly frustrating time for California dairy families. The Department's own cost-of-production and milk price data clearly show that our dairy farmers have been and continue to be subjected to crushing financial losses, resulting in a growing number of our friends, family and colleagues either moving out of the state or quitting the business altogether. As that milk supply diminishes the dairy farmers still operating in the state are required to haul milk from further and further away in order to serve the needs of our urban population centers. That, of course, leads to requests to modify the transportation allowance programs to reflect these new longer hauls. And who is asked to fork over the money to fund the expanding program? Dairy farmers.

Therefore, we strongly urge the Department us the information available to establish transportation allowance rates that do not increase the overall cost of the program, but rather, result in more efficient milk movement that follows the policy of incentivizing the closest milk to move first.

I request the opportunity to submit a post-hearing brief and I am available to answer any questions the panel members may have.

HEARING OFFICER ROWDEN: Your request to submit a post-hearing brief is granted. Panel members, questions?

MR. SHIPPELHOUTE: A question on your comment about being asked to consider a $1 rate for the milk coming out of the south Valley into Southern California.

MR. VANDENHEUVEL: Um-hmm.

MR. SHIPPELHOUTE: And your comparison of the $0.27 differential between Northern California and Southern California. Should we also consider the difference between the Class 1 price and say maybe the 4a price or the 4b price?

MR. VANDENHEUVEL: What do you mean by that?

MR. SHIPPELHOUTE: You were making reference to the amount of money that that milk is contributing to the pool and whether or not, at least if I am understanding your point correctly, that the additional contribution to the pool would not cover that $1 transportation allowance. So I'm just wondering if we should consider the difference between the Class 1 price being paid into the pool and the 4a and 4b price?

MR. VANDENHEUVEL: Well, you know, I didn't provide, I didn't do that kind of analysis coming into this hearing. I guess my point was -- I was thinking about this on the plane ride up, which is why it's not in my testimony and was additional comments -- is that we do have a mechanism in place recognizing that there is a cost of servicing the Southern California fluid markets, $0.27 additionally. That may have made sense at one point.

Obviously the costs of servicing that market have gotten substantial. it's not just the cost of the haul, it's the cost of the transportation subsidies, which are also taken out of dairy farmers' pockets. They are grounded back to dairy farmers. But that all ultimately comes out of producer pockets. And so my comment was that -- was that that $0.27 may have been a reasonable figure at one point. Obviously it is not subject to debate here at this hearing because the Stabilization Plan is not open.

But I believe that if you looked at -- when you create regulation one of the goals is to try your best to mimic what would happen in the real world. I mean, obviously there's a reason you have regulations but you try to mimic what would happen in the real world.

And I submit to the panel that in a free market, non-pool -- we didn't have the pool protection for those plants, making sure that they had the milk and using stuff like transportation allowances -- those plants would pay a significant premium to make sure they got milk into their plants. Because there is a diminishing supply of milk in their local area and they would have to find a way to attract that milk. And so that -- that was my point is the $0.27, it's not a well-thought out concept. If we have a hearing with the Stabilization Plan open I will come much more prepared but that was a comment about what those plants put into the pool.

MR. SHIPPELHOUTE: And at the end of your testimony you urge the Department to use the information available to establish allowance rates that do not increase the cost of the program but rather result in more efficient milk movement. You obviously have looked at the background information that we had. Did you have any suggestions on what rates or what that would look like?

MR. VANDENHEUVEL: You know, it's difficult. We do our best to try to analyze, you know, the information that's provided. I would assume that CDFA gets a little bit more specific information than they are able to publish and that the panel could consider some of that information.

And obviously I do have respect for the two previous witnesses who deal directly in managing milk so I really -- I guess what our board would like the Department to do is use all the information you have available, whether that's in the hearing panel report -- hearing panel materials or anything else that you guys have access to that maybe you couldn't publish to ensure that, you know, we're trying to keep these costs held as steady as possible while responding to the concerns that have been raised.

MR. SHIPPELHOUTE: Thank you.

HEARING OFFICER ROWDEN: Thank you very much.

Next I'd like to call up Ms. AcMoody.

For the record please state your name, spell your last name and identify your affiliation.

MS. AcMOODY: My name is Annie AcMoody, the last name is spelled A-C-M-O-O-D-Y, and I'm with Western United Dairymen.

HEARING OFFICER ROWDEN: Ms. AcMoody's testimony is Exhibit 45.

(Exhibit 45 was received into evidence.)

Whereupon,

ANNIE AcMOODY

Was duly sworn.

HEARING OFFICER ROWDEN: Please.

MS. AcMOODY: Mr. Hearing Officer and members of the hearing panel. First, thank you for the opportunity to testify here today.

My name is Annie AcMoody. I am the Director of Economic Analysis for Western United Dairymen. Our association is the largest dairy producer trade association in California, representing approximately 900 of the state's dairy families. We are a grassroots organization headquartered in Modesto, California. An elected board of directors governs our policy. The board of directors approved the position I will present here today at its last board meeting held March 27, 2013.

Transportation allowances partially compensate producers for the cost of hauling milk from a producer's ranch to qualified plants in designated receiving areas. They are funded from the producer pool. Transportation allowances apply to some market milk moving from the dairy farm to processing plants. This occurs when the receiving plant is located in a designated deficit area and processes more than 50 percent of its production to Class 1, Class 2 and/or 3. When setting allowances, the Department must look at all relevant economic factors, including but not limited to: (1) CDFA audited hauling costs; (2) distance considerations; (3) local alternative hauling cots; (4) encouragement of close-in milk to be shipped first; (5) local competition for milk; and (6) relative cost to the pool of milk moving under allowances and credits. We looked at those factors when taking the position I are here to present today.

Wallaby's petition.

On January 14, 2013, Wallaby Yogurt Company petitioned the Department to amend the Pooling Plan to include Napa County in the North Bay receiving area. Currently, the North Bay receiving area consists of Marin, Solano and Sonoma counties. Producers' milk going to plants located in those three counties is currently eligible for transportation allowances. Western United supports the petition from Wallaby Yogurt Company to allow producers shipping milk to Napa County to be paid transportation allowances.

Looking at the aforementioned criteria, Wallaby's petition seems appropriate. First, it does not request a change in current transportation allowance rates. Based on CDFA's latest hauling survey, current transportation allowance rates for the North Bay receiving area were within the actual rates incurred as of the latest survey. Table 1 below outlines that comparison.

With Napa County being geographically nestled between Solano and Sonoma it must compete for the same milk supplies as plants located in those adjacent counties. As an example, producers located in Sonoma County are eligible to receive transportation allowances if their milk is going to Solano County, but not to Napa County, which depending on the plant's location, is closer for the most part. Since one of the premises of the system is to encourage the closest milk to move first, it would make sense to provide the same incentive for producers to ship to Napa County. Therefore, it seems reasonable to add Napa County to the North Bay receiving area.

Finally, dairy producers continue to be concerned about the cost of funding the transportation allowance system through the pool and like to see those costs kept to a minimum. According to CDFA analysis, Wallaby's proposal would have increased the monthly average cost of transportation allowances by $9,739 based on calendar year 2012 milk movements. According to the same analysis from CDFA, the total average monthly cost of transportation allowances in 2012 was $2,868,000. Adding Wallaby's proposed change would represent a minimal increase of 0.3 percent.

Alternative proposals.

WUD's board of directors took no position regarding the alternative proposals submitted by California Dairies, Inc. and Dairy Farmers of America.

This concludes our testimony. We would be pleased to answer any questions you may have and request the option to file a post-hearing brief if necessary.

HEARING OFFICER ROWDEN: Your request for a post-hearing brief is granted. Questions?

MR. EASTMAN: I have a question. Although you took no position on the alternative proposals submitted, it appears that in general Western united Dairymen, they do support the milk movement incentive system but they would just like that certain criteria be considered, such as the ones that you outlined on the second paragraph of your testimony. Is that an accurate statement?

MS. AcMOODY: Like you said, we took no position on those proposals but we understand the Department has to look at those relevant economic factors. I guess I'm just repeating what you just said.

MR. EASTMAN: So in essence you just leave it up -- you're leaving that part of the hearing up to the discretion of the Department to exercise its authority.

MS. AcMOODY: Yes, keeping in mind that producers like to keep the cost of funding the transportation allowance system at a minimum.

MR. EASTMAN: Great, that's what I thought.

HEARING OFFICER ROWDEN: Thank you very much.

MS. AcMOODY: Thank you.

HEARING OFFICER ROWDEN: Is there any anyone else who would like to testify?

Mr. Schiek. For the record please state your name, spell your last name and give your affiliation, please.

DR. SCHIEK: Yes. My name is William Schiek, that's spelled S-C-H-I-E-K, and I am the economist for the Dairy Institute of California.

HEARING OFFICER ROWDEN: Mr. Schiek's testimony is Exhibit 46.

(Exhibit 46 was received into evidence.)

Whereupon,

DR. WILLIAM SCHIEK

Was duly sworn.

DR. SCHIEK: Mr. Hearing Officer and members of the hearing panel:

My name is William Schiek and I am Economist for Dairy Institute of California and I am testifying on the Institute's behalf today. Dairy Institute is a trade association representing 30 dairy companies which process approximately 75 percent of the fluid milk, cultured and frozen dairy products, over 80 percent of the cheese products and a substantial portion of condensed and evaporated milk products processed and manufactured in the state. Member firms operate in both marketing areas of the state and purchase all five classes of milk. The position presented at this hearing was unanimously adopted by Dairy

Institute's Board of Directors.

We appreciate the opportunity to testify today about transportation allowances and credits and to comment on the proposals by Wallaby Yogurt, California Diaries and Dairy Farmers of America, which are also under consideration at this hearing. We commend the Secretary for her willingness to consider updating the regulatory framework in which our members operate to make it reflective of current market conditions.

At issue in this hearing are the proposed changes to the transportation allowances and credits contained in the Pooling Plan and the Stabilization and Marketing Plans for Northern and Southern California. The broad purposes of these milk movement programs have been identified as follows:

1) To assure an adequate supply of milk to plants which provide class 1 and 2 usage products to consumers;

2) to assure that higher usages, that is Class 1, 2 and 3, have a priority in terms of milk movement incentives to producers; and

3) to encourage the most efficient movement of milk to fluid usage plants.

The enactment of milk pooling in 1969 fundamentally altered the relationships between Class 1 processors and suppliers. Prior to pooling, the higher plant blend price that was paid by Class 1 plants provided a positive incentive to attract milk to the highest use. During the discussions leading up to the Gonsalves Milk Pooling Act, producer representatives, in exchange for processor support, made a commitment to ensure that Class 1 plants would be served with the milk that they needed. From the beginning it was recognized that fluid plants, by virtue of the higher minimum prices they pay, should be able to procure necessary milk supplies without having to subsidize the haul cost to their plants.

The current system of transportation allowances and credits in California developed after a period where milk movement incentives were limited primarily to area differentials, and location differentials on quota milk, a system which was somewhat similar to the location differentials employed in federal orders. Over time, the consolidation of marketing areas, growth in milk production, changing production and distribution patterns and unique California geography necessitated new milk movement mechanisms.

The transportation credits and allowances both came into being in the early 1980s. The general principle behind transportation allowances was that they should compensate dairymen for the difference between the local haul to a manufacturing plant and the long haul to the more distant fluid milk plant in a metropolitan area. In the absence of such incentives, producers would have an incentive to ship their milk to the local manufacturing plant and a disincentive to serve the fluid milk market. When the transportation allowance fully compensates producers for the difference between the local haul and the long haul to the fluid plant, they would be indifferent as to where they ship their milk.

With respect to transportation credits, the principle was to compensate the milk supplier for the cost of shipping from the supplying plant to the deficit-area plant, after accounting for any difference in the marketing area Class 1 differentials. Historically, the transportation credits and allowances have been set at levels that do not fully compensate handlers for their shipment costs. A shortfall in hauling compensation with respect to more distant milk has been supported by Dairy Institute in the past based upon the assumption that it would encourage more efficient milk movements. The extent of the shortfall needed to encourage orderly movement has been and continues to be a subject of debate. Given the necessity of moving milk even longer distances to supply Class 1 markets today, we believe the application of the shortfall concept should be modest for all but the most distant milk supplies.

We continue to believe that a milk movement incentive system is necessary in order to meet the statutory mandates and guidelines governing our industry. In recent years, the industry has continued to evolve and has undergone considerable structural change. Consolidation of supplying cooperatives and fluid milk processors has changed milk production and distribution patterns. It is therefore appropriate to review the existing system of transportation allowances and credits to determine if changes are necessary. This usual review is made all the more critical when we consider the changes in milk supply structure which are taking place across the state, but nowhere more impressively than in Southern California. Given the rapid and ongoing contraction of the Southern California milk supply, the implications are obvious. To supply the fluid plants in the LA basin, rapidly increasing quantities of milk are going to be trucked in from outside the area. While the growing milk supply in Kern County is an obvious choice to supply the market, in the past not all of this milk has been available to serve the Southern California fluid market. Milk has moved to Southern California from Kings and Tulare counties to meet the Class 1 demand and it may well be that milk from these areas will continue to be needed in the future.

We believe it is consistent with the purposes of milk stabilization, and with the commitments made by producer leadership at the inception of milk pooling, that milk should be attracted to Class 1 plants at order prices. Unfortunately, some have held the incorrect view that the sole purpose of the Class 1 price differential is to enhance producer income, instead of recognizing that, in part, the differential was designed to assure that Class 1 markets are served. Another notion that has been troubling to Dairy Institute's membership has been the belief expressed by some that over-order premiums or surcharges should be relied upon as a primary means to attract milk for fluid purposes. We continue to maintain that the existing order prices paid by processors provide more than enough revenue to attract milk for Class 1 and mandatory Class 2 purposes, and that marketing and pooling plans should provide the milk movement incentive mechanisms which are adequate to ensure that those uses are served. When we consider the relatively high Class 1 price differential in California relative to the state's very low Class 1 utilization, it is even more obvious that processors need not subsidize the haul to their plants, or should be not subsidize the haul to their plants.

In general, Dairy Institute supports proposals that seek to make cost-justified adjustments to the transportation allowances and credits. Costs for diesel fuel have bee hovering just under record levels at over $4 per gallon. Prices spiked in 2008 and then fell during the recession but have risen since 2009 to their present high levels. Prices are double what they were as recently as 2005.

Dairy institute has no specific -- has no access to specific hauling cost invoices that are reflective of current milk movement costs across the state. The October 2012 hauling cost data assembled by the Department are quite useful and diesel prices remain hear levels seen when the data was collected. We have relied on others presenting testimony here today, such as Dr. Erba and Mr. Stueve, to enter relevant information about current hauling costs into the record. To the extent that they can justify higher transportation allowance rates than those indicated by the data, we would continue to support such cost-justified increases.

We continue to argue for the application of sound economic principles in setting allowance and credit rates, basing them on the most recent rate and fuel cost information available to the Panel at the time of the hearing. Notwithstanding the uncertainty in fuel prices and hauling rates, Diary Institute believes that transportation allowances and credits must be adequate to encourage milk to move to higher-use plants in deficit areas. Inadequate rates lead to California Class 1 processors being unable to compete favorably with manufacturing plants for milk supplies, and put them at a competitive disadvantage with respect to out-of-state processors. In order to secure the local Class 1 market for California producers, transportation allowances and credits must be adequate to draw milk without transportation subsidization by the buyer or the supplying cooperative.

Dairy Institute continues to support the principle that transportation allowance rates should be set equal to the difference between the cost of the local haul and the cost of the haul to the higher-use plant in the metropolitan markets. Very modest shortfalls should apply to all but the most distant mileage brackets to encourage milk that is located closer to the market to move first. With regard to milk moving into Southern California, there should be little shortfall on milk coming from as far away as Tulare and Kings Counties, because volumes of milk from those areas are increasingly necessary to supply the Southern California market.

The transportation allowance system should address the narrow problem of how to attract milk to fluid plants in metropolitan areas at order prices. However, when setting both allowance and credit rates, equity among competing Class 1 plants in attracting milk supplies is something that needs to be considered. This is particularly true when the application of milk movement incentives confers advantages on some Class 1 plants over others. If these advantages would not have existed in the absence of milk movement incentives, then the incentives should be adjusted to both: 1) redress the inequitable impacts and 2) ensure the fluid plants would be adequately served. Dairy Institute's position is that fluid milk plants operating within a market should not be disadvantaged relative to each other in the procurement of nearby milk supplies. And that would apply not just to fluid but higher-use plants, Class 2 and Class 3 as well.

With regard to transportation credits, Dairy Institute supports the principle that transportation credits should be set equal to the haul cost less any area differentials. And shortfalls should be limited so that needed milk can move to Class 1 uses.

Dairy Institute supports cost-justified allowances and credits. And CDI's proposals for transportation allowances appear to be cost-justified based upon the hauling rate information available from the Department and CDI's testimony about their own costs in serving their customers. We believe that adding an additional bracket for milk shipments into Southern California makes sense given how the milk shed and supply patterns are changing. The proposed increase in the transportation credit also appears to be cost justified. As we noted earlier, we support keeping transportation rates reflective of current costs to encourage competition in supply in the Class 1 market and to keep the system responsive to changes in industry structure.

Dairy Institute generally supports DFA's proposed increases to transportation allowances in the Bay Area, Sacramento and North Bay receiving areas to the extent that they are justified by current transportation costs.

Wallaby Yogurt Company's petition to add Napa County to the North Bay Receiving Area appears entirely reasonable based on the facts available. Napa County is geographically contiguous to both Solano and Sonoma County. And Wallaby's plant in Napa County competes with others in the North Bay area whose producers are eligible for transportation allowances based on the inclusions of their counties in the designated receiving area. We see no reason to deny Wallaby's proposal and therefore urge the Department to adopt it.

Dairy Institute supports the continuation of the call provisions. Under these provisions, dairy handlers are given an incentive to voluntarily supply milk for fluid uses when call provisions are implemented. The existence of the call provisions promote supply handlers building business relationships with fluid customers to voluntarily release market milk such that both seller and buyer can better plan such milk shipments. Without the call provisions, supply handlers have less incentive to build such ongoing relationships, which could exacerbate disorderly and chaotic milk movements in emergency short supply situations.

Dairy markets are unpredictable and the call provisions are necessary as a standby mechanism should they be rapidly and unexpectedly needed. Unanticipated weather conditions, rapidly changing manufactured product prices and cost/price squeezes have caused sudden changes in milk production patterns in the past and the call provisions have helped maintain milk supply availability. The call provisions are the only means within the marketing and pooling system to make quota milk available for priority uses.

Thank you for the opportunity to testify. I would like to request the opportunity to file a post-hearing brief and I am willing to answer any questions you may have at this time.

HEARING OFFICER ROWDEN: Your request for a post-hearing brief is granted. Questions from the panel?

MR. LEE: I have a question. On page 3 you mention regarding that some of your members expressed concern over over-order premium surcharges being relied upon as a primary means to attract fluid milk, attract milk for fluid purposes. Do you see much of that growing or can you give us a little more explanation as to --

DR. SCHIEK: No. Right now over-charges are primarily related to supply and demand conditions for milk in the marketplace, not so much related to transportation costs because of the system we have. And I think our position, though, is that this is the system we have, this is the system that is designed to move milk to the Class 1 uses. I would say that in the absence of regulation fluid milk plants would have that whole differential that they are paying over what manufacturing plants pay to attract milk, which would be more than sufficient. I think that's the principle, they are paying a higher price, they should get the milk at those over-prices without having to -- you know, they pay service charges based on other services but not having the subsidized transportation as well.

MR. LEE: So you are not seeing much of this occurring currently?

DR. SCHIEK: I am not aware of any at current.

MR. LEE: Thank you.

HEARING OFFICER ROWDEN: Questions?

All right, thank you.

Are there any other witnesses?

(No response.)

Okay. Post-hearing briefs will be due by 4:00 p.m. on Thursday, April 11th. Post-hearing briefs may be submitted via e-mail to pooling - that's P-O-O-L-I-N-G - @cdfa.ca.gov or faxed at 916-900-5340 or in person at 2800 Gateway Oaks Drive, Sacramento.

Again, is there anyone who has not testified who wishes to do so at this time?

(No response.)

Not seeing anyone else, all persons present and desiring to testify have done so, no additional evidence is to be presented. This hearing is now closed at 10:53 a.m. on April 4th, 2013.

We are off the record, thank you.

(Thereupon, the public hearing was closed at 10:53 a.m.)

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CERTIFICATE OF REPORTER

I, RAMONA COTA, an Electronic Reporter and Transcriber, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Department of Food and Agriculture consolidated public hearing; that I thereafter transcribed it.

I further certify that I am not of counsel or attorney for any of the parties to said public hearing, or in any way interested in the outcome of said matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 8th day of April, 2013.

RAMONA COTA, CERT**478