

said. If the diversion limit standard is not lowered, cautioned the witness, dairy farms in Utah will continue to be endangered and result in harming Utah's rural communities.

A witness representing UDA, testified in support of Proposal 6. This witness stated that reducing the diversion limit standard from 90 to 70 percent would result in similar diversion limit standards in effect in other Federal milk orders such as the Arizona-Las Vegas, Mideast, Appalachian, Central and Southwest orders. The UDA witness added that lowering the diversion limit standard also would remedy some of the financial damage borne by Utah and Idaho milk producers resulting from the reform of Federal milk marketing orders in 2000.

A witness representing River Valley also testified in support of lowering the Western order's diversion limit standard. The witness, however, supported lowering the standard to 80 percent, not the 70 percent proposed by DFA. The witness expressed concern about the consequences of easily pooling large volumes of milk on the Western order. The witness provided evidence showing that the amount of milk pooled on a daily basis increased by more than 5.5 million pounds between October and November 2001—a 58 percent increase. The witness hypothesized that an 80 percent diversion limit would continue to allow handlers the ability to efficiently divert milk to nonpool plants while also providing a smoother regulatory transition for regulated handlers.

Seven Utah dairy farmers provided testimony supporting the lowering of the diversion limit standard. The witnesses were of the opinion that the pooling standards adopted as part of Federal milk order reform created loopholes that have caused some handlers and producers to be financially rewarded without the need to demonstrate actual shipments of milk for the Class I market. As a result, the witnesses said, dairy farmers have observed that their blend price is lower than it otherwise would be. These witnesses asserted that dairy farmers should not be permitted to collect money from their fellow dairy farmers if they do not demonstrate performance in supplying the fluid needs of the market.

The witness representing Gossner testified in opposition to Proposal 6. The witness was of the opinion that great disruption would occur to their business operation if the diversion limit standard is lowered. The witness explained that a large portion of their Class I sales are contracts with governmental agencies. The contracts

they hold are bid annually, the witness said, and the loss of a contract would make it very difficult for them to meet the proposed pooling standards.

The Gossner witness also asserted that DFA holds a virtual monopoly in supplying the Class I market in Utah and Southern Idaho. In this regard, the witness advocated the view that dairy farmers are best served when they have more than one buyer for their milk and that Gossner is trying to provide producers an alternative Class I market for their milk. The witness stated that producers would benefit by maintaining a 90 percent diversion limit standard because it leaves Gossner with the flexibility to add producers for pooling as needed and maintain the flexibility to react to changing marketing conditions.

A witness representing Glanbia also testified against lowering the diversion limit standard. The witness was of the opinion that the proposed change was an unwarranted attempt to disassociate much of Idaho's historically pooled milk supply because it is not needed for fluid use. If diversion limits are decreased, the witness said, a large portion of their producer milk would not be pooled. If a producer wished to remain pooled, the witness explained, they would be forced to join a cooperative whose supply is large enough to meet the proposed standards. If adopted, the witness concluded, the new diversion limit standard would inhibit a producer's ability to choose how to market their milk and remain pooled on the order.

The witness representing Magic Valley Milk Producer Association, Inc. (Magic Valley), testified in opposition to Proposal 6. Magic Valley is a milk marketing cooperative located in Idaho that has producer members in both Idaho and Utah. The witness was of the opinion that adoption of Proposal 6 would severely hinder Magic Valley's ability to pool the milk of their producers thereby placing them at a competitive disadvantage in their ability to market the milk of their members at competitive prices. For example, the witness explained, with the 90 percent diversion limit standard in effect from January 2001 to March 2002, the monthly volume of milk pooled on the order averaged 396,900,356 pounds. If a 70 percent standard had been in effect over that same time period, the witness contrasted, the monthly average volume of milk that could have been pooled would have been 285,410,615 pounds. The witness concluded from this example that on average, about 111,489,741 pounds would no longer have been able to be pooled.

The witness representing Davisco, also testified in opposition to lowering the diversion limit standard. The witness was of the opinion that disorderly marketing in the Western market already exists and attributed the disorder to the pooling standards adopted as part of Federal milk order reform. Since January 1, 2000, the witness emphasized, Davisco had been unable to pool two-thirds of their producers. The witness concluded that their inability to pool all of their producers would be remedied by raising the diversion limit standard to 95 percent or by suspending the diversion limit standard altogether.

The witness representing NDA also testified in opposition to lowering the diversion standard. Not only would there be less milk that could be pooled, the witness noted, but the current Western order already pools far less than the total milk production that occurs within the marketing area. The witness concluded from this observation that lowering the diversion limit standard would only make it more difficult for producers to pool their milk on the order. The witness was of the opinion this would give rise to disorderly marketing conditions in a number of forms including the use of "price incentives" serving to undercut the published Class I price, the potential expansion or creation of new bottling operations which could be used to "raid" the retail market, the "paper-pooling" of milk on other Federal milk orders, and being charged a fee for the benefit of being pooled on the order.

The NDA witness estimated that if Proposal 6 is adopted, approximately 150 million pounds, or about 38 percent of the monthly average volume of milk pooled in 2001 would no longer be pooled. This occurrence, according to the witness, would bring an immediate shift in the balance of economic power within the Western order. This result, together with the forms of disorderly conditions previously described cited above, the witness asserted, also would result in political reaction, Congressional review, and waning political support for the Federal milk order program.

The NDA witness asserted that the practice of buying and selling pooling rights is an important indicator and cause of disorderly marketing conditions. The witness explained that this is because a person selling pooling rights can gain competitive advantages not available to others thus compounding disorderly marketing conditions. Finally, the witness concluded, no justification exists for lowering the diversion limit standard of