Producer Tells CA FMMO: Stop Deducting Unauthorized QIP Assessment

by Pete Hardin

Chino, California dairy producer Craig Gordon has elevated his battle against the state's Quota Implementation Program (QIP) to a higher authority: the California Federal Milk Order (#51).

Gordon, who operates six dairies milking a total of 3,000 cows, is a catalyst in the "Stop QIP" effort. Hundreds of California Grade A dairy producers have signed petitions seeking referenda on the issue of deducting $0.38/cwt. from milk production to pay out $1.70/cwt. to a minority of state producers (and non-producers) who own state-issued "milk quota."

The California Department of Food and Agriculture (CDFA) has dragged its feet, basically cooking up what appear to be administrative excuses for responding to petitioning producers' demands for a vote on whether or not to continue the QIP assessment.

Gordon frankly admits that his dairies verge on financial failure. Creditors are knocking loudly on the doors, so to speak. The QIP assessment is draining $1,000 per day from his dairies' milk income. Gordon's cash flow has also been impaired by the "negative Producer Price Differentials" that have drained an estimated $600,000-$700,000 of milk income from the average California dairy during June-November 2020. Fortunately, Gordon has other businesses that do quite well and make up for the dairy operations, but if his other businesses are keeping his head above water, what about survival ot other California dairies that aren't as diversified as Gordon. Gordon has estimated he would have in his bank account today, if he wouldn't of had to pay the Quota tax the last 10 years, an unbelievable $3,726,000.

Deep digging by Gordon has uncovered the fact that the QIP assessment, which took effect when the California federal milk order came into existence, is illegal, under state law. Gordon contends that California's Administrative Procedures Act (APA) was not followed, when CDFA officials hatched that assessment. The California APA specifies precisely how state-mandated revenue-raising measures — taxes or assessments – must be created.

Gordon is sharing a video and transcript of a March 2019 hearing at which CDFA attorney Michele Dias publicly admitted that her agency had not followed the state's regulatory Process, and that CDFA did not turn the QIP program into the APA for approval. Gordon's recent appeal to the state's APA overseers drew the response that APA officials were not interested in pursuing the matter of QIP's illegality – a bureaucratic shrug of the shoulders for an "underground tax" that's deducting an estimated $158,000,000 of milk revenue annually from California's Grade A dairy producers. One hundred and fifty eight MILLION dollars!

Gordon to FMMO: no QIP tax on my milk

On January 7, 2020, Craig Gordon expanded his outreach to officialdom to try to halt the approximate $1,000 per day that QIP has been draining from his milk income. He emailed a letter the market administrator of USDA's California federal milk order, stating that the QIP program was illegal under California state law, and, further asking the market administrator not authorize QIP deductions.

Gordon actually divided his request into two parts, since milk from his six dairies is marketed to multiple handlers, — a private fluid processor (Rockview) and cooperative (California Dairies, Inc.). If the milk order overseers fail to suspend QIP assessment across-the-board, then Gordon's fall-back request is that no QIP "tax" be deducted from his sales to the private handler.

Federal milk order rules specify that in the case of "independent" producers, milk buyers must pay the prevailing, monthly "Statistical Uniform Price," minus allowable deductions. "Allowable deductions" from independent producers' milk checks may run the gamut from milk hauling fees and "stop charges" to the national dairy promotion assessment … and authorized payments to suppliers and creditors.

Gordon's January 7, 2020 letter specified that he did not authorize the QIP deduction from his milk income.

"We demand that effective with my final payments for December 2020 milk marketings, and all future months' milk sales by my dairies, that Federal Milk Order #51 disallow these QIP deductions, as I do not authorize."

That letter further stated that if Federal Order #51 does not respond to Gordon's satisfaction, he will take the matter to USDA's Office of the Inspector General in Washington, D.C.

Will federal bureaucrats pay heed to the rules better than their California counterparts?

Milk Powder Settlement Checks: Mid-January Mailing

by Pete Hardin

Wisely, the scheduled mailing of settlement checks to current and former dairy farmers who'd submitted claims in the *DairyAmerica* class action lawsuit Settlement was delayed until mid-January.

Wisely? Given horrendous delays experienced by the U.S. Postal Service prior to Christmas, it was prudent to wait until the Christmas mail bulge will hopefully be worked down. Mail service in weeks prior to Christmas was scandalous – a serious drag on the nation's economy that taxed Postal Service customers' patience.

The settlement checks – averaging about $1,000 apiece — will go to about 25,000 claimants. Those producers will receive modest compensation for losses resulting from DairyAmerica's failure to properly report commodity price sales data to USDA over a period of years, from 2002 to 2007. DairyAmerica is a marketing agency in common that prices and sells nonfat dry milk and other dairy protein powders for a handful of major dairy cooperatives. California Dairies, Inc. was later added as a defendant in the case.

The nuts-and-bolts of the *DairyAmerica* case are such …

In spring 2006, DairyAmerica signed a long-term (one year) contract to export massive quantities of U.S. dairy protein powders. Terms of that export contract included a fixed, low-ball price for an entire year. That contract was inked with Fonterra, New Zealand's major dairy cooperative. DairyAmeria executives failed to realize that global dairy protein supplies were tightening dramatically.

Extremely hot weather that hit western states in early summer 2006 constricted farm milk production, compounding a suddenly evolving scarcity for nonfat dry milk in the United States. As the second half of 2006 progressed, DairyAmerica continued reporting lowball prices to USDA … even though Grade A milk powder prices at the Chicago Mercantile Exchange came close to $2.00/lb. and "spot market" prices surged even higher. DairyAmerica actually "shorted" supply contracts with domestic nonfat dry milk buyers, in order to meet the export commitments.

This mess spilled over in early March 2007, when *The Milkweed* revealed DairyAmerica's wrongdoings. USDA rules on mandatory reporting of dairy commodity sales specified clearly that only sales contracted during the prior 30 days were reportable. DairyAmerica's executives blatantly and knowingly violated those rules. Immediately following *The Milkweed's* revelations, USDA launched an investigation that blamed DairyAmerica.

A class action lawsuit followed, seeking compensation for dairy producers who had lost income due to DairyAmerica's failure to properly report sales prices. That lawsuit dragged on for more than a decade – compounded by delays and misrepresentations by DairyAmeica's attorneys. Ultimately, the matter settled. But payments to claimants were further delayed for approximately 18 months by frivolous appeals from a wet-eared attorney.

The ultimate lesson in the DairyAmerica case: certain cooperatives will resort to amazing shenanigans to keep dairy producers from receiving honest milk checks.

December '20 Class III Drops to $15.72/Cwt.: Down $7.62

by Pete Hardin

The December 2020 Class III (cheese) milk price took a big nose-dive, dropping $7.62/cwt. below the previous month's level. By late November, most marketers had filled their holiday cheese needs, leaving the cheese market in these uncertain times with only one direction: D-O-W-N.

In fact, that $7.62/cwt. price drop from November to December was one of the biggest, month-to-month declines for the cheese price index. The Class III price applies to all milk pooled on the federal milk order system during December that was processed into cheese. The standard composition for Class III milk is 3.5% milk fat.

In December 2020, the Class II (cultured products) price declined by only $0.15/cwt. – to $14.01/cwt. And the Class IV (butter-powder) price actually rose by $0.06/cwt. – to $13.36.

USDA economists calculate the monthly manufacturing class milk prices using the monthly averages of weekly survey prices/volumes for specific dairy commodities: Cheddar cheese, Grade A butter, Grade A nonfat dry milk, and dry whey. Each week, manufacturers of those commodities are mandated to report sales prices and volumes to USDA's Agricultural Marketing Service. USDA then incorporates those weekly averages into their pricing formulas and crank out the final monthly manufacturing Class prices.

For December 2020, USDA economists used the following basic commodity prices in their manufacturing Class calculations:

Butterfat ....$1.5399/lb.
Protein ....$3.0283/lb.
Nonfat solids ....$0.9181/lb.
Other solids ....$0.2245/lb.

The December 2020 Class III price may represent a low point, from which subsequent months' Class III prices will rebound. In early January, cash market prices for Cheddar and nonfat dry milk at the Chicago Mercantile Exchange had rebounded distinctly from the December '20 low points. Of course, anything can happen these days. Stay tuned.

PRICES PER POUND	October '20	November '20	December '20	November-December Difference
Butter	$1.5248	$1.4558	$1.4431	-1.27¢/lb.
Nonfat Dry Milk	$1.0670	$1.0816	$1.0951	+1.35¢/lb.
Cheddar Cheese	$2.2921	$2.4535	$1.6433	-81.02¢/lb.
Dry Whey	$0.3480	$0.3830	$0.4171	+3.41¢/lb.

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