

2016 MAR -3 PM 1: 13

RECEIVED

UNITED STATES DEPARTMENT OF AGRICULTURE

BEFORE THE SECRETARY OF AGRICULTURE

In re:) [AO]
) Docket No. 15-0071
Milk in California)

Certification of Transcript

The Hearing Clerk of the United States Department of Agriculture has on file the transcript and the exhibits for this case, In re: Milk in California [AO] Docket No. 15-0071 (AMS-DA-14-0095). The transcript and exhibits are also available online, on the website of the Agricultural Marketing Service of the United States Department of Agriculture. *See*

<https://www.ams.usda.gov/rules-regulations/moa/dairy/ca/record>

The transcript captures what witnesses and other participants said. Generally, transcript corrections are NOT meant to improve what a witness said. If a witness misspoke, Briefs may be used to suggest corrections. I have not accepted proposed corrections designed to improve grammar. I do appreciate and have accepted proposed corrections that clarify what a witness said; for example, if a witness said 3,000,000, and in context it is clear that the witness referred to \$3,000,000 (as opposed to 3,000,000 pounds, for example), I am willing to change 3,000,000 to \$3,000,000. My reasoning: much of the evidence is highly technical; some speakers used “shorthand” references that are understood within milk marketing but unknown to most judges. If a proposed transcript correction clarifies what was spoken by adding precision, where, in context, the speaker’s meaning is clear, I accept the proposed correction.

This is to certify that the foregoing 8,143-page transcript, in 40 volumes, to the best of my knowledge and belief, is a true transcript of the 40-day hearing in AO Docket No. 15-0071 (AMS-DA-14-0095) held during 2015 (during September, October, and November), in California (in Clovis and Fresno); except for obvious or

immaterial typing, spelling, or grammatical errors, and except for the following corrections (paragraphs A - E).

- A. all the proposed corrections by the Dairy Institute of California, filed on January 27, 2016 (which was timely ¹);
- B. all the proposed corrections by California Dairies Inc., Dairy Farmers of America, Inc., and Land O'Lakes, Inc., filed on January 27, 2016 (which was timely ¹);
- C. all the proposed corrections by California Producer Handlers Association and Ponderosa Dairy (mistakenly written as coming from "Dairy Institute of California"), filed on February 16, 2016; EXCEPT THAT regarding 11/10/2015: page 6942 line 15, and page 6951 line 11, the transcript shows what the witness said and will not be corrected; and on my own motion I correct page 6951 line 1 to MS. HANCOCK ~~MR. SHEHADEY~~; and regarding 11/11/2015, the reference to page 6979 lines 14-15 (page 6979 contains testimony from the previous day, 11/10/2015) and does not have any "missing comment from Judge", so no correction will be made; further regarding 11/11/2015, page 7053 line 20, Mr. English said "agreeing" as the transcript shows, so no correction will be made; page 7086, line 4, "question" is correct as the transcript shows, and on my own motion I correct page 7086 line 3 as follows: "one of the other"; and regarding 11/13/2015, page 7540 line 14, the proposed addition, to identify the location of Mr. Beshore's question, is not accepted; and
- D. all the proposed corrections by the U.S. Department of Agriculture, Agricultural Marketing Service (AMS), Dairy Program, Order Formulation and Enforcement Division, William Francis, Director, filed on February 16, 2016; and
- E. on my own motion, the exhibit page (Tr. 3851) of Volume 20 (October 21, 2015), Exhibit 85 EVD is changed from 3859 to 3881; and

1. The aftermath of a blizzard resulted in closure of U.S. government offices in Washington D.C. on January 25-26, 2016. Thus, January 27, 2016 was the soonest the Hearing Clerk could accept and file.

the cover page of Volume 29 (November 3, 2015) is changed from XXIV to XXIX.

In this age of electronic communication, it would be counterproductive for the Hearing Clerk to note the corrections on the “hard copy” of the transcript. Consequently, I order that the Hearing Clerk NOT follow the specifications to that effect in 7 C.F.R. § 900.10; instead, I order that the “hard copy” of the transcript NOT be marked with the corrections. Rather, each reader of the transcript should take into account the proposed corrections that are referenced in this Certification and my rulings thereon. Accordingly, I request that Laurel L. May, USDA – AMS – Dairy Program, cause to be posted on the AMS USDA website, all four sets of proposed corrections and this Certification.

Exhibits 1 through 194 were identified; also identified were Exhibits 20A (*see* Week 5 on the ams/usda website); 148a (*see* Week 8 on the ams/usda website); and 162A (*see* Week 9 on the ams/usda website).

Exhibits 20A, 148a, and 162A were admitted into evidence; and Exhibits 1 through 194 were admitted into evidence EXCEPT for the following exhibits, which were NOT admitted into evidence:

Exhibit 23 was withdrawn (duplicative of a portion of Exhibit 9)

Exhibit 56

Exhibit 67

Exhibit 68

Exhibit 69

Exhibit 78

Exhibit 154 was not offered; was replaced by Exhibit 155 (Tr. 7089, 7121);

Exhibit 162 was replaced by Exhibit 162A

Exhibit 169 rejected (Tr. 7443)

Exhibit 170 rejected (Tr 7443).

If I have erred in my Certification of Transcript, please apprise the Secretary by filing with the Hearing Clerk a notice of my error(s) by the briefing deadlines, either within a brief or by separate document.

The Hearing Clerk’s contact information is at the bottom of the last page. Filings should ordinarily be submitted in quadruplicate and must *arrive* in the Hearing Clerk’s office earlier than 4:30 pm Eastern to be stamped “Received” on the

arrival date. Please use a next-business-day delivery service through a commercial carrier such as FedEx or UPS to ensure timely filing. [Mail through the U.S. Postal Service is diverted for irradiation and will be delayed.]

Copies of this Certification of Transcript shall be sent by the Hearing Clerk by email to the "email group" (including those who filed notice of entry of appearance with an email address); and, additionally, by two hard copies for pick-up, one for Laurel L. May, USDA – AMS – Dairy Program; and the other for USDA - OGC, attn Lauren Becker and Brian Hill.

Done at Washington, D.C.
this 3rd day of March 2016



Jill S. Clifton
Administrative Law Judge

Hearing Clerk's Office
U.S. Department of Agriculture
Stop 9203 South Building Room 1031
1400 Independence Ave SW
Washington, DC 20250-9203
202-720-4443
FAX 202-720-9776
OALJHearingClerks@ocio.usda.gov