

STATE OF NORTH DAKOTA  
**MILK MARKETING BOARD**

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Consumer Member

Kimberly Kessler, Beulah  
Retail Member

Dwane Wanzek, Cleveland  
Producer Member

**AGRICULTURE COMMITTEE MEETING**

**JANUARY 14, 2014**

Testimony By

SHIRLEY GUMMER

**CHAIRMAN SCHMIDT  
MEMBERS OF THE AGRICULTURE COMMITTEE**

**MY NAME IS SHIRLEY GUMMER AND I AM CHAIRMAN AND A  
CONSUMER MEMBER OF THE NORTH DAKOTA MILK MARKETING  
BOARD.**

**OUR FIVE BOARD MEMBERS APPOINTED BY THE GOVERNOR ARE AS  
FOLLOWS: MR DWANE WANZEK, DAIRY FARMER FROM CLEVELAND;  
MR JEFF BEYER, CREAMERY OPERATOR FROM BOTTINEAU; MRS  
KIMBERLY KESSLER, RETAIL GROCER FROM BEULAH; MRS BARBARA  
LANG, CONSUMER MEMBER FROM JAMESTOWN, AND MYSELF.**

**THANK YOU FOR THIS OPPORTUNITY TO REVIEW WITH YOU THE  
OPERATION OF THE NORTH DAKOTA MILK MARKETING BOARD.**

## NORTH DAKOTA MILK MARKETING LAW

North Dakota's fluid milk industry has operated under a pricing structure and fair trade practice law since July 1, 1967, which affects producers, processors, distributors, retailers, and consumers.

North Dakota's 1967 Legislature enacted the law that established a Milk Marketing Board with powers to regulate fluid milk prices and fair trade practices within the industry and establish milk-marketing areas within the state. Experts in the field consider it to be the best and most flexible state milk law in the country.

The need for the legislation arose when huge plants in the Twin Cities started to turn North Dakota into a dumping ground for their surplus milk supplies in the Minnesota-Wisconsin production region. They were practicing unfair and demoralizing trade practices against the North Dakota dairy industry by taking the large super market accounts away from local dairies with low subsidized prices and leaving the small country markets, schools, cafes and nursing homes with small sales volumes and long distances to the local dairies. In an effort to compete, local dairies started to pay the Grade A dairy farmers less for their milk, thus forcing many out of the dairy business. These very same forces are waiting today to move in and disrupt the market from out-of-state locations. They want to dump their surpluses on high volume accounts with easy access to major highways. However they do not want to serve the small volume accounts in the very rural areas, accounts the Board requires those currently licensed to service at the present. (An example of this is the fast food chains and national accounts that buy everything off of a truck from the Twin Cities.)

The Board itself is made up of five members appointed by the Governor for five-year staggered terms. The five-member Board includes one grade A producer, one processor, one food retailer and two consumers.

The Board's mission is to promote and ensure an adequate supply of fresh and wholesome milk to the public of the state and recognizing the perishable nature of milk to set minimum dairy farmer, wholesale and retail prices on milk products to eliminate unfair trade practices and to provide economic stabilization to the dairy industry.

Milk regulation is a complicated business. The following are some of the ways that the Milk Board helps stabilize and maintain a market for North Dakota milk.

The Milk Board establishes minimum prices for Grade A milk to be paid by processors to producers. Grade A producers are paid a blend price for milk based on their utilization rate between milk used for bottling and for other products. Last year the utilization rate in the upper Midwest Federal Milk Marketing Order averaged 17.4%, while the utilization rate under the jurisdiction of the Milk Board averaged 70.4%. This means that producers regulated by the Milk Board generally have a higher utilization rate and receive a higher price. In addition minimum producer prices established by the Milk Board

have often been greater than those established in the Upper Midwest Federal Milk Marketing Order. Although the Milk Board does not regulate the manufacturing grade price, a healthy Grade A market supports and promotes a healthy manufacturing grade market.

The Milk Board regularly audits processing plants to insure that producers are properly paid.

The Milk Board has authority to license processors, distributors and retailers. Processors and distributors must agree to provide retailers, schools, hospitals, nursing homes and restaurants the same frequency of delivery and services as are customary in the community. This provision has proved to be very helpful in maintaining delivery of milk to remote rural areas.

The Board has discretionary authority to adopt and enforce a wide variety of fair trade practice regulations. These include such things as gifts from dealers to retailers, free equipment, unauthorized advertising allowances, unauthorized loans and the like. The enforcement of fair trade practice regulations protects small operators from predatory and monopolistic trade practices.

The Board establishes minimum wholesale and retail prices for milk. This is the best way to prohibit sales below cost by retailers and dealers and prevent destructive price wars. It also establishes a floor price sufficient to keep reasonably efficient processors, distributors and retailers in business.

Services provided by the Board include the following: establish, publish and audit monthly minimum Grade A dairy farmer Class I, II and III prices; promulgate and enforce regulations governing farm-to-plant dairy farmer hauling rates; promulgate and enforce regulations governing dairy farmer purchasing agreements; enforce regulations governing milk classification, reporting and auditing procedures; conduct a processing plant audit program to insure compliance with the above; conduct cost studies and economic surveys regarding the production and marketing of Grade A milk products; establish minimum and/or maximum wholesale and retail prices and audit for compliance of such; eliminate unfair, unjust, and demoralizing trade practices through audit and investigation of such; recover dairy farmer underpayments and assessment underpayments; issue dairy farmer processor, distributor and retailer licenses; hold public hearings, take sworn testimony, study exhibits, enter into deliberations and issue marketing plans.

There are several areas of concern that the dairy industry is faced with in the near term. The continued introduction of mega retailers into retailing markets such as Wal-Mart, and the continued introduction of regional sole-source dairy product suppliers from outside of our state to service national chain accounts with our state

The introduction of mega retailers such as Wal-Mart causes the loss of small town retail grocers and small town dairy product distributors. When small town dairy product distributors lose their grocery store and convenience store accounts they are left with little or no business, forcing them to lock the door; and it becomes more difficult to distribute dairy products to our rural areas because of this decrease in loss of milk sales. This ultimately results in rural areas of our state that may not receive milk product sales service.

The continued introduction of regional sole-source dairy product suppliers from outside of our state, to service national chain accounts within our state, ultimately results in the loss of milk sales to our creameries and distributors, and the loss of valuable Class I milk utilization for our North Dakota dairy farmers which lowers their blend price and their farm income.

The Milk Board recognizes that it does not have authority to do all things for all people. The interstate commerce clause of the United States constitution prohibits the Milk Board from regulating transactions which occur outside the geographical limit of the state even though such transactions can have an adverse impact within the state. The limitations of interstate commerce require that regulation of milk within North Dakota be such that prices and trade practices with the state remain competitive with surrounding states. North Dakota is a sparsely populated state resulting in extremely high distribution costs. In spite of this, milk prices in North Dakota have generally been at about the median of prices charged for milk in the United States.

Producers also recognize that they need local plants to purchase their product that will earn a reasonable rate of return on their investment. They also recognize that the plants need retailers to market North Dakota milk to North Dakota consumers at a price that is fair to both. The Milk Board does not guarantee a profit to anyone. The Milk Board establishes a safety net so that milk wars and predatory trade practices will not force reasonably efficient producers, processors and retailers to go out of business. The proponents of economic development and growth in North Dakota state the best opportunity for such development and growth is the value added concept and processing and finishing of agricultural products. This is what the North Dakota dairy industry has done in the past and would like to continue in the future.

The dairy industry of North Dakota believes that the Milk Board is essential to give North Dakota people the privilege of drinking milk which is produced by North Dakota farmers, processed in North Dakota plants and sold at a fair price to North Dakota consumers with some North Dakota milk production left over for export.

It is conceded in the North Dakota dairy industry that if the Milk Board became ineffective or was lost, that all of North Dakota soon would be included in the Upper Midwest Federal Milk Marketing Order. The choice is not whether or not there will be milk regulation, the choice is whether there will be state regulation or federal regulation.

The overwhelming majority of persons in the dairy industry of North Dakota believe that the North Dakota Milk Marketing Board is an essential element in maintaining a strong viable dairy industry in North Dakota.

### **BOARD'S MISSION STATEMENT**

Promote and ensure an adequate supply of fresh and wholesome milk to the public of the State and recognizing the perishable nature of milk to set minimum dairy farmer, wholesale and retail prices on milk products, to eliminate unfair and demoralizing trade practices and to provide economic stabilization to the dairy industry. The Board through public hearings and audits, supervises, investigates and regulates all segments of the Grade A dairy industry. The Board may also act as a mediator or arbitrator in connection with any controversy or issue among or between dairy farmers, processors, distributors, retailers or consumers if such controversy or issue pertains to the production, transportation, processing, storage, distribution or sale of milk products. The Board through its licensing functions provides a viable market for Grade A dairy farmer milk and Grade A milk products manufactured within the State and strives to protect the State from becoming a dumping ground for dairy products from other States at the expense of our North Dakota dairy farmers, independent distributors and processing plants.

### **PROGRAM OBJECTIVES**

Set minimum dairy farmer, wholesale and retail prices on milk products. Eliminate unfair and demoralizing trade practices and to provide economic stabilization to the dairy industry. Audit, supervise, investigate and regulate all segments of the Grade A dairy industry. Act as a mediator or arbitrator in connection with any controversy or issue among or between dairy farmers, processors, distributors, retailers or consumers if such controversy or issue pertains to the production, transportation, processing, storage, distribution or sale of milk products. Provide a viable market for Grade A dairy farmer milk and Grade A milk products manufactured within the State and strives to protect the State from becoming a dumping ground for dairy products from other States.

### **SERVICES PROVIDED**

Establish, publish and audit monthly minimum Grade A dairy farmer Class I, II and III prices. Promulgate and enforce regulations governing farm-to-plant dairy farmer hauling rates. Promulgate and enforce regulations governing dairy farmer purchasing agreements. Enforce regulations governing milk classification, reporting and auditing procedures. Conduct a processing plant audit program to insure compliance of item 1 through 4 above. Conduct cost studies and economic surveys regarding the production and marketing of Grade A milk products. Establish minimum and/or maximum wholesale and retail prices and audit for compliance of such. Eliminate unfair, unjust and demoralizing trade practices through audit and investigation of such. Recover dairy farmer underpayments and assessment underpayments. Issue dairy farmer, processor, distributor and retailer licenses. Hold public hearings, take sworn testimony, study exhibits, and enter into deliberations and issue marketing plans.

### **PROGRAM STATISTICAL DATA**

The audit program has recovered over \$1,148,550 in under payments to Grade "A" dairy farmers to date and assessment underpayments recovered to date amount to over \$333,792. The Board has ensured that an adequate supply of milk is available to consumers in all areas of the State. The Board has brought economic stability to the Grade A dairy industry of this State and eliminated the chaotic, destructive trade practices within the dairy industry. The Board has ensured that this State has not become a dumping ground for surplus dairy products from other States at the expense of our North Dakota dairy industry.

Funds to administer the law are obtained from a check off/assessment of fourteen cents per hundredweight on the total volume of Class I and Class II milk sales in the State by all licensed processors and distributors.

**MILK MARKETING BOARD  
Bismarck, North Dakota**

**SUMMARY OF ACTIVITIES**  
For Fiscal Years Ended June 30, 2011 and 2012

	<u>2011</u>	<u>2012</u>
Board Meetings.....	6	7
Official Orders and Supplements Issued.....	34	36
Public Hearings.....	1	1
Administrative Hearings.....	1	1
Hearing Notices Issued.....	211	215
Official Orders and Supplements Issued.....	3,776	4,092
Complaints of Violations Received.....	65	70
Violations Investigated.....	79	87
Plant-Distributor Cost Studies.....	3	3
Producer Cost Studies.....	3	3
Hauling Rate Cost Studies.....	2	2
Citations Issued.....	0	0
Injunctive Actions.....	0	0
Administrative Complaints Filed.....	0	0
Number of Plants Audited for Producer Payments and Assessments.	16	16
Number of Months Audited.....	192	192
Number of Producer Adjustments.....	220	236
Total Underpayments Recovered for Dairy Farmers.....	\$13,141	\$21,027
Total Underpayments Recovered for Dairy Farmers to Date.....	\$1,127,523	\$1,148,550
Total Assessment Underpayments Recovered to Date.....	\$322,960	\$333,792
North Dakota Processors and Distributors Licenses.....	61	61
Out-of-State Processors and Distributor Licenses.....	26	27

**MILK MARKETING BOARD**  
**Bismarck, North Dakota**

**GRADE "A" RECEIPTS/UTILIZATION**  
**For Fiscal Years Ended June 30, 2011 And 2012**

		<u>2011 &amp; 2012</u>
GRADE A RECEIPTS		565,886,703 Lbs
<u>UTILIZATION</u>		
	Class I	404,608,993 Lbs
	Class II	45,270,936 Lbs
	Class III	116,006,774 Lbs
	% I	71.5 %
	% II	8.0 %
	% III	20.5 %
BOARD MEMBERS		5
STAFF		4
EXPENSES		\$ 546,816.00
	Class I Fluid Consumption	404,608,993 Lbs
	In Quarts	188,190,229 Qts
	Cost of Administration. Per Quart	\$ .00291
	Population	699,628 (EST)
	Per Capita Fluid Consumption Per Year	289.16 Lbs.
	In Quarts	134.49 Qts
	Cost of Administration Per Person Per Year	\$ 0.3908
	Milk Marketing Board Revenue	\$ 0.1325 per CWT
		Class I and II (only)

**MILK MARKETING BOARD**

**Bismarck, North Dakota**

**MILK UTILIZATION IN NORTH DAKOTA  
For Fiscal Years Ended June 30, 2011 and 2012**

	<u>2011 &amp; 2012</u>
Grade "A" Receipts North Dakota Producers	565,886,703 Lbs.
Gross \$ Payment North Dakota Producers	\$ 103,284,223.04
State Wide Blend Price Per CWT	\$ 18.25
Average Butterfat Test	3.71 %
Class I Price Range Per CWT Within F.M.O	\$ 23.43 to \$17.54
Average Class I Price Per CWT Within F.M.O	\$ 19.41
Class I Price Range Per CWT State Ordered	\$ 24.26 to \$17.54
Average Class I Price Per CWT State Ordered	\$ 20.14
Premium Range Per CWT Class I Over F.M.O	\$ 0.83 to \$0.63
Average Premium Per CWT Class I Over F.M.O	\$ 0.74
Gross Premium Payment	\$ 3,338,741.55
Average Premium Blend Per CWT N.D. Over F.M.O.	\$ .59
Average Class II Price Paid N.D. Dairy Farmers Per CWT.	\$ 18.11
Average Class III Price Paid N.D. Dairy Farmers Per CWT.	\$ 16.29

## Comparative Statement of Revenues and Expenditures

	<u>June 30, 2012</u>	<u>June 30, 2011</u>
<u>Revenues</u>		
Milk Volume Assessments	\$ 256,210	\$ 236,313
Interest on Investments	1,252	1,807
Total Revenues	\$ 257,462	\$ 238,120
<u>Expenditures</u>		
Salaries and Benefits	\$ 249,101	\$ 232,807
Travel	10,984	10,069
Rent of Building Space	6,818	6,818
Audit and Legal Fees	5,433	10,305
Telephone	1,636	1,655
Postage	1,444	1,450
Professional Development	1,032	1,678
Insurance	675	1,075
Periodicals and Subscriptions	618	338
Office Supplies	289	396
Repairs	265	317
Equipment	284	
Printing	145	295
Data Processing	122	162
Donated Surplus Property	5	
Service Awards		600
Total Expenditures	\$ 278,851	\$ 267,965
Revenues Over/(Under) Expenditures	\$ (21,389)	\$ (29,845)