

**Montana Board of Milk Control – Meeting Minutes  
February 14, 2014**

**Call to Order**

Chairperson Mr. Mitchell called the meeting to order at 10:05 a.m. in the Scott Hart Auditorium, 302 N Roberts St, Helena, Montana

**Board Members:**

Mr. W. Scott Mitchell, Chairperson, Billings, Montana  
Ms. Ariel Overstreet-Adkins, Helena, Montana  
Mr. Erik Somerfeld, Power, Montana  
Mr. R. James Parker, Fairfield, Montana  
Mr. Jerry A. Weissman, Great Falls, Montana

**Members Present:**

Mr. W. Scott Mitchell, Ms. Ariel Overstreet-Adkins, Mr. Erik Somerfeld, Mr. R. James Parker, and Mr. Jerry Weissman

**Other Attendees:**

Ms. Patti Thompson, Bureau Chief, Milk Control Bureau, Department of Livestock  
Ms. Linda Grady, Auditor, Milk Control Bureau, Department of Livestock  
Mr. George Harris, Administrator, Centralized Services Division, Department of Livestock  
Mr. Rob Stutz, Attorney on behalf of the Department of Livestock  
Mr. Christian MacKay, Executive Officer, Department of Livestock  
Mr. David Miller, Montana Correctional Enterprise Dairy, Producer Committee  
Mr. Ed Waldner, MMPA, Choteau  
Mr. Elias Wipf, MMPA, Choteau  
Mr. Ike Wurz, MMPA, Choteau  
Mr. Ruben Wurz, Producer Quota Committee, Great Falls  
Mr. Jock Andersen, Meadow Gold, Helena

**Approval of Minutes from October 15, 2013.**

**Motion:** Mr. Parker moved to approve the minutes. Mr. Somerfeld moved to second the minutes. The Board voted unanimously to approve the minutes.

**Election of vice-chair for the Board**

Board Chairperson Mr. Mitchell asked for nominations for a member to serve as the vice-chairperson.

Mr. Parker nominated Mr. Weissman to serve in this position. No other nominations were presented.

**Motion:** The Board voted unanimously to approve Mr. Weissman as the vice-chairperson.

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**Introduction to the rule making process**

**Presented to the Board by Mr. Rob Stutz, Legal Counsel for the Montana Department of Livestock**

Discussion of the rule making process was put in context of a petition for rulemaking the Board received from the Montana Milk Producers Association (MMPA). The petition requested that the Board conduct a hearing for the purpose of establishing a uniform set price to be paid into the statewide pool for milk that is processed in Montana and sold out of state. The petition stated that establishing a set price to be paid into the statewide pool for milk that is processed in Montana and sold out of state would bring uniformity to the price paid into the pool for such milk, and would provide for a more efficient means of accounting for such milk.

Counsel identified to the Board two Montana statutes that address the rulemaking process with regards to the petition: 81-23-302(1) MCA and 2-4-315 MCA.

Counsel noted to the Board that the petition did not propose any specific language as to how a set price could be established and suggested that the Board consider approaching MMPA to request suspension of the petition until there was further clarification of the amendment sought.

**Board Member Mr. Parker** asked counsel if the petition could be denied. Counsel quoted from MCA 2-4-315 MCA, “A decision to deny a petition or to initiate rulemaking proceedings must be in writing and based on record evidence.” Counsel instructed the Board that it would need to state in writing record evidence supporting denial of the petition.

**Board Member Mr. Weissman** commented that Montana does not accept federal code rules and would like to hear from the petitioners with regards to the pricing.

**Board Chairperson Mr. Mitchell** asked counsel to share with the Board the open meeting laws. Counsel discussed 2-3-202 MCA and further explained that a meeting includes a quorum of members using electronic communications such phone calls, e-mails, skyping, etc. to discuss a subject that pertains to their role as board members. Counsel discussed an Attorney General opinion that public notice must be given more than 48 hours before the meeting is to convene.

**Overview of Montana Pricing Structure As It Pertains To Packaged Sales to Out-Of-State Sources (a presentation by Patti Thompson, Bureau Chief, Milk Control Bureau)**

Ms. Thompson gave an overview of the pricing structure as it pertains to packaged sales to out-of-sources, noting ARM 32.24.523(1) Marketing of Surplus Milk to Nonpool Handlers.

**Mr. Ed Waldner, public member,** commented to the Board that any milk in Montana is paid at Federal Class I plus the \$2.55 differential set by Montana rule. Anything out of state is considered Federal Class IV, mover price.

**Public comment on non-agenda items**

**Mr. Jock Anderson, attorney at law,** shared with the Board some history on the on 32.24.523 ARM. The differential was \$3.25 and with producer being paid at a set price of \$8.00 per 100/cwt. During

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the 1995 legislative session, the legislature did away with price controls on the retail and wholesale levels. Then Meadow Gold stated that the \$3.25 differential would not allow the producers to get paid as well so they raised the Class III price.

In 2000, another dispute developed over the concept of the floor price, agreeing that the Board could do away with the floor, Meadow Gold agreed to purchase milk from Darigold for there in-state and out-of-state needs.

**New and Internal Board business**

**Mr. George Harris, Central Services Division Administrator** shared with the Board an issue that was brought to his attention by the Montana Legislative Auditor Department with regards to producer and distributor assessments in the rules.

- **Administrative Rules of Montana 32.23.301 Licensee Assessments** (1) Pursuant to 81-23-202, MCA, the following assessments for the purpose of deriving funds to administer and enforce the Milk Control Act during the current fiscal year beginning July 1 and ending June 30, are hereby levied upon the Milk Control Act licensees of this department.
  - A fee of \$0.06 per hundredweight on the total volume of all milk subject to the Milk Control Act produced and sold by a producer-distributor.
  - (b) A fee of \$0.06 per hundredweight on the total volume of all milk subject to the Milk Control Act sold in this state by a distributor home based in another state. Said fee is to be paid either by the foreign distributor or his jobber who imports such milk for sale within this state.
  - (c) A fee of \$0.25 per hundredweight on the total volume of all milk subject to the Milk Control Act sold by a producer.
  - (d) A fee of \$0.25 per hundredweight on the total volume of milk subject to the Milk Control Act sold by a distributor, excepting that which is sold to another distributor.

According to the auditors, the rules state that the assessment fee cannot be more than the 50 percent of the \$0.06 cents and that the Board needs to make a motion to change the language in subsections (c) and (d) to read:

- (c) A fee of ~~\$0.25~~ \$0.025 per hundredweight on the total volume of all milk subject to the Milk Control Act sold by a producer.
- (d) A fee of ~~\$0.25~~ \$0.025 per hundredweight on the total volume of milk subject to the Milk Control Act sold by a distributor, excepting that which is sold to another distributor.

**Motion:** Mr. Weissman moved that the appropriate legal and accounting sources of the Department of Livestock examine Administrative Rule of Montana 32.23.301(c) and (d) to

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determine if there was a typographical error in the way the rule was written with regards to it being stated that it is \$0.25 and that it should have been \$0.025. Mr. Somerfeld seconded the motion.

After further discussion with regards to staff looking into the matter without a motion, Mr. Weissman withdrew his motion and Mr. Somerfeld withdrew his second.

**Mr. George Harris, Central Services Division Administrator** shared with Board that Administrative Assessments will cease to be suspended beginning March 1, 2014.

**Board Member Mr. Weissman** expressed concern about the process about how the milk pricing is determined and believes there needs to be an internal committee with a board member looking at the different grades and milk pricing.

**Motion:** Mr. Parker moved to put an item on the agenda to discuss the implementation of the Montana milk pricing formulas. Ms. Ariel-Overstreet seconded the motion. The motion passed unanimously.

**Motion:** Mr. Weissman moved to have Board meetings no less than three meetings per year, preferably one each quarter. Mr. Somerfeld seconded the motion.

**Board Chairperson Mr. Mitchell** encouraged Mr. Weissman to amend his motion to apply to meetings for the year 2014. Mr. Weissman amended his motion to have Board meetings no less than three meetings in 2014. Mr. Somerfeld seconded the amended motion. The Board approved the motion unanimously.

The Board recommended that the petitioners (MMPA) propose specific language for the rule amendment and invited all interested parties to bring specific proposals to the hearing on the petition.

**Motion:** Mr. Somerfeld moved to notice a hearing on the pending petition for March 7, 2014 at 10:00 a.m. Mr. Parker seconded the motion. The Board unanimously approved the motion.

**Adjournment**

The meeting adjourned at 12:29 p.m. with a tentative meeting scheduled for June 2014.

  
W. Scott Mitchell,  
Chairperson, Montana Board of Milk Control