

**Montana Board of Milk Control – Meeting Minutes
June 10, 2014**

Call to Order

Chairperson Mitchell called the meeting to order at 1:06 p.m. in the Scott Hart Auditorium, 302 N Roberts Street, Helena, Montana.

Attendance

Board Members:

	Present	Absent
W. Scott Mitchell, Chair	X	
Jerry A. Weissman, Vice Chair	X	
Ariel Overstreet-Adkins	X	
R. James Parker	X	
Erik Somerfeld		X

Montana Department of Livestock Staff:

George Harris, Administrator, Centralized Services Division
Mr. Chad Lee, Bureau Chief, Milk Control Bureau
Ms. Linda Grady, Auditor, Milk Control Bureau
Rob Stutz, Montana Department of Justice, Agency Legal Services (attorney representing the Montana Department of Livestock)

Guests:

Rob Adamson, Meadow Gold
Jock Anderson, Meadow Gold
Loren Dyk, Northwest Dairy Association / Amsterdam Holsteins
Carolyn Gray, Montana Department of Justice, Agency Legal Services
Michael J. Hofer, Glendale Colony
David Lewis, Northwest Dairy Association / Big Creek Dairy
Dan McBride, Northwest Dairy Association / Darigold, Inc.
David Miller, Montana Correctional Enterprises Dairy / Producer Committee
Andrew Newcomer, Counsel for Montana Milk Producers Association
Bud Rowley, Rowley Trucking Inc.
Ed Waldner, Montana Milk Producers Association / Riverview Colony
Andrew P Wipf, Big Sky Colony
Walter Wipf, Martinsdale Colony

Introduction to New Bureau Chief

Mr. Harris introduced Chad Lee, the new bureau chief for the Milk Control Bureau.

Minutes

Mr. Weissman moved and Mr. Parker seconded the motion to approve the minutes of the February 14, 2014 meeting. The motion carried. All members voted in favor.

Montana Board of Milk Control – Meeting Minutes
June 10, 2014

Unfinished Business & General Orders

Petition Withdrawn by MMPA after February 14, 2014 Board Meeting

Mr. Stutz noted that the Board scheduled a hearing to determine whether to accept the petition for rulemaking filed by MMPA. In the interim, MMPA withdrew its petition, eliminating the need for the hearing. No Board action.

Discussion of Typographical Error in Published in ARM 32.23.301(1)(c) and (d) Licensee Assessments

Mr. Stutz stated that the administrative assessment rate published in ARM 32.23.301(1)(c) and 32.23.301(1)(d) had been corrected by the Office of the Secretary of State. The correct rate was \$0.025 per hundredweight, which had been erroneously published as \$0.25 per hundredweight by the Office of the Secretary of State. The Bureau collected the proper amount despite the typographical error. No Board action.

New Business

Milk Control Bureau Report

Mr. Lee reported on the Bureau's recent activity and near-term plans: development of a written process manual; improved format for the monthly price announcement; a new report prepared during pooling to present the calculation of quota and excess prices; listing of the dairy accountant position; annual licensing; audits; and statistical reporting. Mr. Lee described corrective adjustments to be made in a future pooling prior to auditing October 2013 and January 2014 to correct pooling data-entry errors and pooling calculation errors. Corrective adjustments are being implemented ahead of auditing to avoid delay of payment to dairy producers resulting from errors in pooling.

Mr. Lee made a presentation on the calculation of announced minimum prices and calculation of quota and excess milk prices during pooling using announced minimum prices. Quota and excess milk prices are used to calculate the compensation of dairy producers.

Mr. Lee described a petition received by the Bureau on June 4, 2014 from MMPA. The petition before the Board is to amend ARM 32.24.523 to provide that if an out-of-state purchaser of surplus milk agrees to make a payment on the components of surplus milk, the component payment may be made to the individual producer or their related association or cooperative, and will not be treated as the gain from the sale of the surplus milk that is exclusively shared by all Montana pool dairymen.

Mr. Lee explained the requirements and process for the Board to respond to the petition. The Board must deny the petition or initiate rulemaking within sixty days of the receipt of the petition (August 3, 2014), the Board must record its decision and reasoning in writing, and the reasoning must be based on record evidence. Initiation of the rulemaking process does not necessarily result in a rule change and does not limit the Board to rulemaking specific to the petition. Once the rulemaking process is initiated, there is no time constraint for the drafting period. After drafting rule amendments, the Bureau brings a recommendation to the Board, which reviews and takes action on the recommendation. If the Board advances the Bureau's proposed changes, a Written Proposal Notice is filed with the Secretary of State for publication. The Written Proposal Notice must be published for at least thirty days in advance of the

Montana Board of Milk Control – Meeting Minutes
June 10, 2014

agency's proposed action. At least twenty-eight days must be provided after the original notice for interested persons to submit data, views, and arguments. A hearing is not required prior to adopting rule changes unless requested by enough people; and if a hearing is held, the Board must give interested parties notice at least twenty days prior to a hearing.

Other New Business

Ex parte Contact

Mr. Stutz discussed ex parte contact, which addresses the need for a decision maker to be unbiased and unprejudiced in making decisions. Because Board members are serving the public, Mr. Stutz advised Board members to avoid contacts on pending issues in which the Board would have authority to make a decision. Individuals who come before the Board are entitled to unbiased, unprejudiced opportunity to have their issue heard and decided. Even if a Board member were able to maintain neutrality, there would be a perception that if there is ex parte contact that the Board could be biased against an individual or group. The Board's ability to function could be impacted negatively if maintaining quorum became difficult due to a Board members recusing from decision making due to ex parte contact. Mr. Stutz advised Board members to contact Chairperson Mitchell or Mr. Lee if they had ex parte contact and discuss whether the contact will influence the impartiality of Board members.

Board Comments on Bureau Report

Mr. Parker posed questions regarding whether Montana's Class I differential is working for both Montana producers and processors and whether out-of-state milk imports are damaging Montana's milk industry. Mr. Lee responded that changes to Montana's Class I differential would involve a rule change and that producers and dairy processors have not communicated a desire for change to Montana milk pricing.

Mr. Weissman stated his belief that prices paid to producers should be in sync with the markets instead of the Federal Milk Marketing Order and that at some point in the future the Board should make the Montana price more of a market price.

Ms. Overstreet-Adkins requested that Mr. Lee's presentation be made available to the Board.

Mr. Mitchell requested recommendations from the Bureau for the next Board meeting with regard to catching up on annual statistical reports and purpose of certain aspects of reporting.

Mr. Parker moved that the Board direct the Bureau chief to study formats and report on the status of annual reports and bring recommendations for changes and provide guidance on past annual reports. Ms. Overstreet-Adkins seconded the motion. The motion carried. All members voted in favor.

Mr. Mitchell noted that it would be useful for the Board to know the volume of milk coming into Montana for retail sale. Mr. Weissman noted that certain products formerly made in Montana are now imported and that he desired information on these

Montana Board of Milk Control – Meeting Minutes
June 10, 2014

products too. Mr. Mitchell instructed that imports should at least be broken down by class.

Hearing for Petition for Rulemaking Received from MMPA

Mr. Mitchell noted that the petition was received only a short time before the Board meeting and that there would be many parties that would provide input. Mr. Mitchell expressed the desire to set a date for a public meeting to decide whether to initiate the rulemaking process.

Mr. Weissman moved that the Board schedule a meeting in Great Falls on June 30, 2014 to consider the petition for rulemaking received from MMPA. Mr. Parker seconded the motion. The motion carried. All members voted in favor. The Board discussed a specific time and location for the meeting and instructed the Bureau to find a venue with similar seating as the Scott Hart Auditorium that would be available mid-morning on June 30, 2014.

Public Comment

Andy Newcomer, Counsel Representing MMPA

Andy Newcomer, counsel representing MMPA, stated MMPA filed a petition to amend ARM 32.24.523. The proposed amendments are available to the public and were included in the handouts of the Board meeting. The proposed rule change would allow producers to be paid for components from the excess milk and reward producers whose milk exceeds benchmark standards and likely incurred higher feed costs. Mr. Newcomer encouraged the Board to initiate the rulemaking process, whether through the normal rulemaking process or through expedited negotiated rulemaking. Also, MMPA would like to bring attention that MMPA wishes to become a buyer of excess milk and is willing to pay a fair market price for it. MMPA feels that this would be beneficial to producers and ensure a buyer of all excess milk. In the past the handlers have been unable to find buyers of excess milk and have had to dump portions of surplus milk. Benefits would be to assure a buyer of all the excess milk, keeping revenue in Montana, and allowing a Montana organization to decide what happens to this surplus milk. The pool will be reimbursed in the same way that it always has. Rather than a plant in Idaho purchasing the surplus milk, MMPA will be the entity purchasing it. MMPA plans to make a substantial investment in the milk market in Montana and have explored building a reverse osmosis plant in Great Falls that would take the surplus milk and spin the water off to make it easier to ship, but they need a stable supply of surplus milk before they can move forward with a very substantial investment in the plant. MMPA believes that the rules currently allow for this. The rules do not specify who can or cannot buy the surplus milk; it simply says that it must be sold in quote "an economically advantageous manner." MMPA just wanted to bring this to everyone's attention at the Board meeting, given that many of the players are present.

Mr. Weissman asked Mr. Newcomer how the Board would comment or make regulations regarding the announcement of MMPA's intent to purchase surplus milk.

Mr. Newcomer responded that MMPA does not feel that changes are necessary, that MMPA wanted to bring its intent to everyone's attention. The rules, as MMPA reads them, allow for this and MMPA does not feel that an amendment or new rule is needed. The rules as they exist do not prohibit MMPA from purchasing the surplus milk. The regulation simply says that surplus

Montana Board of Milk Control – Meeting Minutes
June 10, 2014

milk must be sold in a quote “economically advantageous manner.” The Milk Producers are willing to pay a fair market price for this milk.

Mr. Weissman asked several questions regarding the volume of surplus milk that would be purchased, the duration or quantity of purchases, and whether purchases would be under contract. Mr. Newcomer deferred to Ed Waldner, representing MMPA, to respond.

Mr. Mitchell informed Mr. Newcomer that the comments were part of an informational agenda item and asked whether MMPA was just giving notice or asking for a future rule change. Mr. Newcomer responded that given that the players in the industry were present, MMPA wanted to bring its intent to everyone’s attention in case there were comments or questions.

Ed Waldner, Representing MMPA

Mr. Waldner said the current rules do not prohibit anybody from purchasing the surplus milk and that, if the rules do, MMPA is not going to make a seven million dollar investment to make it better for the Montana producer. If there are no objections, and even if there are some parties that would object, the rules do not prohibit MMPA from purchasing surplus milk as long as MMPA buys it at a competitive price, as long as it the surplus milk is sold in an economic advantageous way. MMPA is willing to pay whatever was paid for the milk. There are ups and downs, and MMPA will follow the market. MMPA will bring the best to the Montana producer that it can. A reverse osmosis plant spins water off the milk. It costs \$4.00, \$3.50, to ship milk to Idaho. A reverse osmosis plant can reduce the freight by a third, and the milk has the same components and same value. MMPA can purchase surplus milk as long as it is competitive. Right now, the surplus is at Meadow Gold. MMPA does not want Meadow Gold to give it a break. MMPA will pay whatever Meadow Gold could get in the future or what Meadow Gold has been getting.

David Lewis, Milk Producer and Northwest Dairy Association Board Member

Mr. Lewis addressed Mr. Parker specifically regarding milk imported and exported across Montana’s borders. Eight million pounds of milk is shipped out of the state, mostly in a bottle. Mr. Lewis’s impression as a producer is that Montana ships a lot of milk out of state into other states and that he would hate to see the market impeded upon too much. Mr. Lewis thinks Montana has good rules in place for the current situation.

Mr. Lewis addressed Mr. Weissman specifically regarding Mr. Weissman’s comments that Montana milk prices should mirror the market. Montana’s market is the states that surround it; if it does not match or mirror the prices in those states, someone will bring milk in. The average price in the Pacific Northwest Federal Order in 2012 was \$17.20 compared to \$17.79 in Montana. In 2013, the average price in the Pacific Northwest Federal Order was \$18.86 compared to \$19.24 in Montana. In May 2014, the average price in the Pacific Northwest Federal Order was \$23.03 compared to \$24.32 in Montana. Montana does not mirror those states; it sets the bar a little higher. The price is pretty good in Montana from the perspective of a producer, the person who is most concerned.

Mr. Lewis addressed the Board regarding MMPA’s petition to amend ARM 32.24.523. Components include fats, solids not fats, and protein. If milk is sold out of state and the value for those components is skimmed off, most of the value of the milk is directed directly to the individual producer. Who is going to pay for the freight? Right now, the cost of freight is shared

Montana Board of Milk Control – Meeting Minutes
June 10, 2014

amongst all farmers as a shared cost. It hurts all members of the pool to share the cost of freight but have only 50% of the value of the milk shared through the pool. Does the producer that receives the value for components still (in addition to the component payment) get quota and excess prices for milk and receive the blended price? What utilization will surplus milk be in? How will freight be accounted for?

Mr. Lewis discussed MMPA's proposal to build a reverse osmosis plant. Mr. Lewis believes it is fine if surplus milk can be utilized and skip shipping it out of state. Would the milk utilized be classified as surplus milk or processed milk? If it is processed milk, the rules require it to be classified as Montana Class I, Class II, or Class III. From the audience, Mr. Waldner interjected that the milk would not be processed milk because it would not be pasteurized. Mr. Lewis acknowledged and accepted Mr. Waldner's interjection as something that would be acceptable to him as a Montana dairyman.

Mr. Lewis continued regarding MMPA purchasing surplus milk. The price will be easy to figure out, Class IV minus freight. The price will be pretty set. If MMPA does not pay enough, the price will go up because MMPA is not going to have milk. If MMPA is paying plenty, they will have all the milk they want. Mr. Lewis then stated that he did not think anyone could force his (Darigold) surplus milk to go to MMPA just because it has a plant.

Rob Adamson, Meadow Gold

Mr. Adamson welcomed Mr. Lee as the Bureau Chief and made complimentary statements to the Board regarding Mr. Lee and Ms. Grady. With regard to the Bureau moving forward with audits, Mr. Adamson noted that even though Meadow Gold would like any money that was due, it has closed out years that are being audited and that that should be considered in the process of thinking about what needs to go forward. Mr. Adamson encouraged moving forward rather than look years back.

Mr. Adamson addressed the Board a second time and suggested that the petition needs to be re-thought because butterfat is such a large component of milk.

Following Mr. Adamson's second address to the Board, Mr. Mitchell said to the public that the Board is doing what is required by law, given that a petition has been filed. If the Board decides on using a negotiated rulemaking process, the process is a formal processes provided for by administrative rules that would involve input from interested parties. Negotiated rulemaking is different than when interested parties get together, talk informally, and bring a joint proposal for rulemaking to the Board, as has occurred in the past. Mr. Mitchell encouraged the interested parties to communicate and bring a proposal for the Board to consider.

Ed Waldner, Representing MMPA

Mr. Waldner addressed the Board a second time, making the following paraphrased statements. If MMPA can buy the excess milk and re-sell it at a component price, that is all MMPA is after. MMPA does not want to purchase from the Darigold producers but does think that the Darigold milk should come to Great Falls if it costs \$3.50 to ship Darigold milk to Jerome, Idaho and \$1.40 to ship to Great Falls.

Following Mr. Waldner's second address to the Board, Mr. Mitchell stated that Mr. Waldner's statements were an example of why there are things for the milk industry to discuss with each

Montana Board of Milk Control – Meeting Minutes
June 10, 2014

other. Mr. Weissman told Mr. Waldner that the Board does not start or stop anyone from creating a processing plant and that the market will determine what MMPA can do.

Mr. Mitchell recognized Rob Stutz, attorney representing the Montana Department of Livestock. Mr. Stutz provided a background history of events pertaining to MMPA's petition for rulemaking in February 2014. At the February 14, 2014 meeting there was discussion that the process for rulemaking would be easier if the interested parties jointly developed a proposal for rulemaking. Following the meeting, the petition was withdrawn so that the parties could consider whether they wanted to jointly propose rulemaking. Mr. Stutz encouraged the parties to talk and decide whether to bring a more specific proposal before the Board. Mr. Stutz requested that if MMPA was inclined to withdraw its petition, that it not delay in communicating that decision so that the Board could avoid unnecessary effort in meeting its legal obligations.

Mr. Waldner addressed Chairperson Mitchell a third time and stated that MMPA was considering withdrawing its petition for rulemaking because it accomplished what the rulemaking would accomplish by being able to buy the excess milk. After being asked by Mr. Weissman whether MMPA was withdrawing its petition for rulemaking, Mr. Waldner responded that the Montana Milk Producers had accomplished what it wanted and that Mr. Lewis was not opposed to MMPA buying the excess milk at a competitive price.

Mr. Mitchell asked Mr. Waldner whether he had authority to act on behalf of MMPA to withdraw the petition. Mr. Waldner responded that he believed he had authority. Mr. Stutz recommended to Mr. Mitchell that the Board wait to cancel its hearing until notice of withdrawal of the petition was received from Mark Meyer, the attorney who filed the petition on behalf of MMPA. Mr. Mitchell instructed MMPA to file any notice of withdrawal of its petition for rulemaking with the Bureau. Until such notice is received, the hearing date is set.

Next Meeting

The Board discussed a timeframe for its next regular Board meeting following the June 30, 2014 hearing on the petition for rulemaking received from MMPA. No date was set, but the consensus was that the Board would meet in the fall or within sixty days of the June 30, 2014 hearing.

Adjournment

Mr. Mitchell adjourned at 3:53 p.m.



_____ **W. Scott Mitchell, Chair**

Date: 12/18/2014