

**Montana Board of Milk Control – Meeting Minutes
December 18, 2014**

Call to Order

Chairperson Scott Mitchell called the meeting to order at 1:01 p.m. at the Livestock Loss Board Office, 1404 ½ 8th Avenue, Helena, Montana.

Attendance

Board Members:

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

Montana Department of Livestock Staff:

George Harris, Administrator, Centralized Services Division
Chad Lee, Bureau Chief, Milk Control Bureau
Mark Curtis, Dairy Accountant, Milk Control Bureau

Guests:

Jock Anderson, attorney representing Meadow Gold
Michael J. Hofer, Glendale Colony / Producer Committee
Sam Hofer, Surprise Creek Colony / Producer Committee
David Miller, Montana Correctional Enterprises Dairy / Producer Committee
Andrew P Wipf, Big Sky Colony / Producer Committee
Ruben A. Wurz, Big Stone Colony / Producer Committee

I. INTRODUCTION TO NEW DAIRY ACCOUNTANT

Chad Lee introduced Mark Curtis, the new Dairy Accounting for the Milk Control Bureau.

II. MINUTES

Motion:

Erik Somerfeld moved and Ariel Overstreet-Adkins seconded the motion to approve the minutes as presented. The motion carried. All members voted in favor.

III. UNFINISHED BUSINESS & GENERAL ORDERS

A. Hearing for Petition for Rulemaking Received from MMPA (Scheduled June 30, 2014 in Great Falls)

Mr. Mitchell stated that the Montana Milk Producers Association withdrew its petition for rulemaking, so the hearing scheduled for June 30, 2014 was cancelled.

B. Status of Statistics Reporting

Chad Lee reported that due to other tasks competing for time, he was limited in the amount of attention he could give to the resumption of statistics reporting. Mr. Lee stated that he was able to evaluate the former system and identified some errors, as well as some information that he thought had limited relevance. Mr.

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Lee requested more time to set up more statistical databases and develop a template (table of contents and examples) for the board to review and comment at a meeting in the spring of 2015. Mr. Lee made recommendations for future statistical reports. Mr. Lee's recommendations include abandoning the previous system; preparing annual reports on a fiscal year basis, with Fiscal Year 2015 being the first year; not waiting for pooling audits to be completed prior to preparing statistical reports; where possible, presenting information in the form of charts and graphs instead of data tables; and providing time series data or comparison to prior dates. Mr. Lee discussed the need for prioritization of information and giving consideration to what information is needed for decisions the board might make.

The board discussed the recommendations made and inquired about the completion date for a Fiscal Year 2015 report. Mr. Lee stated that it should be possible to provide a statistical report template for board comment by May or June 2015 and that he anticipates that a draft annual report for Fiscal Year 2015 would be available by mid-August 2015. Jerry Weissman expressed concern about a recommendation by Mr. Lee that the bureau not prepare annual statistical reports for the years between Fiscal Year 2015 and the last annual statistical report published, particularly from the standpoint of whether the board would be in violation of its duties. Mr. Mitchell instructed Mr. Lee to contact Rob Stutz (attorney representing the Department of Livestock) to get a legal opinion about the course of action discussed and what level of specificity is necessary for the board to meet its requirements.

Motion:

Jim Parker moved and Erik Somerfeld seconded the motion for the bureau to prepare a template for a draft statistics report for Fiscal Year 2015 as proposed for the board to review at its spring meeting. The motion carried. All members voted in favor.

To assist the board in gaining perspective on the Montana milk market, Chad Lee discussed key information in handouts showing estimates of Montana dairy consumption and Montana imports of dairy products, as well as information on Montana dairy production, classified utilization and exports of Class I packaged products. The format of the information provided compared 2013 with 2011 and comparing the first three quarters of 2014 with the first three quarters of 2013.

IV. NEW BUSINESS

A. Milk Control Bureau Report

i. Activity

Mr. Lee discussed activity by the bureau since the June 10, 2014 board meeting, including information provided to the Legislative Services Division, development of new databases, progress on developing a new pooling spreadsheet, audits, monitoring the sale of surplus milk, and attendance of the International Association of Milk Control Officials annual convention. In discussing monitoring of the sale of surplus milk, Mr. Lee discussed inquiries made by the bureau pertaining to the price of bulk milk sold by Meadow Gold. The bureau and Meadow Gold worked through the issue and the point became moot when the Montana Milk Producers Association made an additional payment to Meadow Gold related to purchases made in May, June, and July 2014. During this time, Meadow Gold considered exercising its right to turn over responsibility of marketing surplus milk to the Producer Committee. The administrative rules provide that a pool handler may turn over the responsibility to market surplus milk to the Producer Committee without a period of notice. Similarly, the Producer Committee may take over the responsibility of marketing surplus milk without a period of notice. Mr. Lee noted to the board that it would be desirable to

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have an administrative rule requiring a period of notice for such changes in responsibility for marketing surplus milk to ensure an orderly marketing of milk. Mr. Mitchell instructed Mr. Lee to provide an update on the new pooling spreadsheet at a board meeting to be scheduled in the spring of 2015.

ii. Price Used for Surplus Gain/Loss Calculation of Out-of-State Milk Sales

Mr. Lee described the calculations made to determine the gain or loss on the sale of surplus milk sold to out-of-state markets. The gain or loss is added to the skim pool value in calculating quota and excess prices. ARM 32.24.523(4) specifies that all proceeds received from such sales are to be reported and added to the pool, less deductions for the Class III value and transportation expenses. Mr. Lee noted that for packaged milk sold out-of-state, if all proceeds were reported, distributors would have no margin and would therefore have no motivation to market packaged milk for out-of-state sale. Mr. Lee explained that the prices used to determine the value of surplus packaged milk sold out-of-state are based upon an agreement between Meadow Gold and Darigold and are not addressed by administrative rule. Mr. Lee reviewed information showing that packaged surplus milk sales accounts for the majority of out-of-state milk sales by Montana distributors, the majority of the net gain on sale of surplus milk, and provides for a higher margin of gain (\$/cwt) on the sale of surplus milk.

Mr. Lee identified two things that he thought the board should take away from his presentation. Out-of-state surplus milk sales are classified as Class III, but the actual amount paid for packaged milk is always greater than the Class III price and often greater than the Class III price for sales of bulk milk. Overall, out-of-state surplus sales are compensated significantly over the Class III price largely because of the prices being assigned to the value of surplus packaged milk, which is attributable to the agreement between Meadow Gold and Darigold.

Mr. Lee identified improvements the bureau made pertaining to the reporting of surplus sales in reports mailed to producers following pooling. Following comments from Mr. Parker, Mr. Mitchell recommended that the report provided to producers present separate information for the sales of bulk surplus milk and packaged surplus milk. Mr. Lee also showed charts added to supplemental information provided in the January 2015 monthly price announcement report that compare quota prices to announced prices for Class I, Class II, and Class III milk.

iii. Legislative & Rule Making Changes

Mr. Mitchell explained that a series of statutes govern milk control, and many statutes require or provide for rule making procedures that establish administrative rules that also govern milk control. Statutes can only be changed by the Legislature, which meets every two years. Rulemaking procedures may occur year-round. Mr. Mitchell learned that there are deadlines for statutory changes proposed by the Department of Livestock. Proposed legislation from the department needs to run through a bureaucratic process for the administration to weigh in. The deadline for such legislation expired prior to any discussion with Mr. Lee of statutory changes that the board might propose. As a result, the board is not in a position to propose cleanup legislation or new legislation as a department bill for the 2015 Legislative Session. The board could work to develop department bills for the 2017 Legislature as the bureau examines statutes. There may be legislation introduced in the 2015 Legislature that could impact laws pertaining to the board, and the bureau is instructed to keep the Chairman informed. Mr. Mitchell noted that if board members want to testify on legislation, there are certain requirements by which board members must abide.

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Mr. Mitchell explained that changes may be desired to 81-23-202, MCA if processors and producers agree that changes make sense and find a legislator that will introduce a bill. Mr. Mitchell reviewed content of the statute, much of which pertains to assessments used to fund the Milk Control Bureau and activities of the Board of Milk Control. The statute sets deadlines by which assessments are to be paid. Mr. Mitchell has come to an understanding that the deadlines are out of sync with what makes sense to distributors and that while sometimes the deadlines are hard to meet and are not met, the assessments are paid. Subsection six of the statute provides that if an assessment is not paid on time, the business's license is automatically revoked and can only be reinstated upon payment of a thirty percent fine. The bureau has identified this statutory language as something it would like to have changed. The board discussed the issue and importance of getting direct input from the major processors.

Motion:

Jim Parker moved and Ariel Overstreet-Adkins seconded the motion to direct Mr. Lee to work with the two processors as necessary and to contact appropriate legislators, senators and representatives on the agriculture committee to do whatever cleanup work is necessary on paragraphs (5) and (6) of 81-23-202, MCA. The motion carried. All members voted in favor.

Mr. Mitchell asked the board and staff if they were aware of any bill drafts or rumored legislation that needed to be discussed by the board at the meeting. Mr. Lee stated that there were only two bill draft titles directly related to milk, both sponsored by Representative Hertz. As of the meeting date, these bill drafts consisted of titles only and it was unknown whether they would ultimately relate to the Milk Control Act. Mr. Weissman stated that there would be a bill on raw milk; Mr. Mitchell stated that a raw milk bill would not be within the purview of the Board of Milk Control. Mr. Mitchell instructed Mr. Lee to keep the board apprised of relevant legislation and stated legislation may develop that would require board members to weigh in on short notice.

Mr. Mitchell discussed rulemaking changes from two different perspectives of time: longer-term cleanup involving amendments and new rules and near-term rulemaking pertaining to administrative assessment rates. In 81-23-202, MCA, statute provides that the board establish assessment rates annually before April 1. In view of the bureau's projected cash balances and projected need for additional funds for projected expenditures, it would appear appropriate for the board to consider an increase in administrative rates and initiate rulemaking so that the rulemaking procedure is completed by April 1st. Mr. Mitchell explained that he learned that if the board wanted to hire a consultant to conduct a study, the board may be limited in its ability to do so if the expenditure is not in the budget approved by the legislature.

B. Administrative Assessment Rates

Mr. Lee discussed the budget proposed for the Milk Control Bureau within the Department of Livestock budget for FY2016 and FY2017; compared it with the FY2015 budget; and discussed the bureau's recent cash balances. Mr. Mitchell asked how the change in the budget relative to the current biennium would play out in the 2015 Legislative Session. Mr. Lee deferred to George Harris, Administrator of the Department of Livestock Centralized Services Division to respond. Mr. Harris explained the budget process from the beginning at the executive planning process (which occurs almost 9 months before a legislative session) through the signing of the budget bill (House Bill 2) following the adjournment of the legislature. Mr. Harris explained how the budget provides authority to the department to expend funds, within the constraint of sufficient available cash. Mr. Harris stated that it was incumbent upon the board to have fees established to provide revenue to allow for sufficient cash to enable the bureau to fund its budgeted expenditures. Mr.

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Mitchell asked Mr. Harris if it was reasonable to assume that the highest level of budget for the Milk Control Bureau in FY2016 was \$285,000 and asked if the budget passed could be less. Mr. Harris responded yes to both questions. Mr. Parker asked Mr. Harris about past caps on the bureau cash balance. Mr. Harris responded that in the past, action was taken to reduce the bureau's cash balance when it reached \$170,000 to \$180,000. Mr. Mitchell confirmed with Mr. Harris that there would be no opportunity to increase the bureau's budget until the 2017 Legislative Session. Before leaving, Mr. Harris discussed the International Association of Milk Control Agencies convention to be held in Whitefish on September 13 – 15, 2015. Additionally, Mr. Harris stated the he had instructed Mr. Lee to look at all laws and administrative rules related to milk control to identify opportunity for cleanup. If statutory changes are identified that the board would like to pursue, the deadline for proposing changes through the Department of Livestock and the Governor's Office for the 2017 Legislative Session is in the early spring of 2016.

Motion:

Erik Somerfeld moved and Jerry Weissman seconded a motion that the board move forward with the rulemaking process to change the rates of ARM 32.23.301 to reflect the required level of funding needed for Fiscal Year 2016. The motion carried. All members voted in favor.

Mr. Parker suggested that a revenue cap be considered so that assessments would be suspended after the bureau received \$285,000 of assessment revenue for the fiscal year. Mr. Lee recommended against the use of an assessment suspension mechanism and identified impacts to the bureau that resulted from the most recent assessment suspension. Mr. Mitchell and Mr. Somerfeld discussed how the assessment rates can be considered annually and be lowered if sufficient funds are projected to be available, as described in 81-23-202(8), MCA.

Mr. Lee was instructed to provide a draft of the rulemaking notice to board members by the first week in January 2015, following legal review. Mr. Lee informed the board that the first notice for rule change would need to be filed with the Secretary of State Office by January 20, 2015 in order for the rulemaking process to be complete by April 1, 2015. The board will need to meet and vote on the content of the notice before January 20, 2015.

C. Producer Committee Report

David Miller, Producer Committee Chair, reported to the board on Producer Committee activity. Mr. Miller stated that the Producer Committee supports having Meadow Gold continue to market surplus milk. Mr. Miller stated that the Producer Committee would like to have administrative rules establish prices on the packaged surplus milk sold to out-of-state customers by Meadow Gold and Darigold to reflect the agreement between the companies. The Producer Committee sees a need for creating an administrative rule to require a period of notice when a pool handler decides to decline to market surplus milk and turns the responsibility of marketing surplus milk to the Producer Committee. The board discussed its authority to make the types of rules discussed. Mr. Mitchell stated that he anticipates the bureau will have suggestions on these and possibly other rules. Mr. Miller discussed prior activity by the rules review committee, which included a management representative and producer representative from each plant and the chair of the Producer Committee. Mr. Miller recommended that such a committee and process be made active again to review rules and assure that current rules are being followed or are changed to match what is accepted in practice.

D. Montana Milk Pricing Formula

Mr. Weissman stated that he believes the Montana milk price formulas, especially Class III are not in sync with the active traded market, the federal order, or other states. Mr. Weissman thinks the bureau should be

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having conversations with other states. Mr. Weissman stated that California prices are always higher than Montana prices, with exception to Class I. Mr. Weissman expressed the need of the bureau and board to know why and how California sets its prices. Mr. Weissman would like to have the pricing rules changed so that Montana prices are competitive.

Motion:

Jerry Weissman moved that the bureau inspect and look at prices in other states and propose to the board the changes in Montana rules so that Montana is more consistent with other states, especially California.

Mr. Mitchell expressed his thoughts and requested comments from the board prior to asking if anyone would second the motion. Mr. Mitchell stated that the proposal would be a major step in Montana milk control because of the workload it would add to the bureau and because he believes it is premature until the board has heard from the affected parties. Mr. Mitchell thinks the board needs to gain an understanding of whether there was a desire from producers and processors for a change. Mr. Parker stated that he is in agreement with Mr. Weissman's suggestion but was not going to second the motion. Mr. Somerfeld proposed that the Producer Committee look at Mr. Weissman's proposal and see if the committee and the plants can come to agreement on any changes they would like to see so that suggestion of change comes from the affected parties instead of the board. Mr. Lee requested to comment and stated that unless the producers or distributors communicate that the current pricing system is not working, he is leery of change that could have unintended consequences, such as encouraging a processor to cease operations in Montana. Mr. Lee stated that a large amount of analysis would need to be done and that the statutes list many factors for the board to consider when it changes pricing formulas. Mr. Lee did not think the bureau could undertake the proposed project for at least nine to twelve months. Additional discussion occurred regarding Montana Class III prices; net prices of bulk and packaged surplus milk after factoring gains on the sales; quota blend prices in relation to announced Class I and Class II prices in the last year; and the question of whether the bureau has the staff, time, or expertise to conduct what might be a multi-year study.

Withdrawal of Motion:

Jerry Weissman withdrew his motion and stated that he does not think a significant amount of time would be required for the bureau to contact California's milk market administrator to obtain California's rule and formulas so that the board would have it for a resource in the future.

Mr. Mitchell recommended that Mr. Weissman's proposal and analysis be sent to the affected parties to seek feedback to help provide direction to the board in the future.

Motion:

Eric Somerfeld moved and Jerry Weissman seconded a motion that Mr. Weissman's proposal be sent to producers, processors, and the public as a whole that is involved in the industry to request their feedback and look for any changes that they would like from the board. The motion carried. All members voted in favor.

V. OTHER NEW BUSINESS

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VI. PUBLIC COMMENT

Ruben Wurz (representing the Montana Milk Producers Association)

Mr. Wurz commented on Agenda Item IV (D) Montana Milk Pricing Formula. Mr. Wurz stated that the Montana Milk Producers Association's position is that it is inappropriate for a board member to advocate for a change to the pricing formulas and that advocating for a change is up to the producers.

Next Meeting

January 14, 2015, 12:00 p.m. in Helena, MT

Mr. Parker recommended and the other board members agreed that a physical meeting was preferable to a conference call for discussion of rulemaking for setting administrative assessments. Mr. Lee stated that the meeting needs to occur before January 19, 2015. All board members expressed that they could attend a meeting scheduled for January 14, 2015, starting at 12:00 p.m.

Regular Meeting – Spring 2015

The board and staff discussed scheduling a meeting in April or May to follow up on business pending from the December 18, 2014 meeting. Scheduling factors discussed included timing of adjournment of the 2015 Legislature, time for the bureau to complete tasks assigned by the board, and personal schedules. The board decided to delay setting a date until the January 14, 2015 meeting so that board members could further examine their schedules.

VII. ADJOURNMENT

Erik Somerfeld moved and Jim Parker seconded the motion to adjourn. The motion carried. All members voted in favor.

Mr. Mitchell adjourned the meeting at 4:13 p.m.

 _____ **W. Scott Mitchell, Chair**

Date: _____

1/15/2015