

Montana Board of Milk Control
Meeting Minutes – Time Stamp Record to Accompany Meeting Recording
 March 8, 2019 12:00 p.m.
 Montana Historical Society Auditorium (Montana Historical Museum)
 225 North Roberts Street, Helena, Montana

PUBLIC MEETING

Call to Order

Chairperson Scott Mitchell called the meeting to order at 12:03 p.m. in the Montana Historical Society Auditorium at the Montana Historical Museum Building; 225 N. Roberts Street; Helena, Montana.

Attendance

Board Members:

	Present	Absent
W. Scott Mitchell, Chair	X	
Jerrold A. Weissman, Vice Chair	X	
Brian Beerman	X*	
R. James Parker	X	
Erik Somerfeld	X	

*Participated telephonically for the following portions of the meeting (00:00 – 43:36, 02:12:51 – 02:46:01)

Montana Department of Livestock Staff:

- Chad Lee, Bureau Chief, Milk Control Bureau
- Mark Curtis, Dairy Accountant, Milk Control Bureau
- Linda Grady, Auditor, Milk Control Bureau
- Mike Honeycutt, Department of Livestock
- Brian Simonson, Department of Livestock
- Rob Stutz, Montana Department of Justice, Agency Legal Services (attorney representing the Montana Department of Livestock)

Guests:

- Dan Daugherty, Producer
- Della Daugherty, Producer
- Krista Lee Evans, Montana Milk Producers Association
- Arley J. George, Moiese Valley Ranch
- Leland Heidema, Producer
- Tim Huls, Huls Dairy, Inc.
- Nelson Kamerman, Dairyland Farms
- Leonard Kleinsasser, Montana Milk Producers Association
- Dave Miller, Montana Correctional Enterprises Dairy
- David Lewis, Big Creek Dairy, Northwest Dairy Association
- David Price, Moiese Valley Ranch
- Ed Waldner, Montana Milk Producers Association
- Ruben A. Wurz, Montana Milk Producers Association

AGENDA ITEM	TIME STAMP
ROLL CALL & INTRODUCTIONS	00:00 – 01:24
I. MINUTES Motion: Mr. Somerfeld moved and Mr. Parker seconded a motion to approve the time stamp document as written for the audio recorded minutes of the January 22, 2019 Board of Milk Control meeting. The motion carried. All members voted in favor.	I. 01:25 – 01:50 Motion 01:32 – 01:50
II. UNFINISHED BUSINESS & GENERAL ORDERS	II. NO UNFINISHED BUSINESS
III. NEW BUSINESS	III. 01:50 – 2:54:53
A. Legislative Update Introductory Comments (Scott Mitchell) Board’s Role, Responsibility, and Constraints on Taking Positions on Legislation (Rob Stutz)	III.A. 01:50 – 12:12 01:50 – 06:43 06:43 – 12:12
B. Board Consideration of House Bill 592 “Revise Milk Pooling Laws” Milk Control Bureau Analysis of House Bill 592 (HB592) (Chad Lee) Primer on Montana’s Statewide Pool (Chad Lee) Response to questions regarding impact of new Class III price formula and milk produced by the Montana Correctional Enterprises dairy on the utilization value for individual plants and the statewide pool. (Chad Lee) Public Comment on HB592 The following individuals commented: David Lewis, Big Creek Dairy / Northwest Dairy Association Response to question: Does the elimination of the current statewide pool eliminate the quota? (Rob Stutz, Chad Lee) Board Member questions and comments for David Lewis (and response): Mr. Somerfeld, Mr. Weissman	III.B. 12:12 – 2:55:20 12:12 – 33:25 33:25 – 42:20 54:17 – 55:36 43:36 – 2:06:32 44:22 – 44:46 47:00 – 54:09 55:36 – 58:49 2:03:30 – 2:04:52 45:36 – 46:56 55:36 – 58:49 2:04:52 – 2:06:01

AGENDA ITEM	TIME STAMP	
<p>B. Board Consideration of House Bill 592 “Revise Milk Pooling Laws”</p> <p>Public Comment on HB592 (continued)</p> <p>The following individuals commented:</p> <p>David Price, Moiese Valley Ranch</p> <p>Board Member questions and comments for David Price (and response): Mr. Somerfeld, Mr. Mitchell, Mr. Weissman</p> <p>Break (1:10 p.m. – 1:19 p.m.)</p> <p>Tim Huls, Huls Dairy, Inc.</p> <p>Board Member questions and comments for Tim Huls (and response): Mr. Weissman, Mr. Somerfeld</p> <p>Krista Lee Evans, Montana Milk Producers Association</p> <p>Board Member questions and comments for Krista Lee Evans (and response): Mr. Parker, Mr. Mitchell, Mr. Weissman, Mr. Somerfeld</p> <p>Nelson Kamerman, Dairyland Farms</p> <p>Dave Miller, Montana Correctional Enterprises Dairy</p> <p>Arley George, Moiese Valley Ranch</p> <p>Dan Daugherty, Producer</p> <p>Discussion of Written Public Comment Received from Roger Witt, attorney representing the Montana Milk Producers Association</p> <p>Break (2:18 p.m. – 2:30 p.m.)</p> <p>Chairperson request for board comment on Agenda Item III.B. with comment received from the following: Mr. Parker, Mr. Somerfeld, Mr. Weissman, Mr. Beerman, Mr. Mitchell</p> <p>Motion: Mr. Somerfeld moved and Mr. Weissman seconded a motion that the Board of Milk Control take the position that it does not support House Bill 592 as it currently reads in the Senate.</p> <p>The motion carried. Four members voted in favor. No members voted in opposition. One member abstained.</p>	<p>III.B.</p>	<p>59:02 – 1:02:32</p> <p>1:02:32 – 1:06:33</p> <p>Break Not Recorded</p> <p>1:07:24 – 1:16:34</p> <p>1:16:34 – 1:18:57</p> <p>1:19:06 – 1:20:37 1:53:51 – 1:55:20</p> <p>1:20:37 – 1:45:57 1:55:20 – 2:01:18</p> <p>1:46:32 – 1:48:42</p> <p>1:48:58 – 1:50:45</p> <p>1:50:58 – 1:52:21</p> <p>1:52:41 – 1:53:42</p> <p>02:02:51 – 02:03:18 02:34:43 – 02:37:38</p> <p>Break Not Recorded</p> <p>2:07:01 – 2:39:48</p> <p>Motion 2:39:48 – 2:42:52</p>

AGENDA ITEM	TIME STAMP
<p>B. Board Consideration of House Bill 592 “Revise Milk Pooling Laws</p> <p>Board testimony on HB592 before the legislature: process, communication with Governor’s Office, authorization of the board by the Governor’s Office, board representation at Senate hearing, role of bureau staff (Mike Honeycutt)</p> <p>Motion: Mr. Weissman moved and Mr. Parker seconded a motion to authorize either the chair, or a person he designates from the board, to testify at the Senate hearing, if allowed by the Governor’s Office, and to speak with authority for the board on its position on HB 592.</p> <p>The motion carried. Four members voted in favor. No members voted in opposition.</p> <p>Motion: Mr. Somerfeld moved and Mr. Parker seconded a motion that the board prepare written testimony to be presented for the record, along with any oral testimony on its position that is given on HB592, if allowed.</p> <p>The motion carried. Four members voted in favor. No members voted in opposition.</p>	<p>02:45:03 – 02:50:49</p> <p>Motion 2:53:13 – 2:54:03</p> <p>Motion 2:54:03 – 2:54:44</p>
<p>IV. PUBLIC COMMENT</p> <p>The following individual made public comment:</p> <p>Mr. Somerfeld: Wisconsin Farmers Union movement to look at national Americanized Canadian-style quota system – opportunity for presentation</p>	<p>IV. 2:55:20 – 2:59:34</p> <p>2:55:47 – 2:59:12</p>
<p>V. ADJOURNMENT</p> <p>Chair Scott Mitchell stated that the next meeting is to be announced when necessary.</p> <p>Motion: Mr. Weissman moved and Mr. Somerfeld seconded a motion to adjourn.</p> <p>The motion carried. Four members voted in favor. No members voted in opposition.</p> <p>Mr. Mitchell adjourned the meeting at 3:22 p.m.</p>	<p>V. 2:59:34 – 2:59:45</p> <p>Motion 2:59:37 – 2:59:44</p>

Time stamps were recorded during the meeting and reviewed and adjusted by bureau staff.

REVIEWED BY

(Initials):

MC _____ Mark Curtis, Dairy Accountant, Milk Control Bureau

CPL _____ Chad Lee, Bureau Chief, Milk Control Bureau

Attached to Time Stamp Document:

- March 7, 2019 written public comment received from Roger Witt regarding Agenda Item III.B. Board Consideration of House Bill 592 “Revise Milk Pooling Laws”

**Montana Board of Milk Control
Meeting Agenda**

March 8, 2019 12:00 p.m.

Montana Historical Society Auditorium (Montana Historical Museum)
225 North Roberts Street, Helena, Montana

*Agenda may change up to 48 hours prior to the meeting.
Latest version of agenda will be posted at <http://www.liv.mt.gov/mc/public.mcp>*

WELCOME

ROLL CALL & INTRODUCTIONS

W. Scott Mitchell, Chair
Jerrold A. Weissman, Vice-Chairperson
Brian Beerman
Jim Parker
Erik Somerfeld
Montana Department of Livestock Staff
Guests

I. MINUTES

II. UNFINISHED BUSINESS & GENERAL ORDERS

III. NEW BUSINESS

- A. Legislative Update
- B. Board Consideration of House Bill 592 "Revise Milk Pooling Laws"

IV. PUBLIC COMMENT

V. ADJOURNMENT

Lee, Chad

From: Roger Witt <rtw@uazh.com>
Sent: Thursday, March 7, 2019 4:39 PM
To: Lee, Chad; smitchell@hollandhart.com
Cc: Andy Newcomer; Krista Evans; Don Waldner
Subject: RE: March 8, 2019 Board of Milk Control Meeting

Chad and Scott - Having heard nothing further, I assume fully answering my questions has been declined. Please submit the entirety of this email string into the record and share with all the Board members. Please confirm its submission and distribution. I may not attend in person. Please kindly advise how I may listen and observe the meeting remotely as I understand they are broadcast.

Before summarizing, when Chad sent his email on February 19 to selected industry participants notifying of pending legislation, including HB 592, he added "no views or opinions are expressed". At that point, the industry participants were able to track the bill and appear at, or present information to, the House Ag Committee to their express views or opinions, which is the appropriate public process. A separate meeting of the Milk Control Board for that same purpose is not part of the legislative process. Expressions can next be done via the Senate hearing.

In summary, I request that portion of the Milk Control Board meeting on Friday relating to HB 592 consist of a legislative update only. The MCB operates under existing states, regulations, rulings, and agreements. This is pending legislation. We don't know if it will be amended or passed or signed into law. There is nothing for the MCB to act under. To discuss it will require some set of facts be applied to it. While some can be surmised, it is still speculation. The MCB doesn't act on speculation. It acts when an actual issue, request, claim, or controversy is properly placed before it. We can assume that soliciting public comment will result in opinions both for and against. If it doesn't, then there is no reason for the MCB to take any position. If it does, then taking a position necessarily supports one side or the other. That impinges upon the neutrality of the MCB on a matter that does not require a position now.

Thank you for your anticipated consideration.

■
Roger T. Witt
UGRIN ALEXANDER ZADICK, P.C.
#2 Railroad Square, Suite B
P.O. Box 1746
Great Falls, MT 59403-1746
Telephone: (406) 771-0007
Facsimile: (406) 452-9360

The information contained in this e-mail message may be privileged and confidential information intended only for the use of the individual or entity named above. If you have received this communication in error please notify us immediately and delete. Thank you.

From: Roger Witt
Sent: Tuesday, March 05, 2019 5:17 PM
To: 'Lee, Chad' <chlee@mt.gov>
Cc: Andy Newcomer <atn@uazh.com>; 'Krista Evans' <blakecrk@gmail.com>; Don Waldner <rvdairy@gmail.com>;

'smitchell@hollandhart.com' <smitchell@hollandhart.com>

Subject: RE: March 8, 2019 Board of Milk Control Meeting

Respectfully Chad, I feel you are not answering my questions. So you are saying that it can be appropriate for the Board to take a position on pending legislation. Even when the legislation may not be in its final form yet? And if a position is taken, isn't that tantamount to expressing an advisory opinion about its application? If it is principally to take public comment, what purpose does that fulfill? Public comment is offered in the legislative process. There will be a Senate hearing.

I still don't understand why the Board is conducting a hearing to vet proposed legislation and under what authority that is occurring. I don't feel that has been fairly answered.

Scott, as the Board Chair, I believe you set the agenda and conduct the meeting. Is vetting proposed legislation appropriate discussion?

These emails are my written comments.



Roger T. Witt
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From: Lee, Chad <chlee@mt.gov>
Sent: Tuesday, March 05, 2019 4:38 PM
To: Roger Witt <rtw@uazh.com>
Subject: RE: March 8, 2019 Board of Milk Control Meeting

Dear Roger,

Thank you for your interest in the Board of Milk Control meeting. In response to the questions in your e-mail, neither I nor the Board knows what position, if any, the Board may take on HB592. I envision that will be a primary topic of discussion at the meeting. The results of that discussion, taking into account public comment, will not, of course, be known until after the Board meeting. I encourage you to attend the [Board meeting this Friday](#) or to provide written comment for that meeting.

Sincerely,

Chad Lee
Bureau Chief
Montana Department of Livestock
1404 8th Ave.
PO Box 202003
Helena, MT 59620-2003
406.444.4300
406.444.1432 (fax)

chlee@mt.gov

From: Roger Witt <rtw@uazh.com>
Sent: Tuesday, March 5, 2019 11:53 AM
To: Lee, Chad <chlee@mt.gov>
Cc: Andy Newcomer <atn@uazh.com>; Krista Evans <blakecrk@gmail.com>; Don Waldner <rvdairy@gmail.com>; smitchell@hollandhart.com
Subject: RE: March 8, 2019 Board of Milk Control Meeting

Thanks Chad. However, I'm not sure that fully answered my question. Please consider the following thoughts and requests for clarification.

Courts, administrative agencies, and other tribunals do not give advisory opinions. Recall when I appeared last at a Board meeting, there was discussion about aspects of the milk study and an interest in knowing the Commissioners take on things. Ultimately, the Commissioners agreed they would need to see a petition and analyze it under the prevailing law. That's a recognition that the Board does not anticipate outcomes in advance, but requires a proper procedural application under existing statute.

The proposed legislation allows for consideration of other possible pooling arrangements following the proper procedural application specified in it. It is a procedural revision proposal that may lead to a substantive change. **What more is there to consider now?** If it is not passed by the Senate, then board activities are not impacted by it. If passed and ultimately signed into law, the new language will still require a petition and review by the Board. Only then will the "potential impact on board activities" be fully appreciated. To anticipate anything now is premature and speculative, and a discussion invites a pro or con consideration of the merits and an opinion for or against it, which I assume is not the Board's role.

So I'll ask again, **does the Board staff, counsel, or commission (and similarly those at the DOL) take a position for or against the proposed legislation or otherwise comment now about the pros or cons of its passage or defeat?** If not, then the agenda item should be a legislative update only, which seems to be the treatment currently given to other proposed milk-related legislation. You previously provided the bill tracker link to industry interested persons, and the legislative forums are the proper vehicles for expressing opinions about it or otherwise interpreting it. To hold a separate public meeting about it now unnecessarily stirs the pot without clear or timely objective.

By copy to Scott, I'm sharing these thoughts and requesting that any consideration be in the form of a legislative update. Perhaps Scott can transmit this email to the other commissioners also. If it becomes law, then an interpretation of board activities seems more appropriate then, although a petition would still be needed to implicate the Board's prospective activities. Per your email below, if the "potential" impact will be discussed now, please answer the questions above and further clarify why the potential impact needs to be studied and accomplished now. Thanks.

■
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From: Lee, Chad <chlee@mt.gov>
Sent: Tuesday, March 05, 2019 9:23 AM
To: Roger Witt <rtw@uazh.com>
Subject: March 8, 2019 Board of Milk Control Meeting

Roger,

The Board of Milk Control first became aware of HB 592 on February 21, 2019.

The purpose of the meeting is to discuss the legislation and its potential impact on board activities.

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From: Roger Witt <rtw@uazh.com>
Sent: Monday, March 4, 2019 4:07 PM
To: Lee, Chad <chlee@mt.gov>
Cc: Andy Newcomer <atn@uazh.com>
Subject: RE: Board of Milk Control Meeting Notice: agenda correction

Chad – What exactly is the Board’s consideration of the proposed legislation at this stage? Does the Board staff, counsel, or commission (and similarly those at the DOL) take a position for or against the proposed legislation or otherwise comment now about the pros or cons of its passage or defeat?

■
Roger T. Witt
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From: Lee, Chad <chlee@mt.gov>
Sent: Friday, March 01, 2019 1:56 PM
Subject: Board of Milk Control Meeting Notice: agenda correction

Please replace the Board of Milk Control meeting agenda your received earlier today with the attached agenda.

The meeting will not be a teleconference meeting. It is an in-person meeting at the stated location.

I am sorry for the error.

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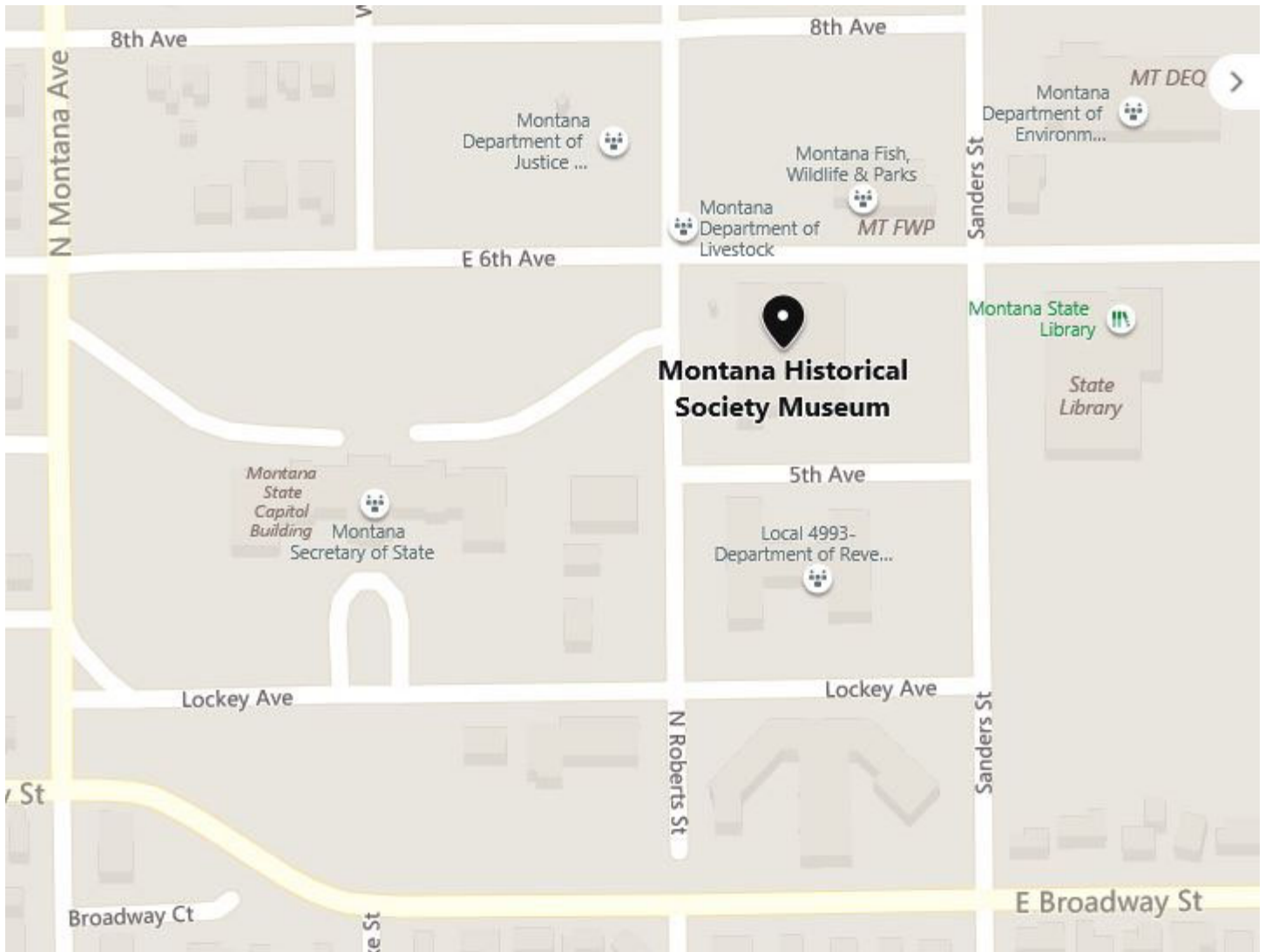
From: Lee, Chad

Sent: Friday, March 1, 2019 12:09 PM

Subject: Board of Milk Control Meeting Notice: Friday, March 8, 2019 at 12:00 p.m.; Montana Historical Society Auditorium - 225 North Roberts Street, Helena

Scott Mitchell has called a meeting of the Board of Milk Control to be held on Friday, March 8, 2019 at 12:00 p.m.; Montana Historical Society Auditorium - 225 North Roberts Street, Helena.

Please see the map below. The Montana Historical Society building is the state history museum with the iron bison skull in front of it. In order to get to the building's auditorium, you will walk through the front doors and through some exhibits. The Milk Control Bureau will have people in place to help meeting attendees get to the right spot.



Please see the attached agenda.

A major purpose of this meeting is agenda item III.B. Board Consideration of House Bill 592 “Revise Milk Pooling Laws.

House Bill 592 was transmitted to the Senate today. It has not been assigned a committee as of the time of this email. Here is a link to the webpage that shows actions taken on the bill. [http://laws.leg.mt.gov/legprd/LAW0203W\\$BSRV.ActionQuery?P_SESS=20191&P_BLTP_BILL_TYP_CD=HB&P_BILL_NO=592&P_BILL_DFT_NO=&P_CHPT_NO=&Z_ACTION=Find&P_ENTY_ID_SEQ2=&P_SBJT_SBJ_CD=&P_ENTY_ID_SEQ=](http://laws.leg.mt.gov/legprd/LAW0203W$BSRV.ActionQuery?P_SESS=20191&P_BLTP_BILL_TYP_CD=HB&P_BILL_NO=592&P_BILL_DFT_NO=&P_CHPT_NO=&Z_ACTION=Find&P_ENTY_ID_SEQ2=&P_SBJT_SBJ_CD=&P_ENTY_ID_SEQ=)

The following is a link to HB592.

<https://leg.mt.gov/bills/2019/billpdf/HB0592.pdf>

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