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**Public Meeting**

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THE STATE OF NEVADA  
DEPARTMENT OF BUSINESS AND INDUSTRY  
BEFORE THE NEVADA STATE DAIRY COMMISSION

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TRANSCRIPT OF PROCEEDINGS  
PUBLIC MEETING  
VIDEO/AUDIO CONFERENCE

9:00 A.M., WEDNESDAY, OCTOBER 17, 2012

NEVADA STATE DAIRY COMMISSION

KIETZKE PLAZA

4600 KIETZKE LANE, A-107

RENO, NEVADA

APPEARANCES:

COMMISSIONERS PRESENT:

CHRISTOPHER COOK, Chairman

JOHN COLLIER, Commissioner

TROY CROWTHER, Commissioner

LYNN HETTRICK, Executive Director

REPORTED BY:

SUZANNE KUES ROWE, CCR, RPR

Nevada CCR #127

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1           WEDNESDAY, OCTOBER 17, 2012, RENO, NEVADA, 9:00 A.M.

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3                   (This meeting is held concurrently in Reno and Las  
4 Vegas via video conferencing.)

5                   CHAIRMAN COOK: Mr. Hettrick, if you would open the  
6 meeting, the October meeting of the Nevada State Dairy  
7 Commission?

8                   MR. HETTRICK: This is the time and place set for the  
9 regularly scheduled meeting of the Nevada State Dairy Commission  
10 for the month of October 2012.

11                   This meeting has been scheduled and noticed in  
12 compliance with the pertinent statutes, including the open  
13 meeting law.

14                   A copy of the agenda has been handed to the court  
15 reporter with the request that it be a part of the official  
16 transcript of these proceedings.

17                   My name is Lynn Hettrick, executive director of the  
18 Nevada State Dairy Commission.

19                   Present today are Mr. Christopher Cook, chairman.  
20 Mr. Troy G. Crowther, member of the commission. Mr. John  
21 Collier, member of the commission. Mr. Goedert is excused today,  
22 and we have members of the Dairy Commission staff.

23                   Those who present statements or evidence to the  
24 commission during the meeting, are requested to be first  
25 acknowledged by the chairman, and to identify themselves for the

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1 record.

2 First thing on the agenda, Mr. Chairman, is public  
3 comment.

4 CHAIRMAN COOK: Dave, it looks like you're the only  
5 public. Comments?

6 MR. COON: Just happy to be here, thank you.

7 CHAIRMAN COOK: Okay. Let's proceed.

8 MR. HETTRICK: All right. First thing on the agenda  
9 then on action items is a processing distributor license for  
10 Chobani. Chobani incorporated from Norwich, New York, and Besnik  
11 Fetoski is the secretary/treasurer.

12 The applicant seeks a license to distribute yogurt in  
13 Northern and Southern Nevada Marketing Areas.

14 The applicant's prices and costs have been reviewed by  
15 members of the commission and are in compliance with the agency's  
16 laws and regulations.

17 The applicant will be responsible for the assessments.

18 CHAIRMAN COOK: Anybody representing this applicant  
19 present?

20 Seeing none, is there anything that the staff wants to  
21 add to this?

22 MR. HETTRICK: Pretty straightforward.

23 CHAIRMAN COOK: I'm assuming this is product they will  
24 be producing up in Idaho?

25 MR. HETTRICK: I don't know whether they are going to

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1 import now.

2 I was at a meeting last night, Mr. Chairman, and they  
3 said that new plant is not open yet. So, I think it's very, very  
4 close, but it's not actually producing yogurt yet. So I don't  
5 know whether they are going to import from New York before they  
6 get that plant open or whether this is just in anticipation of  
7 the opening of that plant.

8 CHAIRMAN COOK: Okay. Clarify something for me.  
9 Chobani product has been available in the state for a number of  
10 years.

11 MR. HETTRICK: Yes. But, apparently, through  
12 distributors. And now they are going to distribute some  
13 directly, I guess.

14 CHAIRMAN COOK: So they're bypassing the --

15 MR. HETTRICK: Or maybe coming direct from this new  
16 plant and skipping somebody else along the way. I don't know.

17 CHAIRMAN COOK: Okay.

18 COMMISSIONER CROWTHER: Who currently has the peddler  
19 distributor license, do we know?

20 MS. PUGH: For Chobani?

21 MR. HETTRICK: They're multiple distributors.

22 MS. PUGH: It's found in Safeway, it's found in  
23 Wal-Mart and Costco. Everywhere.

24 COMMISSIONER CROWTHER: Do the retailers then have the  
25 license at this point?

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1 MS. PUGH: Yes.

2 MR. HETTRICK: They all have a license.

3 MS. PUGH: Yogurt is not specifically licensed. It's  
4 the product, I mean, Chobani isn't specifically licensed, just  
5 the yogurt category.

6 COMMISSIONER CROWTHER: Okay. So, that's why, as Chris  
7 said, we see it in stores now, but they still need to get a  
8 license, Chobani needs to get a license as a processor?

9 MR. ORZECH: No.

10 MR. HETTRICK: They won't be processing in the state,  
11 so what they are apparently going to do is distribute directly  
12 somehow, or pick up a new, become their own distributor, I don't  
13 know.

14 But, they're, they're getting a processing distributor  
15 license, so I'm presuming that they're changing some part of  
16 their distribution network. Or are preparing to.

17 CHAIRMAN COOK: Okay.

18 COMMISSIONER CROWTHER: Okay. I don't have any further  
19 questions.

20 CHAIRMAN COOK: John?

21 COMMISSIONER COLLIER: I have none.

22 CHAIRMAN COOK: Okay. Questions from anybody in the  
23 audience, staff?

24 Seeing none, I will entertain a motion.

25 COMMISSIONER COLLIER: Mr. Chairman, I would make a

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1 motion that we accept this processing distributor license for  
2 Chobani to distribute yogurt in Northern and Southern Nevada, in  
3 the Marketing Areas, and I would present that as a motion.

4 CHAIRMAN COOK: Okay.

5 COMMISSIONER CROWTHER: Second.

6 CHAIRMAN COOK: Having a motion and second and no  
7 dissenting votes, the motion carries.

8 MR. HETTRICK: All right. Mr. Chairman, next on the  
9 agenda is the license amendment application for a peddler  
10 distributor license National DCP, Columbus, Ohio.

11 The applicant seeks a license amendment to add the  
12 Sarah Farms label of fluid milk in the Southern Nevada Marketing  
13 Area. Temporary approval was granted on September 27th, 2012.

14 Prices and costs have been reviewed by members of the  
15 Dairy Commission staff, and are in compliance with the agency's  
16 laws and regulations. The applicant will be responsible for the  
17 assessments.

18 CHAIRMAN COOK: Anybody representing this applicant  
19 present?

20 Okay. Is there anything, Sarah Farms, isn't that Hein  
21 Hettinga's operation?

22 MR. ORZECH: It is.

23 CHAIRMAN COOK: And he is pretty much producing in  
24 Arizona now, right?

25 MR. HETTRICK: Correct.

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1           CHAIRMAN COOK:   Okay.   Questions, Troy?

2           COMMISSIONER CROWTHER:   That -- actually, what you just  
3 asked answered mine.

4           CHAIRMAN COOK:   Okay.   John?

5           COMMISSIONER COLLIER:   I have none.

6           CHAIRMAN COOK:   Okay.   Any comments from the staff?  
7 Go ahead, Dave.

8           MR. COON:   Could I ask who, National DCP, LLC is who?

9           MR. ORZECH:   Dunkin Doughnuts.

10          MR. COON:   Are they a distributor?

11          MR. HETTRICK:   It's Dunkin Doughnuts.

12          MR. COON:   Thank you.

13          CHAIRMAN COOK:   Okay.   Any other questions, comments?  
14 Seeing none, I'll entertain a motion.

15          COMMISSIONER CROWTHER:   I will make a motion to approve  
16 the peddler distributor license amendment application by National  
17 DCP, LLC, Columbus, Ohio, to add Sarah Farms label of fluid milk  
18 in the Southern Nevada Marketing Area.

19          COMMISSIONER COLLIER:   Mr. Chairman, I would second  
20 that motion.

21          CHAIRMAN COOK:   Okay.   Having a motion and a second and  
22 no dissenting votes, the motion carries, the license is granted.

23          MR. HETTRICK:   All right.   Next on the agenda is a  
24 discussion regarding the existing policy for meeting a  
25 competitive price.   You should have the policy in your packet.



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1           If you look at this, you will see this policy was  
2 adopted in October of 2006. What we're experiencing right now,  
3 Mr. Chairman, is we're seeing some real competition in pricing in  
4 particularly Southern Nevada, and it caused us to pull up this  
5 policy and look at it.

6           We were going to send it to some of the people that  
7 were involved. No big issue with the people involved. The issue  
8 here is the actual policy.

9           In reviewing this policy, we felt it was important to  
10 bring it back to the commission. And, frankly, we'd like to  
11 recommend that you rescind this policy.

12           If you read the, and we just handed out, it should be  
13 down for Troy as well, if you read the policy, it says, "May meet  
14 a lawful competitive advertised price, after notifying the Dairy  
15 Commission."

16           If you read the statute 584.584, it doesn't say it has  
17 to be an advertised price, and it doesn't have it has to be after  
18 notifying the commission. It says you have to notify the  
19 commission within five days of the occurrence.

20           And you can go on through this, I mean, there are  
21 multiple examples. "Advertised" is in here multiple times.

22           And then the last sentence in the last paragraph is  
23 also a major concern. It says, "The price set by a retailer  
24 seeking to meet a lawful competitive," again, "advertised price,  
25 cannot be used by any other retail stores as a basis for meeting

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1 a lawful competitive advertised price."

2 And nothing in the law says it's limited to one person.  
3 Anybody can meet an advertised price to be competitive.

4 And after reviewing this and talking this over, we felt  
5 that this is really unnecessary. The law is pretty clear, and I  
6 think it's, it says what it says, instead of what this, this  
7 policy says, which I think in my personal opinion is not right.

8 So, I think we should, you know, I'd like to see the  
9 commission just rescind it.

10 CHAIRMAN COOK: Do you recall, or does anybody -- and I  
11 know I was there -- and I frankly don't have the recollection of  
12 this, the detailed recollection of this occurrence.

13 But, do you recall what the rationale was initially  
14 for, or does anybody have?

15 MR. HETTRICK: Well, Tom and I talked about this.

16 And basically what it was, was someone had published an  
17 advertising flyer, advertising the price in the Las Vegas market  
18 apparently that was for the next, you know, for 28 days for this  
19 month, we are going to sell milk for, or whatever the product  
20 was, for this price. And apparently a competitor came back and  
21 said, well, I just found out about this and this isn't fair,  
22 because they got 28 days of a sale, and I want to match them. I  
23 want to be able to compete with what they did.

24 So, the policy was established to say, okay. Well, if  
25 you tell us you want to do it, whenever you want to start, but

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1 within seven days, which again is not in the law, you can start  
2 and you can advertise for the same length of time they advertise.

3 But, the law says, "meet". It doesn't say, match  
4 afterwards; it says meet.

5 To me that's clear. I think the intent was, if it's on  
6 sale today for two dollars, you can match two dollars.

7 It doesn't say you can sell it next for two dollars  
8 because he sold it last month for two dollars. I just don't  
9 think it's right.

10 But, I think at the time the feeling was, well, they  
11 did, the other company did get to do it, so we really shouldn't  
12 stop somebody who wants to compete from being able to do it as  
13 well.

14 The problem I have with that is I don't think that's  
15 what it says in the law.

16 CHAIRMAN COOK: Yeah. If I remember correctly, I think  
17 it had something to do with, it was in that period of time when  
18 Lucky stores was transitioning, Albertson's was being broken up,  
19 and all the reshuffling that was going on, which eventually  
20 became SaveMart.

21 MR. HETTRICK: Mm-hmm.

22 CHAIRMAN COOK: I don't remember all the fine details.  
23 So, I personally don't have a problem with stream  
24 lining it, because it seems like it's a rather onerous policy.  
25 And if the statute is contradictory to what the policy is, then

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1 it seems like we ought to get rid of the policy.

2 MR. HETTRICK: It strikes me that if we actually  
3 limited somebody, based on this policy, from competing, because  
4 somebody else did, somebody else has already done it, we would be  
5 opening ourselves up for a lawsuit, because the law clearly says  
6 you can meet a competitive price.

7 CHAIRMAN COOK: Dave, do you have any recollection of  
8 this?

9 MR. COON: I don't remember the discussion. I just  
10 wanted to make sure that I am understanding.

11 The discussion as to, eliminate entirely a source of  
12 ability to meet a price across the street?

13 CHAIRMAN COOK: No.

14 MR. HETTRICK: No, Dave, the intent here is to take out  
15 this policy. The ability to meet, and do you folks have a copy  
16 of the law that you can hand to Dave? Maybe that would help him.  
17 And the NAC, because the ability to meet the price is in the law,  
18 and we're not changing the law.

19 What we're worried about is the policy that was adopted  
20 goes beyond what is allowed in the law.

21 And we don't think, after rereading that, and we  
22 frankly think that we're going to see a, if we do this, follow  
23 this existing policy, what we're going to see in Las Vegas, one  
24 store is going to be at this price this month. Next month, the  
25 following store is going to say I want to do it. The month after

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1 that, somebody else is going to say me too.

2 And it's just going to be a never-ending price war. We  
3 think that people are going to go on, and if somebody came back  
4 and said, but wait a minute. The law says I can meet the price.  
5 In this policy it says only one person can meet the price.

6 So, we just don't think it's right.

7 But, no. The competitive price clause still exists.

8 MR. CROWTHER: I would like to see if we can get the  
9 minutes from the meeting where this was approved and discussed.

10 Do we have the archives of that that we can get ahold  
11 of?

12 MR. HETTRICK: Yeah. Tom pulled those minutes, and we  
13 looked at the minutes. We went through it all. And we can do  
14 that if you like, but I don't know. I'm trying to be careful.

15 I think that, quite frankly, the commission was  
16 misinformed at the time about what the law did.

17 They were told that this was the way it was handled at  
18 the time. But, it wasn't the way it was handled at the time, or  
19 it shouldn't have been if it was, because it would have been a  
20 violation of the law.

21 It wasn't limited to an advertised price by state law,  
22 and it is not limited to one person. By state law.

23 So, I think the minutes just demonstrate that, that the  
24 commission was given poor information to make a decision to put  
25 this in place.

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1           COMMISSIONER COLLIER: Could I ask a question? How  
2 does this policy affect the state law? This regulation right  
3 here.

4           MR. HETTRICK: It's supposed to be on adaptation, or  
5 the actual, here's how you go about doing it.

6           COMMISSIONER COLLIER: Is this an interpretation of  
7 what this is supposed to be?

8           MR. HETTRICK: Mm-hmm.

9           COMMISSIONER COLLIER: Hmm.

10          CHAIRMAN COOK: Tom, had you something to add?

11          MR. ORZECH: Mr. Chairman, just to give you some  
12 background on this too. When this policy was discussed, it was  
13 to solve a problem at the time. And you're right, it goes back,  
14 it was one store that wanted to advertise, to have the ability to  
15 advertise a price they were meeting that day.

16                 And they said, we want to be able to advertise that,  
17 and there was nothing that would allow that to happen.

18                 Since 2006, since this policy came up, it has never  
19 been used until now. And down in Vegas, the problem down there,  
20 and to give specifics on it is WinCo.

21                 WinCo is now the, since they opened, they've been the  
22 lowest priced milk, and several other stores have wanted to meet  
23 that price.

24                 So what happened was WinCo's price was okay till, like,  
25 30 September.

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1           And so this other store wanted to match the price, but  
2 they wanted to be able to advertise it through October. Which  
3 they're now meeting a price that's illegal, because the price,  
4 WinCo's price went up one October. It was no longer valid. But  
5 they still wanted to meet that price from September.

6           According to this policy, you have to let them do it.

7           But, as Lynn stated, now another store comes along and  
8 looks at the one that's meeting that price. They say we want to  
9 meet it. This says you can't. It's all against -- all we're  
10 doing is perpetuating a problem that's starting down in Vegas  
11 with a price war.

12           And I know Dave would probably remember back with what  
13 Wal-Mart wanted to do with the 1.99 across the board. And we had  
14 to put a stop to that.

15           By keeping this policy in place, we are perpetuating a  
16 price war instead of making it the way the law reads, that you  
17 can match that price as long as that price is legal, and go ahead  
18 and put your advertisement out today.

19           But, you can only sell it at that price as long as the  
20 price you're meeting is legal. The day that price goes up, your  
21 price goes up. And then it's equal across the board to  
22 everybody. And that's the reason why we want to get this  
23 removed, but, this ties our hands and actually extends an  
24 unlawful price is what it does.

25           CHAIRMAN COOK: And the presumption in all of this is

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1 that whoever first dropped the price is still not encountering  
2 problems with the below cost sales, that they are still legal in  
3 terms of the price.

4 MR. ORZECH: As long as that price remains legal that  
5 they want to match. The minute it goes up, because technically  
6 as of one October, when WinCo's price went up, the other person's  
7 price shoulda went up.

8 But, according to this policy, it doesn't have to. As  
9 long as they're notifying us they're going to advertise.

10 COMMISSIONER CROWTHER: Well, hang on though. But if  
11 the other person's price is still below their cost, they don't  
12 have to go up, do they?

13 MR. ORZECH: Say that again?

14 COMMISSIONER CROWTHER: Well, if the retail store that  
15 is matching the price of say, WinCo, WinCo's price goes up, but  
16 store that's meeting it, if the price, if they hold it at that  
17 price, but that price is still not below their cost, then they're  
18 still legal, aren't they?

19 MR. HETTRICK: Sure. They're legal, because as long as  
20 they're at cost plus ten, they're legal. And if they match, they  
21 didn't need notify us to do that if they didn't go below the cost  
22 plus ten. They didn't have to notify us, it wouldn't be meeting  
23 a competitive price from our standpoint, it would be their own  
24 pricing, and they could do whatever they want.

25 The issue here would be, and if you read the fine print



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1 of -- the fine print. If you read the NAC, you can adjust your  
2 markup to meet the price.

3 So, it would mean that they would have to go below the  
4 markup amount to have to notify us and become, or be using the  
5 competitive price section in the law.

6 CHAIRMAN COOK: So if we look at this from the  
7 standpoint of there's basically three pricing zones that are,  
8 that a Retailer can be in. Full markup.

9 MR. HETTRICK: Whatever they want.

10 CHAIRMAN COOK: Within that ten percent limit, if they  
11 go into that range, they have to notify us.

12 MR. HETTRICK: It has to be matching a competitive  
13 price.

14 CHAIRMAN COOK: But, they have to match a competitor's  
15 price to do that. But, under no circumstances, even to match a  
16 competitive price, can they go below cost.

17 MR. HETTRICK: That's a very interesting question,  
18 Mr. Chairman, because the way I read the law and the NAC, it says  
19 you can adjust your markup.

20 And I would tell you that it says, the top of the law  
21 says, you may meet a lawful, competitive price.

22 That means to me that if WinCo can sell it for 2.50 and  
23 they are legal, they have at least a ten percent markup, which is  
24 required by law, and my cost is 2.55, but I feel the need to do  
25 it. To me, adjusting my margins means I'm going to adjust my

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1 margin negatively to compete, because I think I have to do it.

2           Now, that's the way I read it. Is, because it says,  
3 "You may meet a lawful price," and then it goes on to say, "by  
4 adjusting your margin."

5           Now, I realize it goes negative and you could argue  
6 that that's not what he it means. But, I still that's what it  
7 means. It means meet a lawful price, despite your price.  
8 Despite your cost. Whatever it is.

9           COMMISSIONER CROWTHER: So, in that way somebody could  
10 sell below their cost.

11           MR. HETTRICK: Correct.

12           CHAIRMAN COOK: And that's only the exception, is to  
13 meet a competitive price.

14           COMMISSIONER CROWTHER: And that's your interpretation,  
15 is that what you are saying?

16           MR. HETTRICK: Yes, sir. That's exactly the way I see  
17 it. Is you don't put a statute, to me, you don't put a statute  
18 in the law that says you can meet a competitive price, but no,  
19 you can't meet it because it goes below cost.

20           If that was the intent, then you never would have put a  
21 competitive price statute in the law. It would just have been  
22 you can't sell below cost.

23           So, you have to look at the big picture of what the  
24 statute says. And when you look at the big picture, to me the  
25 statute says you may meet a competitive price, period.

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1           CHAIRMAN COOK: Which makes a lot of this stuff about  
2 the administrative policy way out there in left field. In what  
3 was the point of all this.

4           MR. HETTRICK: Exactly. It was to satisfy one customer  
5 who said he got to advertise that price for a month, and I want  
6 to. And nothing in the law says you could. And a policy was  
7 adopted that said you could, to satisfy one customer.

8           CHAIRMAN COOK: But, the law says you couldn't do it  
9 either.

10          MR. HETTRICK: Exactly.

11          CHAIRMAN COOK: The law just says you can meet a  
12 competitive price.

13          MR. HETTRICK: Exactly. It doesn't say anything.

14          CHAIRMAN COOK: You can't do it retroactively. You  
15 can't go back and say, well, last month he was selling it.

16          MR. HETTRICK: Exactly. That's not meeting it anymore.  
17 He's no longer at that price. To me that is, that's not what the  
18 word "meet" means.

19          CHAIRMAN COOK: Let me throw of curve at you. That's  
20 passed. That retailer has now gone back and raised his price.

21          MR. HETTRICK: Correct.

22          CHAIRMAN COOK: If retailer number two decides we're  
23 within that ten percent margin, if they come and get permission  
24 to drop their price down, they're not meeting a competitive  
25 price, they are now setting the competitive price. Does the law

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1 prohibit them them from doing that.

2 MR. HETTRICK: Not as long as they don't go below ten  
3 percent. The law says you can sell any time you want at cost  
4 plus ten percent. You don't need permission from us to do that.  
5 And as long as you're cost plus ten or more, you can do whatever  
6 you want.

7 If you're competitor can sell cheaper than you because  
8 he buys cheaper than you, and to match that price you have to go  
9 below ten, you have to get permission or you have to notify the  
10 commission you are matching a price.

11 COMMISSIONER COLLIER: What's the ten percent about?

12 MR. HETTRICK: We have a law, a statute that says you  
13 can't sell milk for less than cost plus ten percent.

14 COMMISSIONER COLLIER: I can sell it for more than  
15 that.

16 MR. HETTRICK: Absolutely. But you can't sell it for  
17 less than cost. And it was put in place a long time ago to  
18 protect small retailers and the small distributors.

19 And there's other states that have the same thing.

20 We are not unique in this regard. But, that's why they  
21 also added the competitive clause. Is, you know, if you feel you  
22 have to have the ability to compete to retain your business,  
23 you've got to be able to match a price.

24 MR. ORZECH: Maybe I can explain that. Are you asking  
25 where that ten percent came from?

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1           COMMISSIONER COLLIER: Yeah.

2           MR. ORZECH: The way it's set up is that the  
3 distributor, if they filed, if they filed a monthly statement of  
4 cost, which included all their overhead, their transportation,  
5 the refrigeration for the store, everything, then that ten  
6 percent doesn't apply. Then they have to sell it at their cost  
7 plus their overhead. That's what they have to go by.

8           Well, it was decided that that was kind of burdensome  
9 for a retail store to do that, so the ten percent figure was  
10 adopted. You don't have to file your cost per month anymore.  
11 But, you do have to add that ten percent for fluid milk, and six  
12 percent on butter.

13           COMMISSIONER COLLIER: Six percent on what?

14           MR. ORZECH: Butter. You don't have to file paperwork  
15 anymore. And it was figured that ten percent was an average  
16 figure to cover the cost of operation.

17           COMMISSIONER COLLIER: Is that in the regs?

18           MR. ORZECH: Mm-hmm.

19           MR. HETTRICK: Yeah, it's in there.

20           COMMISSIONER COLLIER: And this policy supersedes this  
21 reg.

22           MR. HETTRICK: It's supposed to be an interpretation of  
23 that reg.

24           MR. ORZECH: Policy doesn't supercede regulation. It  
25 was supposed to -- the regulation stands, because the regulation

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1 was adopted by the legislature. We're not allowed to go against  
2 what --

3 CHAIRMAN COOK: You got NRS and NAC administrative code  
4 and the administrative code is subordinate to the NRS, which is  
5 the law.

6 MR. ORZECH: The policy was set to say, I guess, how we  
7 were going to enforce that regulation. But, it actually went  
8 against it. And like I said, it was used one time. And in the  
9 past six years that I have been here, it has not been used. It  
10 has not come up. This is the first time, and it's gonna cause a  
11 problem now.

12 COMMISSIONER COLLIER: Somebody brought this up?

13 MR. ORZECH: Mike Compston, the director at the time,  
14 working with Mark French out of Vegas, and that's where it.

15 COMMISSIONER COLLIER: Originated? But has somebody  
16 currently brought this up?

17 MR. ORZECH: What brought it up was, again, was a  
18 company down in Vegas has asked to extend their price past what  
19 the legal price is.

20 COMMISSIONER COLLIER: Past the 28 days?

21 MR. ORZECH: Past the meet date. It would go, like I  
22 said, the legal price that they wanted to match, ended 30  
23 September. And they wanted to go ahead and continue that price  
24 through October, and match that, so that they could use it so  
25 that they could put fliers out and say that -- but then it comes

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1 up again.

2 This goes, like I said, as Lynn stated, if another  
3 company comes along and says, look. They're advertising this  
4 price because it's already happened.

5 The company that -- here's how bad it is. WinCo called  
6 me and said they're advertising that price. Can we match it  
7 again? And I said you can't match the price. They're matching  
8 you. So, we're actually the one that's causing this.

9 COMMISSIONER COLLIER: But they could in 28 days.

10 MR. ORZECH: No, because the price is not legal  
11 anymore.

12 MR. HETTRICK: This thing will go on and on forever if  
13 we do it this way. Because one guy is going say I want to  
14 exercise the 28 day rule in your policy. And as soon as he gets  
15 done, the other guy is going say, I want to exercise the 28 day  
16 rule in your policy. And it's going to go on and on. And the  
17 price has gone back up. It's already gone back up.

18 CHAIRMAN COOK: And the fact that it's limited to one  
19 at a time.

20 MR. ORZECH: It's actually limited to the first guy in  
21 the price. Everybody else is out of the game.

22 COMMISSIONER COLLIER: This locks everybody out of the  
23 market. So, for a 28 day selling period, that retailer is making  
24 out like a bandit.

25 CHAIRMAN COOK: Dave, do you have any thoughts or

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1 comments on this?

2 MR. COON: I can't represent the positions of the  
3 retailers, of course, but everything the staff has said makes  
4 sense and we respect, you know, where they're coming from on it,  
5 sure.

6 MR. HETTRICK: I want to point out, attached on that  
7 law I gave you, the last page -- or the staff gave you -- the  
8 last page does have the NAC in there. It's 6507. It's about the  
9 second paragraph up from the bottom.

10 COMMISSIONER COLLIER: Minimum markup.

11 MR. HETTRICK: There's the markup six percent apply,  
12 and ten percent and then, you know, and it says they must, they  
13 shall file costs unless they are using the markup permitted by  
14 this section.

15 So, okay. So that's where the ten percent comes from.  
16 They can do it either way, but generally most of them don't want  
17 to file a monthly statement, so they use the minimum ten percent.

18 It's the easiest way and the cost effective way, so  
19 there's your minimum established. And then when you read 584,  
20 which is on the front page of what we passed out, it says the,  
21 you are not allowed to develop a monopoly or unfair system.

22 So, if you meet in good faith, and it says, "meet in  
23 good faith a lawful competitive price," which means we need to  
24 check it if there's an issue, because we have to make sure it's  
25 lawful. And they truly are above cost, which is the law, and if



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1 they are doing that, they should be able to meet it.

2 And it doesn't say it's only one person. It doesn't  
3 say it has to be advertised. It says you may meet. And beyond  
4 that, it goes on to say, then you have to notify us within five  
5 days after the occurrence.

6 And in there it says they have to notify us seven days  
7 in advance. In the policy. It just doesn't make sense.

8 COMMISSIONER COLLIER: I think, Mr. Chairman, this  
9 really limits the free enterprise. I really think it does.

10 CHAIRMAN COOK: I agree.

11 COMMISSIONER COLLIER: This is a very cumbersome deal  
12 as far as I can see.

13 MR. HETTRICK: Yeah. So we would like you to just  
14 rescind it. The law is clear. You read the law and the NAC, the  
15 administrative code, it's very clear.

16 COMMISSIONER COLLIER: It is over here?

17 MR. HETTRICK: Yeah. It's very clear what it says.  
18 You can meet it.

19 COMMISSIONER COLLIER: Now that I have had a chance to  
20 read all this.

21 CHAIRMAN COOK: It seems to me that rescinding this  
22 code will ultimately benefit the consumer the most.

23 MS. PUGH: It's not a code; it's just a policy.

24 CHAIRMAN COOK: Well, policy. And it would certainly  
25 make things easier on the retailers as well.

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1           MR. HETTRICK: And the other thing, Mr. Chairman, quite  
2 frankly, it would make it easier on us.

3           Can you imagine us have to going out and police  
4 advertising for 28 days and whether or not they are doing it for  
5 the 28 days? It's beyond the scope of anything.

6           COMMISSIONER COLLIER: How many more staff members  
7 would it take you do that?

8           MR. HETTRICK: If they started doing what we anticipate  
9 they do if we publish this policy, it would certainly be a  
10 headache. We wouldn't want to be involved.

11          CHAIRMAN COOK: So, what action to do we need, just a  
12 motion?

13          MR. HETTRICK: Just a motion. You adopted it.

14          COMMISSIONER CROWTHER: Hang on. Can we do this, I  
15 mean is this an actactionable item on today's, for today's  
16 meeting?

17          CHAIRMAN COOK: Yes, it is.

18          COMMISSIONER CROWTHER: Or do we need to get some legal  
19 counsel? Warren's not here.

20          MR. HETTRICK: No. Actually, it's a very good  
21 question, Troy, and it's interesting that you brought up the  
22 minutes and the question about whether or not we can do it.

23                 The same question was asked when it was adopted  
24 originally. Warren was there when it happened.

25                 We looked at the minutes. Warren ruled that, no, you

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1 can do it, it's a policy. It's not, it doesn't take the  
2 legislature, it doesn't take anybody but you. You are the  
3 commission. You can adopt it.

4 And therefore you can do the same thing to rescind it.  
5 You just need to make a motion and rescind it.

6 COMMISSIONER CROWTHER: I just wanted to make, because  
7 some of these things we actually have to hold hearings on them;  
8 we have to have public meetings on them, and you're saying that  
9 for this --

10 MR. ORZECH: This is under administrative procedures.  
11 This is just a memo. In fact, this memo could have been done  
12 without it even going to the commission.

13 The executive director could have done it.

14 The only reason it is brought up now is it was brought  
15 up in 2006, and it was the commission that adopted this. So  
16 that's why it was brought here for action.

17 MR. HETTRICK: This is a policy; it's not a law, and  
18 it's not adopted by the legislature. That's NAC, and that's why  
19 we have to go through all the hearings and we have to take it to,  
20 what's it called, the commission, the legislative commission.  
21 They have to approve it.

22 None of this has to be done in that fashion. This a  
23 policy.

24 COMMISSIONER COLLIER: Has this policy only been  
25 challenged once?

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1 MR. ORZECH: One time.

2 MR. HETTRICK: It's actually never been challenged.

3 COMMISSIONER COLLIER: Not challenged.

4 MR. HETTRICK: It was put in place and used once in  
5 2006.

6 COMMISSIONER COLLIER: To solve a problem at the time.

7 COMMISSIONER CROWTHER: It sounds like it's currently  
8 being used right now. Or trying to be used.

9 MR. ORZECH: It's not. In six years -- I'm the one  
10 that sees these. In six years, this has never been used. The  
11 only time it's been used is just recently it just came up because  
12 of what's going down there with WinCo.

13 And it's, other than that, the people that want to  
14 match prices, they have been matching prices and they have been  
15 doing it only as long as that price has remained legal.

16 This is the first time in six years that someone has  
17 come to me and said they want to go beyond that.

18 And I was warned ahead of time that WinCo's price was  
19 going to go up one October, and so that's one of the main reasons  
20 I knew that.

21 So, when I was approached by, it was actually  
22 Food4Less, that they wanted to go ahead and match this price, I  
23 knew as of one October that price was no longer going to be  
24 valid.

25 But, with this policy in place, I had no choice.

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1     Otherwise I said you can only go ahead and match that price to  
2     the end of September.

3             But, with this in place, I had to allow them to go  
4     until October. And then after discussion with the staff, and  
5     then, like I said, WinCo then called me back and said hey, we  
6     just, this was already beginning of October, WinCo came to me and  
7     said, look. We had to raise our price. We want to go match what  
8     Food4Less has got.

9             And I said, well, Food4Less was matching your price.  
10    And he said, well, how are you letting them do that?

11            So it's a round and round circle, and we're stuck in  
12    the middle of it. And we're actually the one that's causing the  
13    problem in the marketplace by this policy.

14            That's why it has to be removed, so we can go back and  
15    allow the retailers to compete equally as long as the price  
16    remains legal. That's really the function of it.

17            COMMISSIONER CROWTHER: Okay. I don't have a problem,  
18    you know, taking this out and voting on it. But, I would like to  
19    have some, I have had some questions for a while on some other  
20    issues regarding the pricing that maybe once this is voted on, we  
21    can follow up on.

22            MR. HETTRICK: Sure.

23            CHAIRMAN COOK: Okay. Well, would either of you care  
24    to make a motion to rescind this policy?

25            COMMISSIONER COLLIER: Mr. Chairman, I will make a

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1 motion that we rescind the State of Nevada Dairy Commission  
2 policy memorandum, dated October the 13th, 2006, related to the  
3 retail store meeting a lawful competitive price. I would  
4 recommend that we rescind this motion.

5 COMMISSIONER CROWTHER: Second.

6 CHAIRMAN COOK: Is that worded appropriately for you?

7 MR. ORZECH: Perfect.

8 MR. HETTRICK: It's fine.

9 CHAIRMAN COOK: Okay. Motion and a second, no  
10 dissenting votes. The motion carries.

11 MR. HETTRICK: Thank you. We appreciate that. That's  
12 going to make it a lot better in the long run.

13 All right. Next thing on the agenda, and Troy, if you  
14 want to discuss pricing or anything, we'll do it when we get to  
15 public comment, or in the director's report, either one. Nothing  
16 we could do in regard to action because we didn't agendize, but  
17 we can certainly discuss.

18 Okay. Next thing is approval of the minutes. We've  
19 got minor changes. We really made it hard on the court reporter  
20 last time, because many of these changes are words that like haul  
21 and hall, that without knowing what we were talking about, it was  
22 very difficult for the court reporter to understand.

23 And then an acronym MILC or milk, some minor changes  
24 there, but we need to make those changes. So, with those changes  
25 made, I would recommend that you have a motion to approve the

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1 minutes as corrected.

2 COMMISSIONER CROWTHER: Okay. I will -- sorry.

3 CHAIRMAN COOK: Go ahead.

4 COMMISSIONER CROWTHER: I will make a motion to approve  
5 the minutes as corrected for the September 19th, 2012 meeting.

6 COMMISSIONER COLLIER: Mr. Chairman, I will second that  
7 motion.

8 CHAIRMAN COOK: We have a motion and a second. The  
9 minutes are approved as corrected.

10 MR. HETTRICK: Next, Mr. Chairman, is the staff report.  
11 And since we got Mike sitting there, I think the first thing we  
12 need to do is recognize the fact that Mike's going to be leaving  
13 us.

14 He's accepted a position in Salt Lake City, as I  
15 understand it. And is going to be moving to there. So, this  
16 will be his last meeting. And we certainly want to express to  
17 Mike our appreciation of his efforts on behalf of the Dairy  
18 Commission, and the work he's done down there, and we're going to  
19 miss him.

20 MR. SHAFER: I was going to say, the position is with  
21 the FDA, so that's the only reason I would be leaving, because  
22 it's such a great opportunity.

23 I love this job. I love working for the Dairy  
24 Commission. Anna has been an amazing boss. And so it was a hard  
25 decision. But, it's just too good of an opportunity to pass up,

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1     you know?  So.

2                   CHAIRMAN COOK:  So, you'd rather work for Obama than  
3     Brian Sandoval?

4                   MR. SHAFER:  I'm going back to hopefully getting some  
5     pay raises and stuff, so that would be nice.

6                   Seriously, no.  It's been great.  I have loved working  
7     here.  I thoroughly enjoyed it, and I learned a lot.

8                   I'm glad that I got this opportunity for sure.

9                   CHAIRMAN COOK:  Well, we appreciate your service, and  
10    we're going to miss you.

11                   MR. SHAFER:  Thank you.

12                   MR. HETTRICK:  Thanks, Mike.  All right.

13                   COMMISSIONER CROWTHER:  We never -- there is never more  
14    than two people down here at a time anyway, right?

15                   MR. HETTRICK:  Okay.  Our balance forward at the end of  
16    September was 415,580.78.  That's a decrease of 43,466.47 from  
17    the end of August.  The decrease is a result of two things.

18                   First, we ended up recognizing a change in our 2012  
19    ending balance from 545,963 to \$511,585.  That was a reduction of  
20    \$34,378.

21                   And the other thing is that during the month, we make a  
22    lot of our quarterly payments.  So, we got hit with some of the  
23    bigger expenditures that don't appear in the next month.  So,  
24    this going to even out beyond the 34,000 that was the recognition  
25    of the decrease in the balance.



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1           The milk price report's been handed out. Today is the  
2 day they will publish Southern Nevada. We don't have it. We  
3 anticipate it will rise by a number similar to what you see on  
4 that sheet for Northern Nevada.

5           Prices are high, but the costs are very high at the  
6 same time. And so the guys are still struggling, the dairies are  
7 still struggling with margin, which is the issue.

8           We are in the process of extending our lease for the  
9 Las Vegas offices down there right now.

10           Our existing lease expires on 12/31 of 2012. We had  
11 anticipated moving our staff down there into the ag building, and  
12 were supposed to do that, and it was going to be rent free.

13           But, when Kimberly went over and looked at the space,  
14 it was clear that that space had to be either significantly  
15 remodeled -- well, had to be significantly remodeled. And at  
16 that it was very marginal. The space they had for us included  
17 the, had to include the walkway to the ADA bathroom, which meant  
18 there had to be a four foot wide hallway right through the space  
19 where office staff would have to be to get into the only ADA  
20 bathroom in the building.

21           And it was simply determined that -- and then they were  
22 also looking at moving to a new building. They don't know yet  
23 what they are going to do. So, at that point we talked it over  
24 and said, this doesn't make a lot of sense. So, we went and  
25 renegotiated the lease, B and G did, buildings and grounds did,

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1 renegotiated the lease.

2           And we've got actually a lower rate and some better  
3 terms on the holdover, so we can figure out what we are going to  
4 do. It also gives the legislature a chance to determine whether  
5 or not officially we are going to get moved to agriculture and  
6 some of those things, which may have an impact on it or may not.

7           So, anyway, we are in the process of doing that, and  
8 going from there. The only final thing I would mention on the  
9 record just quickly, I didn't put it in the report when I wrote  
10 it.

11           I did speak last night at a function put on by the  
12 Churchill County Museum Association, and a rather interesting  
13 program where they do in-service training for teachers in the  
14 district, who really like that. They don't have to go  
15 out-of-state or travel or pay fees. The museum association puts  
16 on training for them.

17           Last night their training was on the dairy industry and  
18 the new DFA plant.

19           And they had the manager of the DFA plant there, a  
20 couple of dairymen and myself, who explained just general  
21 industry and some of those things. Went -- very well attended.  
22 About 18 teachers that were there, for a two-hour presentation,  
23 and then there was a break.

24           And then at 7:30 the public came in. There were  
25 probably 40 people and we redid the whole thing again for about

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1 40 people and the public. It was quite interesting and fun to  
2 do, and I thought it was kind of unique.

3 CHAIRMAN COOK: Nice way the show the flag.

4 MR. HETTRICK: Yeah. It was good. And then the next  
5 thing on the agenda, Mr. Chairman is the legal report.

6 Obviously Warren is not here. But, I can tell you that  
7 we don't have any legal issues, and nothing that I'm aware of  
8 going on that would apply to Mr. Goedert's job function. So,  
9 we're doing good there.

10 Mr. Goedert's out for medical reasons and we hope that  
11 he will be back. We anticipate he will be back at the next  
12 meeting.

13 CHAIRMAN COOK: Okay. Thank you.

14 MR. HETTRICK: The next thing on the agenda is  
15 consideration of any other matters relating to the dairy  
16 industry. Probably a good time for Troy, if he has some  
17 questions he wanted to ask.

18 COMMISSIONER CROWTHER: I just, let me jump back to the  
19 price, the report. Class I milk at 23.17 a gallon, or a hundred  
20 weight. That, you mentioned they're still fighting the margins  
21 on that. Because of feeding costs?

22 MR. HETTRICK: Yes.

23 COMMISSIONER CROWTHER: That's about the highest I've  
24 seen it for a long time.

25 MR. HETTRICK: Yes. You are exactly right, Troy. It's

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1 feed cost, transportation cost. Everything that's involved for  
2 these guys is going up. Hey, I saw some figures last night that  
3 the dairymen produced, and they said I think it was a  
4 year-and-a-half, two years ago, hay was \$130 a ton.

5 Today it is running 260, something like that. Corn has  
6 got similar pricing. It's gone from around \$130 a bushel,  
7 interesting the prices are very close, to over \$300 a bushel,  
8 given the government's mandate that 40 percent of the corn crop  
9 has to go into ethanol.

10 It's really fascinating that's what's happening,  
11 despite the drought. We hear all the talk about the drought, but  
12 Pete Olsen last night said that in 2008, the yield for corn was  
13 83 or 85 bushels of corn per acre average for the corn belt.  
14 This year with the drought, it's going to be 123. And there's a  
15 shortage of corn. And it's because of the ethanol mandate.

16 And we made an attempt, the commission, we joined with  
17 the western dairy producers in asking Congress to rescind the  
18 mandate and lower the price of feed for the dairy industry, but  
19 they have not acted yet.

20 We're one of many. I mean we're not the Lone Ranger,  
21 but we're trying to participate in helping the dairymen maintain  
22 their margins.

23 But, margins are the issue. And, of course, the new  
24 farm bill that's what it's trying to protect is margins. It's  
25 not about the price you get paid; it's about maintaining a margin

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1 so you can actually pay your bills because there's something left  
2 in between.

3 But, they're stalled on the farm end too.

4 COMMISSIONER CROWTHER: Well, now 23.17 a hundred  
5 weight, that obviously gets passed along, at least a portion, to  
6 the processors.

7 I mean what's the down the line impact on this?  
8 Because as we just discussed, the retail stores are still selling  
9 milk at these discounted prices.

10 MR. HETTRICK: We've heard, there was some article  
11 published, I think you saw that article, Tom, or you and I did  
12 somewhere, that said that somebody in California is predicting  
13 milk will go to six dollars a gallon.

14 COMMISSIONER COLLIER: I heard that.

15 MR. HETTRICK: It's coming. It's going to come as  
16 price increases, whether we like it or not. It's coming, and  
17 it's the only way they will maintain any kind of a margin.

18 COMMISSIONER CROWTHER: Okay. Back to our previous  
19 discussion.

20 I've had a question about the statute indicates that we  
21 cannot sell, the retailers cannot sell below cost and that the  
22 same applies to processors and down the line.

23 Is there some kind of standard that we use to determine  
24 what that cost is?

25 For example, there was mention of overhead, that ten

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1 percent was put in there in order to make it, I guess, simplify  
2 the calculation so you didn't have to worry about all this  
3 overhead and that.

4 But, if companies can allocate, can do, you know, cost  
5 allocations on the lines below the overhead, or above the  
6 overhead, however you want to look at it.

7 MR. HETTRICK: Yep.

8 COMMISSIONER CROWTHER: And allocate costs elsewhere,  
9 do we have standards that prevent that, that kind of standardize  
10 what that cost calculation is?

11 MR. HETTRICK: We changed our regulations and did the  
12 hearings and everything and passed those.

13 And they were accepted by the legislative commission,  
14 and we actually removed a listing of the various things that were  
15 expected to be within.

16 And we did it for the very reason you just cited, Troy,  
17 is every company is different.

18 And, yes, you go in and try to count it for them, but  
19 you would be doing it on a constant basis, and arguing with them  
20 about how they did business. If you did it.

21 We accept what they say their cost is, and it's because  
22 they can allocate, as you said, a company like U.S. Food can  
23 deliver milk, and they can deliver meat and rice, and whatever  
24 else, to a convenience store or market and they can charge  
25 whatever portion of the freight to that delivery to milk or not

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1 to milk, or however they want to do it. It's their choice how  
2 they allocate.

3 Now, could we go back and one of our auditors sit down  
4 and figure out for them what the real cost was? Absolutely we  
5 could. But, are we going to do that on a week to week basis of  
6 one delivery has rice and meat and the other one doesn't?

7 Are we going to, what price are we going to use? I  
8 mean it becomes such a nightmare that -- the intent is, you tell  
9 us what cost is, it's got to be reasonable. And we check that,  
10 and we work from that figure.

11 And so that's how we're doing it. Otherwise I don't  
12 know how big the staff of auditors has to be to check these  
13 prices if people decided to do it monthly.

14 COMMISSIONER CROWTHER: I understand. That's why I  
15 asked about standard, if there's a standardized method for doing  
16 that.

17 I mean, you know we used the example of WinCo, and if  
18 they, you know, for example if a company that may own their own  
19 trucking line, and as a separate entity, and can determine what  
20 they're going to charge what they're going charge for freight in  
21 this particular matter.

22 MR. HETRICK: Exactly.

23 COMMISSIONER CROWTHER: It would seem that they would  
24 have a significant advantage over, you know, your mom and pop  
25 store that does not have the, you know, has to show their cost

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1 much higher.

2           Even though, the reality may be, that may be that it's  
3 the same.

4           MR. HETTRICK: That, and Troy, you're right. But, I  
5 mean, your example is probably a good one to express how  
6 difficult it is.

7           The mom and pop store is never going to own their own  
8 truck and haul their own material, as you point out. And they  
9 are going to get a price from a supplier that includes a margin.

10           Where the big company, that can haul their own milk,  
11 owns their own truck, they're not going to have an added margin.  
12 You are never going to make it fair and compete. It's the way it  
13 is. It's the system.

14           COMMISSIONER CROWTHER: I'm not saying compete. Try to  
15 make it fair and compete in what company pays for freight versus  
16 another company. I'm just saying, isn't there some way to  
17 standardized it so that the calculation has to be the same? The  
18 things that are included in the calculation are the same?

19           I realize there's, you know, there's opportunities for  
20 a larger company to save on just volume. But, it seems like, you  
21 know, I don't know how other places do it, how other states if  
22 there is a standardized way to calculate that cost, but it just  
23 seems like one area where there could really be a significant  
24 amount of fudging on that, that cost.

25           MR. HETTRICK: You know, I understand the concern and



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1 the direction, but I don't know how you would set that standard  
2 and make it fair to everyone.

3 And I don't see how, how we can do it. I mean, I think  
4 that was the very reason we said it included operating costs and  
5 overhead costs, and a whole lot of other costs that can be  
6 allocated out a million ways.

7 If your costs go, do you allocate the cost of the  
8 chairman of the company down to the price of milk or do you call  
9 that administration, and divide it out and then you have got that  
10 cost, where somebody else doesn't?

11 There are so many variables that, I mean, do I believe  
12 my audit staff could go out and do that, sure they could.  
13 There's now doubt we could do it.

14 Could we afford to do it? Do we have the time to do  
15 it? I just don't see any way. I mean, we pretty much have to  
16 accept, and I don't see the kind of anomaly I think you are  
17 concerned with in the market, and that is that most of these  
18 people are within 30 to 40 cents of each other on the price of a  
19 gallon of milk. It just isn't that big of a deal. And, you  
20 know, it's not, we just don't see that anomaly.

21 So, I understand the concern, but I don't now how we  
22 could set a standard that would work.

23 COMMISSIONER CROWTHER: Okay. And my question, and  
24 first of all, again, like I said, it's not -- I'm not just  
25 concerned about the retail, but, you know, processors also have

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1 this issue. I would think.

2 And the question, it was more of a question. Is there  
3 an industry standard for costs that is out there that we can look  
4 to? And that's, what I am hearing is no.

5 MS. PUGH: Sure, there is.

6 MR. ORZECH: When our auditors go out there, if you  
7 want to talk to processors, and Dave knows they do a pretty good  
8 job of taking the information that's supplied to get what that  
9 gallon of milk is going to cost to get it out the door.

10 So, I feel comfortable that's being done real well with  
11 the processors, because that's being done, it's done the same.  
12 It's done when we do a cost price on the processors.

13 On the distributor, the cost variables come in as you  
14 say. Transportation is the big one. That's the one that we  
15 watch the closest. And we, the auditors do a pretty darn good  
16 job at making sure that that figure, because they'll tell me if  
17 they think there's a problem on it.

18 I mean I don't have, you know, we try to keep a pretty  
19 good look at what that, at what it costs to move that gallon of  
20 milk. And from what I've seen, the companies, the distributors  
21 that are out there, for the most, part do a pretty darn good job  
22 of knowing what their transportation costs are.

23 I mean, and we see them, and we do take a look at that,  
24 because as you have that problem down there, we have that problem  
25 here with milk coming in from Salt Lake.

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1           It's coming all the way across the state to be sold in  
2 Reno cheaper than what the guys in town can produce it and  
3 distribute it for. There's a problem. So, we have to keep an  
4 eye on that transportation cost across the state.

5           So, as the price of fuel varies, and it's only going  
6 up, it hits those guys pretty good, the distributors. So, we  
7 watch that. That's probability the main thing. I don't know if  
8 that's answering your question.

9           COMMISSIONER CROWTHER: Well, again, I guess the  
10 overall question is, is there an industry standard.

11          MR. ORZECH: No.

12          COMMISSIONER CROWTHER: And it sounds like no.

13          MR. ORZECH: No. Each company is going to move it  
14 differently. I mean again, if the company is moving the stuff,  
15 if that truck dead heads on the back way, or if they go into  
16 California, pick up a load. Each company, and then some the, you  
17 know, postage stamp way of distribution as far as spreading that  
18 cost out amongst everything.

19                 And our feeling, at least with the Dairy Commission has  
20 been to, as Lynn said, work, as long as that company can show you  
21 how they are putting that transportation cost into their product,  
22 it's up to us to learn their process. Not to dictate to them a  
23 way of doing it.

24                 And that's how we have been doing it. And they have  
25 been able to show us. They all put their transportation costs in

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1     there and their other costs as needed.

2             COMMISSIONER CROWTHER:   Okay.   The other issue I guess  
3     is going back to the, what we previously talked about, where we  
4     rescinded that memo.

5             I think it would be beneficial to get at least some  
6     kind of an opinion from Warren or whomever, about whether that  
7     statute and NAC allow people to sell below cost.

8             Because that's what I heard.   And I heard that that's  
9     how we've interpreted it, that, you know, if somebody else is  
10    advertising it, now somebody wants to sell it at that price, even  
11    though it's below cost, they can do that.

12            MR. ORZECH:   The statute clearly says you can meet the  
13    price.   It's very clear.   The statute is very clear.

14            COMMISSIONER CROWTHER:   But, it also says that you  
15    can't sell below cost.

16            MR. HETTRICK:   But, Troy, that was kind of the point I  
17    was trying to make.   If you have a statute that absolutely says  
18    you can not sell below cost, then you don't put in another  
19    section of the law that says you can meet a price.

20            You wouldn't do it.   You would just say you can't sell  
21    below cost, and that would be the end of it.

22            And that's not what was it said.   So, it's clear to me  
23    that by adding the statement that says you can match a  
24    competitive price, a lawful price, and that means that your price  
25    might be unlawful to me.   I mean just the wording of it says that

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1 to me. It seems to me it's clear. I don't mind at all asking  
2 Warren if he feels same way. I mean I don't mind doing that.

3 COMMISSIONER CROWTHER: I would like to just get his,  
4 just hear him comment on that.

5 MR. HETTRICK: Yeah. I'll see if I can't get a comment  
6 in writing from him. I will give him a call and talk to him on  
7 the phone when he's available.

8 CHAIRMAN COOK: Or put it on the agenda for next  
9 meeting.

10 MR. HETTRICK: We can do that too. I would rather have  
11 his answer in writing, so you can all read it in advance and then  
12 maybe have an opportunity to think about your questions.

13 I'll try to do that. I don't know, I can't guarantee I  
14 can. I don't know what he's doing or time wise what he's  
15 obligated to, but I'll try.

16 But, either way, we can put it on the agenda and talk  
17 about it if you would like. But, I just want to say to you, and,  
18 you know, don't misunderstand what I'm saying.

19 But, having spent 14 years in the legislature and  
20 having read this over and over and over again for intent, to me  
21 it seems very, very clear. You don't add the second statement if  
22 you can't sell below cost. It simply wouldn't be done. I mean  
23 there would be no reason for it.

24 So, it seems to me the intent is very clear. The  
25 wording may not be. I would agree with you that the wording is

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1 not very precise. It would have been nice if they said you can  
2 match a competitive price even if you go below cost so it was  
3 very clear, but that's not what they said.

4 COMMISSIONER CROWTHER: Okay.

5 CHAIRMAN COOK: Do you have your questions answered?

6 COMMISSIONER CROWTHER: That's all I had.

7 CHAIRMAN COOK: I wanted to go back and ask a question  
8 about the fund balance.

9 Are we pretty well done with the tax holiday credits  
10 coming through?

11 MR. HETTRICK: We're going to be done now for a while,  
12 the way it looks. The recognition of the difference in the  
13 balance was significant. And budgets have been posted for the  
14 state agency budgets that were put through, and ours was modified  
15 after we submitted it to show that we're going to be paying  
16 significant fees to the Department of Agriculture.

17 Far beyond what we anticipated. And so given that,  
18 we're probably going to just sit and make sure we're comfortable  
19 where we are before we move forward anymore.

20 CHAIRMAN COOK: Okay. The fees to Department of Ag?

21 MR. HETTRICK: Yes. As you remember, we have been  
22 paying an allocation, almost every agency pays it somewhere along  
23 the line, to a department above them. We have been in the  
24 Department of Business and Industry. And our fee for this year  
25 was \$71,000.

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1           The anticipated move to the Department of Agriculture  
2 with the rewritten budget that was done again, I will say for us,  
3 not what we submitted, shows that our allocation to the  
4 Department of Agriculture is going to jump to \$178,000 a year.  
5 And the year after that it goes to 188,000. And if it continues  
6 like that, we will have issues.

7           So, we are obviously concerned about that. We'll see  
8 how it goes.

9           COMMISSIONER COLLIER: Are we like a source of revenue  
10 to the overriding agency?

11          MR. HETTRICK: Excuse the pun. We are a cash cow.

12          COMMISSIONER COLLIER: We are a cash cow. Wow.

13          CHAIRMAN COOK: And what do we get for that assessment?

14          MR. HETTRICK: The privilege of providing the money.

15          COMMISSIONER COLLIER: That's by state legislature?

16          MR. HETTRICK: No, that's the governor's proposed  
17 budget through this budget staff and the Department of  
18 Agriculture.

19          CHAIRMAN COOK: But, the move still has to be approved  
20 by the legislature.

21          MR. HETTRICK: I don't see the legislature not  
22 approving the move.

23                 I mean, the Department of Agriculture is trying to,  
24 they're trying to, they're trying to, what's the word I want.  
25 They're trying to shore up the Department of Agriculture. And I

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1 believe the direction given to the director was do what you need  
2 to do to make the Department of Agriculture viable again.

3 And bring in the entities that make sense to go into  
4 the Department of Agriculture and do what you need to do to make  
5 it viable.

6 They have decided they need an assistant director and a  
7 marketing director, and a public information officer, and a bunch  
8 of other people. I think they have a total of ten people they  
9 want to add to their staff. And they are directed, apparently,  
10 not to do that on general fund money.

11 CHAIRMAN COOK: So the Dairy Commission will pay for  
12 it.

13 MR. HETTRICK: Between the entities that they are  
14 pulling in, Dairy Commission, the Purchasing Commodities Group,  
15 Out-of-State Purchasing, and the Department of Agriculture School  
16 Lunch Program, which should be in the Department of Agriculture.

17 Between those three entities, I think the total amount  
18 of money they're pulling in is, as I recall, about \$580,000 a  
19 year to pay their bills that they're sucking out of those various  
20 agencies, and our share is the 178.

21 COMMISSIONER COLLIER: Why hasn't this agency been in  
22 the Department of Agriculture?

23 MR. HETTRICK: I'm sorry. Say it again.

24 COMMISSIONER COLLIER: Why hasn't this agency, this  
25 Dairy Commission, why hasn't it been part of the Department of



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1 Agriculture?

2 MR. HETTRICK: When the agency was originally formed,  
3 the Dairy Commission was originally formed, it was a regulatory  
4 body. It was to control pricing, because there was no  
5 standardized pricing across the country.

6 And we were the little tiny, you know, entity with  
7 little tiny stores and markets, and the mom and pops. And any  
8 major company could have come in here and just wiped out our  
9 industry entirely if they wanted to.

10 So, the legislature put in pricing. And it's similarly  
11 in place in many other states. But, put in place a Dairy  
12 Commission that set the prices and the margins and the things to  
13 protect the locals.

14 Over time, the reason now it's making more sense to  
15 move it to the Department of Agriculture, is Anna's function and  
16 Mike's function has been moved into here. It used to be in the  
17 Department of Health, Human Services.

18 But, that function is the actual physically going out  
19 and verifying equipment is doing the right thing and it's all  
20 operating appropriately, the right tests are all taken, the data  
21 is stored so we can prove to people that we did all the right  
22 things, and dairy shipped milk that was legal and on and on and  
23 on.

24 That became more of a Department of Ag function, which  
25 is where it should have proally been also.

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1           So, our role has changed over time. And now the  
2       obvious interest is to move us to the Department of Agriculture.

3           And, frankly, we think the philosophy of it is correct.  
4       We don't feel like we are a regulatory agency. We are trying to  
5       promote the dairy and the all that kind of thing in the state of  
6       Nevada. And we're here just to make sure the folks do it right  
7       and are able to sell and grow, and all those things.

8           We don't argue with the philosophy of moving to the  
9       Department of Agriculture. We are not very happy with the fact  
10      that they look at us as a source of revenue.

11           CHAIRMAN COOK: That I know was one of the concerns  
12      when the discussions first started about making the move. And  
13      they seem to have been deflected in the past. Is this catching  
14      you by surprise?

15           MR. HETTRICK: Well, it definitely caught me by  
16      surprise. Because when I had discussions with the director of  
17      the Department of Agriculture and he's, he was a somehow involved  
18      with UNR, and I don't think he was directly before involved with  
19      state agencies and the allocation system.

20           Because when I sat and met with him about what the  
21      costs were going to be, it was basically, if you move over to our  
22      shop, you will have free rent, and you will only share in the  
23      utilities and the maintenance costs and everything else. There  
24      will be no allocation, there will be no other costs. You will  
25      actually have free rent. Move to our shop.

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1           And we were all excited about that because it was going  
2 to be an opportunity to give back a lot more money and, you know,  
3 and reduce, perhaps, assessments and so on down the road.

4           So, we all thought that was wonderful.

5           Then we were called to a meeting, where we sat down,  
6 and there was the Department of Administration budget office was  
7 there, and Warren was at that meeting.

8           And when I say "Warren" I meant Walter. Walter was at  
9 that meeting. And their budget person sat there and said, well,  
10 there's definitely going to be an allocation.

11           Well, that was the first time we had heard anything  
12 about there was going to be an allocation. And they, and Walter  
13 was told at the time that it would be similar to the allocation  
14 for B and I, which was the 71,000.

15           But then the next thing we saw was a tentative budget,  
16 and it was \$178,000. Tripled. We have complained multiple  
17 times.

18           COMMISSIONER COLLIER: Is the department, is the  
19 chairman of the department, or I guess, I don't know if that's  
20 the proper title of the State of Nevada Agriculture Department,  
21 is that where we're moving to?

22           MR. HETTRICK: Yes.

23           COMMISSIONER COLLIER: Is that an appointed position by  
24 this governor?

25           MR. HETTRICK: He serves at the pleasure of the

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1 governor, yes.

2 CHAIRMAN COOK: It's the director's position?

3 MR. HETTRICK: It's the director's position.

4 COMMISSIONER COLLIER: Okay.

5 MR. HETTRICK: I'm sure they're functioning the best  
6 they can under the marching orders they have, of do what you need  
7 to do to make the Department of Agriculture viable. But don't  
8 come to us for any money. Find money.

9 CHAIRMAN COOK: So, is this a fait accompli?

10 MR. HETTRICK: I would certainly bet on the stock  
11 market before I would bet on changing it.

12 COMMISSIONER COLLIER: Very interesting.

13 CHAIRMAN COOK: Okay. Well, that makes the reserve  
14 balance picture a little more interesting.

15 MR. HETTRICK: Exactly. That's why I said,  
16 Mr. Chairman, we will go slowly now for a while to see what the  
17 impact is.

18 We won't know until we get through the legislative  
19 session. And if it's voted on to be moved in the legislative  
20 session, then the budget will become effective July 1, and we  
21 will get hit for the 178 beginning July 1.

22 In the meantime, we're paying the Department of  
23 Business and Industry the \$71,000 allocation a year. Currently.

24 CHAIRMAN COOK: Is there anybody in B and I fighting  
25 this?

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1           MR. HETTRICK: Oh, no. We were very unhappy with the B  
2 and I's move to centralize, as you may recall, their operations  
3 and so on. So, we argued also with B and I.

4           The Dairy Commission has been stand alone since 1955.  
5 And out of the last session came an order that B and I was going  
6 to centralize all these functions and save a ton of money by  
7 sucking in various operations into B and I and centralizing. And  
8 it was going to be a lot more efficient and cost effective and  
9 all these things.

10           It proved to be, again, I'm trying to be politically  
11 correct. It proved to not be very effective for our use.

12           We submitted, for instance, training requests for Anna  
13 and her staff to go to trainings that went to Albuquerque, New  
14 Mexico and Indianapolis, as I recall.

15           And we got back from the Department of Business and  
16 Industry, after they reviewed it, that they were going to send us  
17 to Salem, Oregon, where there was no training. And Chicago,  
18 where there was no training.

19           And when they entered the stuff into the budget, they  
20 got, they gave us airfare to go one way, but they didn't give us  
21 a round trip. So, our people were left in Salem, Oregon, and in  
22 Chicago.

23           They didn't count in the cost of registration to go to  
24 any of the conferences.

25           I mean it was a literally a mess. We had to go back

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1 and fight through all of that to try to get the money back. And  
2 get what it took to actually train our folks.

3 And we have some issues, quite frankly, with the budget  
4 that's submitted right now. They have taken out, again, part of  
5 our training. They have taken out all of our out-of-state  
6 travel.

7 They have taken out all of our equipment a hundred  
8 percent. No equipment purchases are allowed.

9 They have done all of that so it ends up showing that  
10 we'll have a budget balance, a reserve of 400 some thousand,  
11 according to their budget that they have submitted and put on to  
12 the web.

13 But, the only way they could do that, when they added  
14 180,000 of cost a year was to take 100,000 of expense out. So,  
15 they did.

16 Of things that we still think we need. So it's going  
17 to be --

18 CHAIRMAN COOK: Is this under the Ag budget or under B  
19 and I's?

20 MR. HETTRICK: This is Department of Administration.  
21 They have taken it over. So, it's under the Governor's  
22 direction.

23 CHAIRMAN COOK: Well, yet another example of the  
24 efficient workings of government.

25 MR. HETTRICK: In action.

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1           CHAIRMAN COOK: In action. Correct.

2           MR. HETTRICK: Yes.

3           CHAIRMAN COOK: Okay.

4           MR. HETTRICK: So, we have some ongoing issues, and  
5 we're watching all of those closely, and we'll truck on down the  
6 road.

7           CHAIRMAN COOK: Okay. Well, thank you for the good  
8 work you're doing in dealing with it.

9           MR. HETTRICK: Everybody in this place deals with it.  
10 Believe me. The staff does the work.

11          CHAIRMAN COOK: All of you. It applies to all of you.  
12 Thank you.

13          MR. SHAFER: Thank you.

14          CHAIRMAN COOK: Now we know why you are getting out.

15          MR. HETTRICK: We do recognize the fact, Mike, we  
16 honestly do.

17          COMMISSIONER CROWTHER: The line forms behind Mike.

18          CHAIRMAN COOK: Any other comments or questions or  
19 observations?

20          Dave, do you have anything you want to add?

21          MR. COON: No. Thank you, Mr. Chairman.

22          CHAIRMAN COOK: Nice to see you. Thanks for coming to  
23 these meetings.

24          I have one thing I'd like to add. Middle of September,  
25 Model Dairy very graciously and generously contributed the use of

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1 some of their equipment and donated some product to a fund raiser  
2 that my Rotary Club did.

3           It was a century bike ride that was held at Bower's  
4 Mansion, and Model, this is the second year that they have helped  
5 us out.

6           So, I wanted to recognize their contribution and get it  
7 on the record that there's a lot of gratitude for their  
8 generosity.

9           MR. HETTRICK: I have one more thing too, Mr. Chairman.  
10 Just a note. When you said Dave attending the meetings. I don't  
11 want to have him or anybody else messed up.

12           The meeting in November is not going to be the third  
13 Wednesday, because that's day before Thanksgiving.

14           The meeting in November was moved sometime ago to  
15 November the 14th, So that we won't have any conflict for anybody  
16 trying to get to Thanksgiving or family or something.

17           So, just to make it, you know, get it out there so  
18 everybody is aware of it and don't have their automated calendar  
19 like I did, saying it was the 21st.

20           CHAIRMAN COOK: Okay. All right. Anything else?  
21 Seeing nothing, we will go ahead and adjourn this meeting.

22           (Whereupon proceedings concluded at 10:13 a.m.)

23  
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BOARD SIGNATURE PAGE

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CHRISTOPHER COOK, CHAIRMAN

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JOHN COLLIER, MEMBER

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TROY CROWTHER, MEMBER

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1 STATE OF NEVADA )  
 ) Ss.  
2 COUNTY OF DOUGLAS )  
3

4 I, SUZANNE KUES ROWE, Certified Court Reporter,  
5 licensed in the State of Nevada, License #127, and a Notary  
6 Public in and for the State of Nevada, County of Douglas, do  
7 hereby certify that the foregoing proceeding was reported by me  
8 and was thereafter transcribed under my direction into  
9 typewriting; that the foregoing is a full, complete and true  
10 record of said proceedings.

11 I further certify that I am not of counsel or attorney  
12 for either or any of the parties in the foregoing proceeding and  
13 caption named, or in any way interested in the outcome of the  
14 cause named in said caption.

15  
16  
17  
18 Date: October 24, 2012  
19  
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22  
23 \_\_\_\_\_  
24 SUZANNE KUES ROWE, CCR #127  
25

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