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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

STRAUS FAMILY CREAMERY,)	
)	
Plaintiffs,)	No. C02-1996 BZ
)	
v.)	FINDINGS AND CONCLUSIONS
)	FOLLOWING AUGUST 28, 2003
WILLIAM B. LYONS,)	HEARING
)	
Defendant.)	
_____)	

On August 28, 2003, I held an evidentiary hearing for the limited purpose of determining whether the Secretary of Agriculture considers the cost of organic milk production in setting the minimum milk prices. At the hearing Dr. Eric Erba, Senior Agriculture Economist, testified for defendant, and Dr. Leslie Butler, a Dairy Marketing Specialist, testified for plaintiff. Having considered and weighed all the evidence and having assessed the credibility of the witnesses, I now make these findings and conclusions:

(1) California Food & Agriculture Code section 62062(a) requires the Secretary of Agriculture to consider

1 costs of production in establishing minimum classification
2 prices for milk. The Secretary does so in two ways.
3 First, the Secretary surveys the state's farmers to gather
4 production cost data. Participation in the survey is
5 voluntary and open to any California dairy farmer,
6 including organic farmers. However, no organic farmer is
7 presently known to participate, and one, plaintiff Straus,
8 withdrew a few years ago. Second, any interested party may
9 make cost data part of the record of any hearing held to
10 review minimum classification prices.

11 (2) Defendant uses two formulas to set the minimum
12 classification price, one for Class 1 milk and one for all
13 other Classes. The minimum classification price for Class
14 1 milk consists of the Commodity Reference Price and a
15 differential, which is comprised of many factors. The
16 minimum classification price for Classes 2, 3, 4a and 4b
17 consists of the commodity price minus a manufacturing cost
18 allowance, which includes many factors, multiplied by the
19 volume of finished product. The cost of production is an
20 element of both the differential in the Class 1 formula and
21 in the manufacturing cost allowance in the formula for all
22 other Classes. Dr. Butler agreed that the formulas
23 presented by Dr. Erba were accurate.

24 (3) Any interested party, usually a producer,
25 producer organization or a processor, may petition the
26 Secretary to alter the minimum classification prices to
27 reflect changes in the industry. The Secretary would then
28 begin the hearing process on the proposed changes.

1 Alternatively, the Secretary himself could begin the
2 hearing process without a petition if he believes
3 conditions warrant. On at least one occasion, the
4 Secretary altered the minimum classification price based on
5 increased costs of production. Following severe rain
6 storms in 1995, a petition was filed complaining that costs
7 of milk production had increased dramatically. In
8 response, the Secretary instituted a temporary increase in
9 the minimum classification price for all classes of milk by
10 adding a fixed factor of 13 cents to the pricing formulas.
11 No petition to change Class 1 milk prices has been filed
12 since the March 2000 hearing decision setting the current
13 prices. Over the past three years, costs of milk
14 production have generally risen, though the minimum prices
15 have remained stable.

16 (4) I conclude that the costs of production, to the
17 extent that data is received from participating dairy
18 farmers or placed into the record at a hearing, are
19 considered by the Secretary in setting minimum milk prices.
20 To the extent that increases in production costs are not
21 reflected in the current prices, it is because no hearing
22 has been requested or because the Secretary has not deemed
23 it appropriate to raise prices, and not because of any
24 constitutional infirmity in the milk regulatory scheme.

25 Dated: September 3, 2003

26 /s/ Bernard Zimmerman
27 Bernard Zimmerman
28 United States Magistrate Judge

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