

SPECIAL UPDATE

February 9, 2018

Federal Budget Deal Includes Improvements to Dairy Producer Safety Net

By Charlie Garrison, WUD federal government affairs lobbyist

The Congress has passed a plan to keep the federal government funded for the next six weeks along with a budget agreement for the next two years. Included in the budget is about \$90 billion in disaster spending to assist recovery from hurricanes in Texas, Florida and the Caribbean and the wildfires and ensuing mudslides in California.

The disaster relief bill includes provisions that will be helpful to dairy producers. First, the \$20 million annual cap on livestock insurance programs that limited the use of tools like the Live-stock Gross Margin – Dairy (LGM-Dairy) is lifted. This move will allow the development of more crop insurance-type products for milk to help protect dairy producer revenues. WUD advocated for this change after the board evaluated one revenue protection plan in development and made the policy decision that making these types of programs available would expand effective risk management options for California's dairy farm families. We had the strong support of key members of the House delegation including Majority Leader Kevin McCarthy, Ag Committee members Jim Costa and Jeff Denham and Ag Appropriations Subcommittee member David Valadao. These members were integral in making this change happen and we thank them for their strong support.

Other changes to the dairy producer safety net included in the budget deal are intended to improve the Margin Protection Program for Dairy (MPP-Dairy.) That program would now move from the current two-month to one-month periods, production eligible for protection at Tier One insurance rates is increased from four million to five million pounds annually and it raises the catastrophic coverage level from a \$4.00 margin to \$5.00. The bill would also waive the administrative fee for limited resource, beginning, military veteran and socially disadvantaged farmers and reduces premiums on the first five million pounds of annual milk production.

Standing disaster assistance programs also get a boost in the budget bill. Those include the Livestock Indemnity Program (LIP) and the Emergency Assistance for Livestock Program (ELAP). These improvements apply to losses incurred on or after January 1, 2017.

USDA will be developing regulations to implement the provisions in the budget deal in the coming weeks. Additional changes to dairy producer economic safety net programs are also expected to be a part of negotiations for a new Farm Bill as the current one is set to expire on September 30th. The WUD office will keep you updated on pertinent developments on all fronts as we work in Washington, D.C. to enact federal legislation and regulations that provide additional certainty for our industry.

CA FMMO delay: producers urge USDA to act

California dairy producers cannot wait until the Supreme Court renders a decision on the *Lucia v Securities and Exchange Commission* matter (see WUD update 2.8.18 for more details), which ultimately may not prove relevant to the FMMO proceedings. Therefore, WUD, MPC and CDC sent a letter to USDA today, urging them to release the final decision. The letter is attached on the second page of this Update. The three coops (CDI, DFA and LOL) also are sending a letter (also attached)

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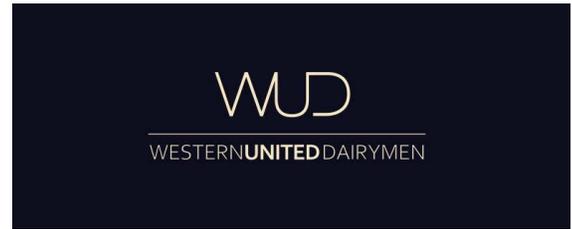
Western United Dairymen has a Facebook page. "Like us" today and join in on the conversation about California dairy families.

GET INVOLVED

For more information on how to get involved in WUD's political machine, visit WUD's website www.westernuniteddairymen.com Or californiaagaction.com to see how you can be part of the action.

MEMBER PORTAL

As a member of WUD, you have access to exclusive pricing and labor information in the Member Portal on the WUD website. If you need your information to access the member portal, please contact your field rep.

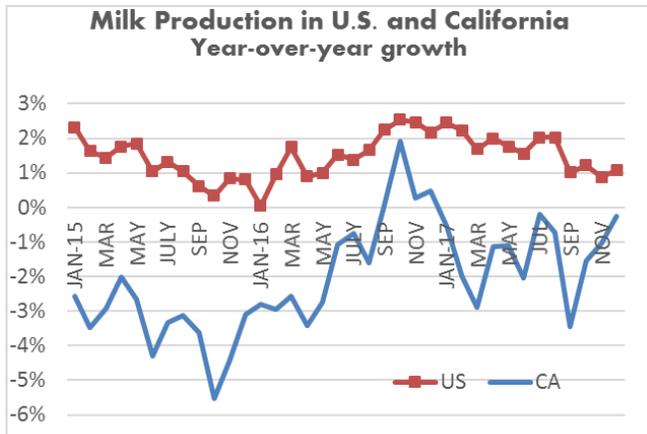


February 9, 2018

The Honorable Sonny Perdue
 Secretary of Agriculture
 U.S. Department of Agriculture
 1400 Independence Ave, SW
 Washington, D.C., 20250

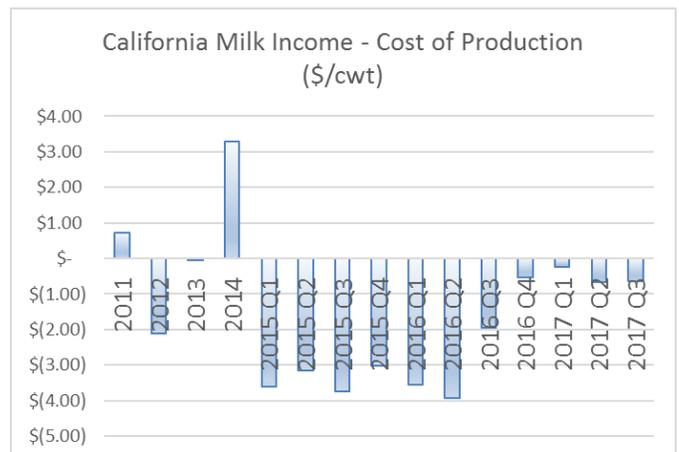
Dear Secretary Perdue,

We write to urge the United States Department of Agriculture (USDA) to move forward in the rulemaking process for the establishment of a Federal Milk Marketing Order (FMMO) in California by releasing its final decision. Given the number of dairy operations that have closed in California and the chronic decline in milk production here, the more than three year rulemaking process for a FMMO in California should not be delayed.



During the past three years, margins on California dairy operations have been negative. Current federal safety net programs have failed to protect California dairy farm families as intended. A clear result of difficult financial situations, the number of dairies in the state continues to shrink. And not due to consolidation: milk production in California has been declining year-over-year for 33 of the past 37 months. The need for changes in the state system is urgent. To allow dairy producers the ability to evaluate a different regulatory system, California Dairy Campaign (CDC), Milk Producers Council (MPC), and Western United Dairymen (WUD) urge USDA to release its final decision for a FMMO in California.

California dairy families have suffered severe economic hardship particularly during the past three years. As a result, many have gone out of business or acquired massive debt on top of eroded equity. The state lost 171 dairies representing 11% of the industry during the four years ending in 2016 and it is expected a similar trend will be confirmed for 2017 when California Department of Food and Agriculture (CDFA) data is released. The significant negative margins witnessed every quarter since January 2015 have placed many producers in a dire financial situation. 2017 displayed a modest recovery in the markets, but the improvements were short-lived and not significant enough to allow for positive margins.



According to CDFA's cost of production data, the smallest loss recorded since January 2015 was a loss of \$0.23 per hundredweight of milk produced during the first quarter of 2017. The latest data (third quarter of 2017) shows a loss of \$0.64 per hundredweight of milk produced. While costs may not have moved much since then, the price of milk has dropped by over \$2 per hundredweight in January 2018. The grim economic situation facing California dairy producers demonstrates the urgency of moving forward in the FMMO process by releasing the final USDA decision.

Since USDA released its draft recommendation in February 2017, producers lost an average of \$0.50 per hundredweight of milk produced. According to USDA's *Regulatory Economic Impact Analysis of the Recommended California Federal Milk Marketing Order*, the all-milk price estimated change from the baseline for California would be \$0.48 per hundredweight. The numbers illustrate California dairy families' eagerness to see a final decision to consider.

While we can recognize USDA's inclination to wait for the Supreme Court decision in the *Lucia v. Securities and Exchange Commission*, before publishing a final decision on a California FMMO, it is not something we can support. Because of the aforementioned economic reasons, and the commitment that dairy producers have made to the FMMO process for more than three years now, California dairy producers cannot wait until the Supreme Court renders a decision on this matter, which ultimately may not prove relevant to the FMMO proceedings. We urge USDA to release the final decision so that California dairy producers who are suffering under the uncertainty the delay in this process is creating have the opportunity to consider a pricing system that will be in alignment with rest of the major milk producing regions in the country.

Sincerely,

A handwritten signature in black ink that reads "Lynne McBride". The signature is written in a cursive, flowing style.

Executive Director, California Dairy Campaign

A handwritten signature in black ink that reads "Kevin Akumathy". The signature is written in a cursive, flowing style.

General Manager, Milk Producers Council

A handwritten signature in blue ink that reads "A. Baudala". The signature is written in a cursive, flowing style.

Chief Executive Officer, Western United Dairymen



LAND O'LAKES, INC.

February 9, 2018

VIA ELECTRONIC MAIL

Honorable Sonny Perdue
Secretary of Agriculture
U.S. Department of Agriculture
1400 Independence Ave., S.W.
Washington, D.C. 20250

Re: USDA's Delay of Rulemaking Proceeding for California Federal Milk Marketing Order

Dear Secretary Perdue,

On behalf of California dairy farmers, we write to you concerned about USDA's recent decision to delay the rulemaking proceeding for a California federal milk marketing order (FMMO) until the U.S. Supreme Court issues a decision in the case of *Lucia v. Securities and Exchange Commission* (17-130). This issue is of critical importance to not only our dairy families across California, which produce approximately 20% of the nation's milk, but also the nearly 200,000 California workers who rely on a vibrant California dairy industry, and the surrounding communities who depend on the more than \$20 billion in economic activity generated by our farmers. We urge you to take a close look at the issue.

After advocating for FMMO authority in the 2014 Farm Bill, California dairy farmers have been engaged for three years in advancing the FMMO regulatory proceeding through the undersigned dairy cooperatives, which represent 75% of the milk in California. With USDA's management and guidance, we have invested substantial time and resources working hard to advance the process for our farmers. USDA's hearing on the California FMMO began in September of 2015 and lasted for 40 days with 100 dairy industry witnesses. USDA Administrative Law Judge Jill Clifton presided over the proceeding. After post-hearing briefs were submitted in the spring of 2016, USDA published its Recommended Decision and Opportunity to File Written Exceptions on February 14, 2017. Comments and exceptions to the Recommended Decision were accepted by USDA through May 15, 2017.

Since that time, California dairy farmers have anxiously waited for a Final Decision from USDA, along with the opportunity to exercise their right to vote on a California FMMO. A California FMMO as originally proposed by the undersigned dairy cooperatives yields critical potential benefit to the producers of California. Unfortunately, although USDA's Final Decision was expected in late 2017, we were disappointed to learn that it may be delayed until the *Lucia v. SEC* case is decided by the U.S. Supreme Court. Until USDA's Final Decision is issued, however, the future of the California dairy industry as a whole remains in flux. This uncertainty

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Honorable Sonny Perdue
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impacts our farmers' ability to plan for the future and our ability to conduct business day-to-day, and is only compounded by the further delay of the California FMMO proceeding.

As noted, USDA notified the industry on February 5, 2018 that the California FMMO rulemaking proceeding would be delayed due to the U.S. Supreme Court's grant of certiorari in *Lucia v. SEC*. Respectfully, that case has no bearing on the California FMMO rulemaking proceeding. In that case, the Supreme Court will consider the question of "Whether administrative law judges of the Securities and Exchange Commission are Officers of the United States within the meaning of the Appointments Clause." In *Lucia*, the SEC's ALJ was functioning in an *adjudicatory* capacity as a trial judge, making factual and legal findings and rulings. In stark contrast, ALJs in *rulemaking* proceedings like the California FMMO proceeding do not function in an *adjudicatory* capacity like ALJs in SEC proceedings. Such proceedings are governed by completely different rules than those governing "formal adjudicatory proceedings." (7 C.F.R. Parts 1.130 – 1.151). Therefore, even a Supreme Court decision limiting the adjudicatory power of ALJs would not have any impact on the role of ALJs in non-adjudicatory rulemaking proceedings, such as the California FMMO proceeding. We offer this brief summary of the legal issues at stake, and can provide a more detailed analysis at your convenience.

We encourage you to explore all possible options and avenues that will allow USDA to move forward with issuing its Final Decision on the California Federal Milk Marketing Order, pursuant to the 2014 Farm Bill.

Sincerely,

California Dairies, Inc.

Dairy Farmers of America, Inc.

Land O'Lakes, Inc.