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January 16, 2004

Mr. Richard McKee
Director, Dairy Division AMS
USDA/AMS/Dairy Division
1400 Independence Avenue, SW
Room 2968, South Building
Stop 0225
Washington, D.C. 20250-0225

Re: EXEMPTION OF PLANTS IN CLARK COUNTY, NEVADA, FROM MINIMUM PRICING

Dear Mr. McKee:

I am writing this letter on behalf of Dairy Producers of New Mexico. DPNM is requesting that the exemption be terminated. The current practice of the USDA is that plants located in Clark County, Nevada, are exempt from minimum pricing by virtue of statute. Because it is not subject to minimum pricing, all provisions regarding pooling, etc., too, are no longer applicable. 64 Fed. Reg. 61776 (Nov. 15, 1999)

Continued exemption for Clark County is creating disorderly marketing conditions. The amount of milk marketed through the plant in that County has increased markedly since the exemption was created. A new plant by Dean Foods is under construction with production to begin later in 2004. Dean Foods announced that it will be marketing milk into five states, four of which are now subject to regulation. The plants combined will add approximately 60 million pounds of capacity to Clark County. Milk from those plants can easily be supplied by milk in Barstow, California, approximately 100 miles away. Virtually all of the new milk will be marketed in areas in which other plants are subject to FMMO minimum prices.

Administratively, the continued exemption poses problems. For example, milk marketed in Clark County from other areas is subject to the minimum prices while milk processed there and moved elsewhere is not. Reporting the volume of milk and treating its source differs from historical patterns.

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There is no longer statutory authority that permits the Secretary to exempt this plant from the terms of Order 131. The Act exempting Clark County was overridden by the Department of the Interior and Related Agencies Appropriations Act, 2000 (P.L. 106-113). Accordingly, the Secretary should regulate fully all plants in Clark County, Nevada, under the Arizona-Las Vegas Order.

The reason the exemption no longer applies is this: On November 29, 1999, President Clinton signed into law Public Law 106-113, which was intended “to provide for the modification and implementation of the final rule for the consolidation and reform of Federal milk marketing orders.” Within that act, Congress ordered the Secretary to “price fluid milk under the Federal milk marketing orders using the Class I price differentials identified as Option 1A. . . published in the Federal Register on January 30, 1999.” Those regulations, found at 63 Fed. Reg. 4802, included a specifically identified Option 1A class differential for Clark County, Nevada, of \$2.00, minimum pricing for plants that marketed 25% or more of their route distribution into the Arizona-Las Vegas Marketing area with no exemption for any plant, and ordered that the new order be called the *Arizona-Las Vegas* marketing Area. 63 Fed. Reg. at 4976-4020.

This specific statutory mandate from Congress is being ignored if any plant is allowed to operate outside the bounds of the Order.

The language in P.L. 106-78, §760 (now codified at 7 U.S.C. §608c(11)) does not exempt Clark County from the Order. P.L. 106-113 has in fact, superceded that language. The exemption for Clark County was created when the real possibility of Option 1B meant that plants in Clark County, Nevada, would pay nearly \$0.70/cwt more than Maricopa County, Arizona, for Class I purchases. Under that scenario, the protection of Clark County from the effects of Option 1B may have been justified. However, P.L. 106-131, jettisoned Option 1B in favor of Option 1A. As you can see from the Adjusted Class I differentials, 7 C.F.R. §1000.52, Clark County now enjoys a pricing **advantage** of \$0.35 over Maricopa County. The rationale that once justified the exemption of Clark County from the pricing provisions of the Arizona-Las Vegas Order simply no longer works. That is why Congress mandated that the Secretary establish an Order that fully regulated Clark County.

In addition, it is important to note that the language that exempted Clark County from the Order was passed by Congress on October 13, 1999, and signed on October 22, 1999. The specific directive from Congress that requires the regulation of Clark County was passed by Congress the following month, November 19, 1999, and signed by President Clinton on November 29, 1999. The fact that the regulation of Clark County was passed after the exemption and the fact that the Congress has specifically called for regulating plants that market milk into Clark County regardless of whether the plant is located there or not as well as that a Class I differential has been identified for Clark County indicate that the exemption of Clark County from the federal order system was a short-lived event. The continued exclusion of Clark County from the Arizona-Las Vegas order is not consistent with Congressional directives and must be

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ended immediately through the issuance of appropriate regulations.

Therefore, DPNM requests that the notice published in the Federal Register on November 15, 1999, be rescinded.

Sincerely yours,
YALE LAW OFFICE, L.P.

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