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GLENN ANDERSON, Lieutenant Governor

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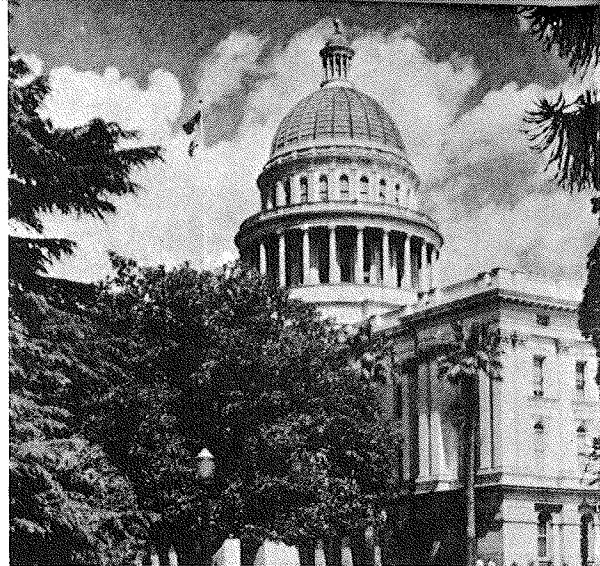
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CHARLES PAUL, Director

MERLE HUSSONG, Editor

HARRISON H. HOLTON, Desk Editor

ROBERT E. BOTTEL, Photographer



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COVER. The handsome cow on our cover doesn't claim to trace her lineage back to an Old Country province. Rather, she's a composite California cow, an artist's conception that endeavors to include strains of all major breeds of dairy cows found in California. This means that she is 80 percent Holstein, 10 percent Jersey, 9 percent Guernsey and 1 percent of a mixture of Ayrshire, Brown Swiss and Milking Shorthorn, for these are the ratios of breeds of dairy cows in the State. She is representative of 790,000 milk cows two years old or older in California. She's a charmer and naturally gentle. If treated with tender, loving care, she will produce approximately her weight in milk each month or about 10,800 pounds of milk a year. She eats roughly 30 pounds of hay and 8 pounds of concentrates a day and drinks from 25-30 gallons of water daily. Around her operates a huge industry, the stabilization of which is the subject of this issue of the *Bulletin*.

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MERLE HUSSONG, Editor

The Story of California's Milk Stabilization Laws

*From Chaos to Stability
in the California Milk Industry*

WILLIAM J. KUHRT
Coordinating Author

The *Bulletin*, published as a contribution to the welfare of California Agriculture is mailed free to California citizens interested in the work of the Department of Agriculture. The *Bulletin* is exchanged, on request, for publications of the Federal Government, Experiment Stations, and other state or national agricultural offices or organizations.

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Foreword

The main purpose of this presentation is to help develop a better and fuller understanding of the California milk laws by presenting a more complete, comprehensive and balanced exposition of the purposes, provisions, problems and accomplishments of these laws.

All of the authors have been connected officially with the administration and enforcement of these laws. Some helped to draft this legislation; others have become associated with it in later years. It is believed that the combined knowledge and experience of these men will not only help others in understanding these laws better, but may also help to present a more balanced viewpoint of purposes, accomplishments and shortcomings than has appeared heretofore.

The list of authors follows (for further biographical information on the authors, see Appendix A):

Robert A. Abbott, Milk Economist (distributor prices)

James P. Duffy, Regional Administrator,
Los Angeles

William J. Hunt, Jr., Chief, Division of
Dairy Industry

William J. Kuhrt, Retired Chief Deputy
Director, California Department of Ag-
riculture

Louis C. Schafer, Chief, Bureau of Milk
Stabilization

Howard J. Stover, Associate Research
Technician

Leroy Walker, Milk Economist (producer
prices)

Donald A. Weinland, Assistant to the Di-
rector, Legislation

Wilson B. Woodburn, Manager, Califor-
nia Dairy Council

We wish to thank Mrs. Dorothy Gallup
and Mrs. Norma Matranga for their services
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WILLIAM J. KUHRT
Coordinating Author

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Chapter 1

ECONOMIC CONDITION OF THE MILK INDUSTRY PRIOR TO PASSAGE OF MILK STABILIZATION LAWS

During the decade preceding the Great Depression of the early 1930's, the fluid milk industry in California had experienced a substantial growth. This was especially noticeable in Southern California. Many new producers had entered the field and some established producers had expanded their operations. A number of financing companies assisted in this expansion. Prices to producers just prior to the beginning of the depression were around 60 cents per pound of milk fat and surplus milk was paid for at from 32 to 36 cents per pound of milk fat. At this time, however, there was very little surplus milk. At these prices production tended to expand slightly ahead of demand and producers were relatively satisfied with conditions.

Producer Organizations

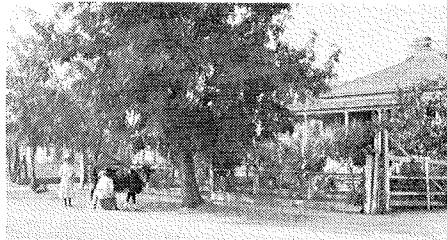
Several milk producer associations functioned in California markets. The largest was the California Milk Producers Association in Los Angeles. Among the others were the Los Angeles Mutual Dairymen's Association, a unit of Challenge Cream and Butter Association; the San Francisco Milk Producers Association; the Sacramento Grade A Milk Association; the Alameda Milk Producers Association; the San Joaquin Grade A Milk Producers Association; and the Qualitee Milk Producers Association in San Diego. These were all price bargaining associations, with the exception of Los Angeles Mutual.

In addition to the bulk Grade A milk producers, there were several other organizations devoted largely to the promotion of Grade A raw (unpasteurized) milk. Most of the members of these associations were producer-distributors, some of whom operated several routes.

Considerable quantities of certified and guaranteed raw milk were also available to consumers, each subject to somewhat greater health and sanitation requirements than were necessary for Grade A raw milk or Grade A milk for pasteurization. The largest number of Grade A raw producer-distributors was in Southern California, the number at one

time amounting to nearly 250. Very few Grade A raw producer-distributors operated in Northern California. The economic factors which brought about this situation, and its effect upon both production and distribution, are discussed in Chapter 2.

During the same period the fluid milk distribution industry also experienced an expansion. The population of the State, especially in Southern California, was rising rapidly and distributors found many new customers to serve each month. Some of the major distributors found their plants taxed to capacity to process and deliver their daily volumes. Unit costs, because of maximum volumes, were relatively low and margins were profit-



Rural home delivery in days gone by. In some communities the producer-distributor drove his cow from door to door, ringing a hand bell to herald his arrival. Here a housewife stands by with her pail as the cow is being milked.



Urban home delivery in the 1920's.

NOTICE To The General Public
in Ontario-Upland District
IT'S A MILK WAR!
and we appeal to all of you for Help!
to Save the Dairymen and the milk business in this district

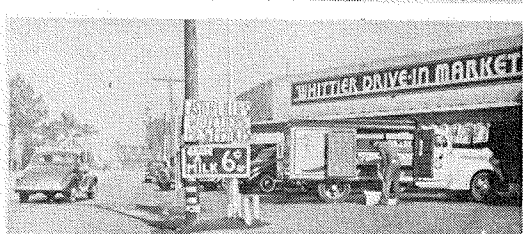
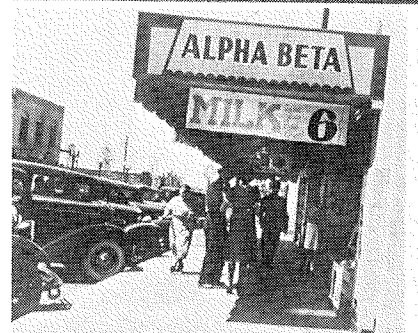
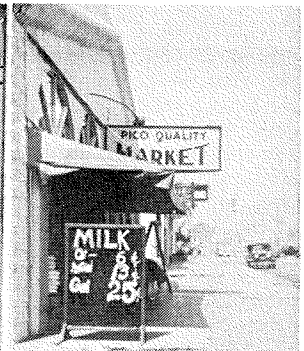
Los Angeles distributors have come into this district with nothing else in mind but to CUT THE PRICE OF MILK so LOW that NO DAIRYMAN CAN SURVIVE—and then the general public will pay THEIR price.—A few stores in this district have already been persuaded to take their milk.

We urge of you as LOYAL LOYAL CITIZENS to DEMAND of your local Groceriesmen MILK and CREAM bottled here from LOCAL DAIRY MEN AND HELP KEEP LOCAL MEN EMPLOYED!

SHADY GROVE DAIRY
LOOK'S DAIRY

ONTARIO-PLAND CREAMERY
LILY DAIRY

MOUNTAIN VIEW DAIRY
A.M. DAIRY



Before milk stabilization laws. Chaotic conditions of instability existed in California's milk industry for many years prior to 1935. In the early 1930's retail stores in the Los Angeles area slashed milk prices to as low as one cent a quart. Conditions like these led the industry to request public regulation of milk prices.

able. With producers being paid at 60 cents per pound of milk fat and with a 9½ cent per quart wholesale price, 11 cent per quart retail store price and 12 cent per quart home delivery price, distributors were prosperous. Approximately two-thirds of the daily volume was delivered directly to homes. Stores were just beginning to realize the potential of handling milk, but their volume was increasing steadily. A few distributors catered almost exclusively to stores, but most distributors operated both wholesale and retail routes.

Effects of the Depression

It was in this economic climate in the fluid milk industry that the depression struck in California early in 1930, several months after its initial impact in the eastern states. In the course of a few months the following problems developed:

(1) Many workers were laid off completely or their incomes were reduced. With lower salaries or no purchasing power, all purchases were reduced and fresh milk was one of the food items which suffered most.

(2) With drastically reduced sales and increasing unit costs, purchasing distributors sought to avoid losses by (a) increasing the proportion of milk purchased at surplus milk prices; (b) moving to reduce prices to producers for non-surplus, bulk milk; and (c) undertaking stronger sales efforts, which later deteriorated into outright price cutting on fresh milk and other dairy products handled.

Milk Wars

Producers, aware of their own costs, fought the proposed price reductions by distributors as hard as they could, but were unable to hold the line. Milk wars between producers and distributors developed during 1931 and 1932 and, at one time in 1932, 14 such disputes were going on in California markets. Some producers, especially those who had trouble maintaining quality, had difficulty selling their milk at any price. Substantial quantities of loose (uncontracted) milk were purchased by some distributors for as little as 29 cents per pound of milk fat, while most distributors were attempting to pay from 45 to 50 cents for their regular supplies.

The effects of these chaotic conditions in production soon brought about worsened conditions in both the production and distribution segments of the industry.

Most producers were unable to stand the financial strain of receiving only 45 to 50

cents per pound of milk fat. Many became insolvent; their assets were taken over by the lending agencies, but their cows were purchased by others who thought they could produce at prevailing prices. Many of the less productive cows were butchered, but the remaining milk production continued to exceed demand.

Rise of Producer-Distributors

Some producers, especially those in better financial condition and dissatisfied with producer prices, viewed the still prevailing store and home delivery prices as profitable and entered the distribution field—mostly with Grade A raw milk. For a time this gave them a better outlet with little surplus and a greater net return. By mid-1932 there were about 300 such producer-distributors in the State, with about 250 of them in the Los Angeles area. While this development provided some more or less temporary relief to these producers, the volume which they handled reduced sales of bulk milk by other producers and also reduced the volume of distribution by established distributors, thus adding further to their problems of survival.

Price Wars

Adding to the already chaotic distribution situation, there were some distributors who purchased distress, surplus milk from producers at 29 to 30 cents per pound milk fat and, in turn, were able to sell at lower prices than distributors who were trying to pay a more adequate price to their regular producers. When these cut-rate distributors began cutting in on regular distributors' volume by selling at lower prices, price wars of various types and extent inevitably ensued. Price cutting activities existed in most of the major cities of the State, but nowhere were they as violent or extensive as in the Los Angeles market where in July 1932 Grade A pasteurized milk sold from some stores at 1 cent per quart. In most stores the price was 5 to 6 cents per quart and most home delivery prices were held at around 8 and 9 cents per quart.

Adding to the confusion, some large stores began pricing milk at 1 to 2 cents per quart below prevailing prices as a loss leader to stimulate weekend grocery sales. This device did increase weekend sales of milk and groceries from stores, but it also caused retaliation by other stores to hold their business. In the end the practice further depressed wholesale and retail prices. In turn, many

distributors sought to protect themselves by further reducing prices to producers or by

paying for larger amounts of milk at the lower, surplus price.

Chapter 2

EARLY EFFORTS AT STABILIZATION

Situation Chaotic

By July 1932 the situation in many markets of the State had become chaotic. Producers were dissatisfied with their returns from distributors. Many were in serious financial difficulty. Bargaining efforts with distributors were fruitless, tempers flared, milk was dumped by roadsides, and bloodshed was feared.

Distributor prices were likewise chaotic. There were no stable wholesale, store or home delivery prices. Prices fluctuated daily, usually downward. All sorts of sales gimmicks and discounts were used, involving not only fluid milk, but also sweet cream, cottage cheese, butter and other dairy items. Distributor meetings were turbulent; charges flew back and forth, and violence was anticipated.

Appeal to Governor

At the height of the crisis, both producers and distributors in the Los Angeles area, fearing bloodshed, appealed to the then Governor Rolph to intervene and to send in California National Guardsmen to maintain order. No troops were actually sent in, but the City and County police officers were alerted and they provided some protection. The Governor, at the same time, directed the California Department of Agriculture to enter the picture to see what could be done to restore some degree of normalcy. The Director of Agriculture assigned the task to the Division of Markets, which was then located in San Francisco.

The Division was at that time engaged in making a study of the costs of production and distribution of fluid milk in the San Francisco Marketing Area. This study, perhaps one of the first of its kind ever at-

tempted in the United States, was being carried out in response to a joint request of the San Francisco Milk Producers Association and the San Francisco Distributors Association.

Mediation Role of the Department

Because of the urgency of the situation in Los Angeles, the State marketing economist who had been carrying on the study in San Francisco was directed to proceed at once to Los Angeles to see what could be done. It should be remembered that there were no milk marketing laws or similar regulations in effect in California at that time. The efforts of the Division of Markets did, however, fall within the scope of Section 1152 (f) of the Agricultural Code of California which authorized the Department to mediate marketing disputes.

Following his arrival in Los Angeles, the representative of the Department conferred at length first with producer leaders and then with distributor leaders. Both groups were requested to select representatives for a joint committee of 11 which would formulate a stabilization program. The State representative served as chairman.

Milk War Ends

In less than a week the joint committee developed a program providing for a price to producers of 55 cents per pound of milk fat, with a resale schedule of 8½ cents per quart to stores, 10 cents at stores and 11 cents home delivered. This program was presented to all producers and distributors in the form of an agreement. All producers and all distributors, except one, signed and the program became operative. The Los Angeles milk war was at an end. The formulation

committee, called the Los Angeles Milk Arbitration Board,¹ was made a permanent agency to supervise the program. The State representative was asked to remain as permanent, neutral chairman. With the Los Angeles program as a model, similar programs were developed in several other California markets and most of the milk wars were terminated, at least for the time being.

Reasonable stability followed in the Los Angeles market. Producers received the price agreed upon. Home delivery prices were generally maintained, but there were frequent reports of wholesale price violations, of open and secret discounts, or of other gimmicks in prices to grocery stores and restaurants. Most of these reports were found to be exaggerated or unfounded. However, there were a few distributors who were constantly being reported as violators. Sometimes they were and sometimes they were not, but it was also discovered that sometimes the complaining company was the one that was actually the violator.

Some of the larger chain stores and supermarkets also presented difficulties. These stores continually attempted to use lower milk prices as a loss leader. Many conferences were held with store representatives and, in general, compliance was obtained.

Lack of Compliance Powers

There were, however, no legal remedies to enforce compliance. The State had no power to enforce—only authority to mediate. Both the California Milk Producers Association and the Distributors Association in Los Angeles used whatever powers they had from their contracts and business relationships to induce compliance. But even though a high degree of compliance was maintained, there continued to be apprehension, especially among distributors, that the lack of law enforcement powers was a serious weakness.

¹ LOS ANGELES MILK ARBITRATION BOARD

<i>Producer members</i>	
Earl Maharg.....	<i>Representing</i>
David P. Howells.....	California Milk Producers Association
R. H. Cronshey.....	Independent Milk Producers Association
William Corbett.....	Los Angeles Mutual Dairymen's Association
F. F. Pellissier.....	Raw Milk Producers
	Bottled Milk Producers
<i>Distributor members</i>	
Tom H. Day.....	<i>Representing</i>
Clarence H. Smith.....	Southern California Milk Dealers Association
Hugh Boyle, Sr.....	Chain Store Operators
R. L. Anderson.....	Wholesale Distributors
F. B. Carpenter.....	Independent Pasteurizers
	Raw Milk Distributors
<i>Chairman</i>	
William J. Kuhrt.....	California Department of Agriculture

² Similar to what is now known as an order.

Federal Marketing Agreement Drafted

Despite problems, the program continued through the remainder of 1932 and into 1933. When the Congress passed the Agricultural Adjustment Act, the fluid milk industry in California immediately saw it as an answer to their need for a program that could be enforced under law. The Los Angeles Arbitration Board took action at once to set up a smaller working committee which, with the aid of the Board staff and an attorney, undertook drafting a Federal Marketing Agreement under the new Federal Act. Many days of work ensued and a comprehensive program was outlined, covering producer prices, wholesale, store and home delivery prices, dairy product prices, surplus handling procedures and a new board, called the Los Angeles Milk Industry Board. When drafted, the program was approved by both producers and distributors, and the Secretary of the U.S. Department of Agriculture was formally requested to call a hearing.

After some time the Secretary responded by requesting copies of the proposed program and later sent a staff of economists and lawyers to assist in preparing the program for public hearing. Extensive changes were proposed by the federal men. The members of the Board's working committee considered many of these changes to be impractical and they were discarded.

Federal Marketing Agreement Becomes Binding

Eventually the program came to a public hearing in the fall of 1933. Both producers and distributors gave testimony in support and the Secretary took the marketing agreement under advisement. In early October of 1933 it was approved by the Secretary and sent out to distributors for signature before issuance of the license² which would be

The California MILK NEWS

Published to Help Dairymen and Dedicated to the Task of
Getting More People to Use More Milk Every Day

VOL. I

Los Angeles, California

NO. 1

The Dawn is Coming

WE have been having a tough time. It isn't over yet. We aren't out of the woods. We are still scared to death. We don't know what is going to happen next. We owe everybody and everybody owes us. The banks want us to pay our notes; the feed men want us to pay our bills; the finance companies want their money; the stockholders want dividends.

What are we going to do? It looks pretty black. Is there any way out?

And yet there has never been a time when things were more hopeful for the dairy business. This sounds absurd, but it is so. For we have got to the place where we know at last that something has got to be done and done right away.

First: Let us stop being scared to death. Nothing can happen that could be worse than our present state.

Second: Let us accept things as they are and not as they ought to be. The dairy business must be liquidated and if we don't do it, somebody else will.

Third: Let us get together. Outside parties can't fix up our business for us.

It won't be easy, but it can be done.

APRIL 20, 1933

Front page editorial of a dairy trade publication reflects conditions existing in the industry in 1933.

binding upon all. The agreement was signed promptly by nearly all distributors and the copies were returned to the Secretary. The Secretary then prepared and issued the license, Los Angeles License Number 33, effective November 11, 1933. The license provided for a board, known as the Los Angeles Milk Industry Board. Board members were appointed and the State representative was appointed chairman of the Board.

The Los Angeles milk industry members, the first in California to use this federal law, were pleased and confident that permanent stability had been reached and that they were entering a new era. Their confidence was shaken, however, by several incidents. During the period between signing the agreement and issuance of the final license, a national distributor of dairy products began an intensive drive for cottage cheese sales in the Los Angeles area at a price one cent below that prescribed in the agreement. When the Los Angeles distributors of cottage cheese remonstrated to the company, they were informed that no violation had occurred and that their price was that carried in the federal program. The record failed to support this, but when the copies of the license were received, it was found that the United States Department of Agriculture had arbitrarily and unilaterally reduced the price of cottage cheese one cent from that carried in the agreement. No explanation of this change was ever received by the Board in Los Angeles. During this short period of noncompetitive price cutting, local cottage cheese distributors suffered severe reductions in volume. One distributor reported a 28 percent loss which took several years to regain.

Injunction Against Program

A second disillusionment occurred when the federal license became effective. On that day a large chain store, which operated both processing and distribution facilities in the Los Angeles area, was successful in obtaining a restraining order against the program and the new Board. This order was obtained from a federal court judge, but was limited to operations of the complainant. At the hearing on the restraining order the complainant charged that the license violated federal antitrust laws, the Commerce Clause of the Constitution, and that the Secretary of Agriculture lacked jurisdiction to regulate the fluid milk industry of the Los Angeles area on the ground that it was local in char-

acter and did not affect or interfere with interstate commerce. Following the hearing the court issued a preliminary injunction prohibiting the Board from enforcing the provisions of the new license upon this distributor and indicated that the trial would be set for a later date. Several other stores and some small distributors promptly joined forces as opponents to the license.

The inability to enforce the provisions of the program upon even these few distributors and stores brought about inequitable competitive conditions and tended to undermine the program's practical operation. Prices were generally maintained by these complainant concerns, but they refused to participate in the surplus milk equalization pool.¹ This left an unpaid surplus pool obligation each month which eventually reached nearly a half million dollars in addition to precluding smooth operation of the pool.

The industry was anxious to have the case brought to trial as quickly as possible and much assistance was made available to the federal legal counsel. It developed, however, that the federal agencies were reluctant to speed up setting the case for trial. Meanwhile much material was prepared at the request of the federal counsel to counter the legal and constitutional questions involved. Trial dates were continued several times at the request of one side or the other and the case never came to trial. Nearly a year later, with the consent of federal attorneys, the preliminary injunction was made permanent.

Federal Program Not Enforceable

Sensing the reluctance on the part of the federal attorneys to defend the case vigorously, the Board (in May 1934) sent a small committee to Washington to discuss the matter with the General Counsel of the Agricultural Adjustment Administration to ascertain what could be done to speed up the trial and to obtain enforcement. With considerable reluctance the General Counsel finally advised that, in his opinion, the Los Angeles license could not be enforced because the fluid milk industry in California was local in character and was not properly subject to regulation by the Federal Government.

¹ To handle the daily surpluses of fluid milk, a surplus milk equalization pool was established under the direction of a producer committee. This committee operated a surplus milk manufacturing plant which produced butter and skimmed milk powder. It also equalized the costs and losses of handling the surplus milk among all producers.

Movement for State Law

When this view was conveyed to the Los Angeles milk market and to other milk markets of the State, the almost immediate reaction was to move at once to draft and secure passage of State laws, both for production and distribution. A meeting of nearly 200 representatives of producers and distributors throughout the State was convened in Santa Barbara in early June 1934. At that meeting there was unanimous consent to proceed with the preparation of State legislation. A committee of 24 producers and distributors was selected to oversee the work and the chairman of the Los Angeles Board was asked to take charge of the drafting. An attorney was employed and immediate action on drafting followed.

It then developed that several important problems would be involved in reaching agreement upon a draft of a bill. One group favored tying producer prices to manufacturing milk, while another proposed setting producer prices in relation to a cost of production formula. The chain stores and independent retail stores could not agree upon regulatory features and some wholesale distributors with heavy store volumes were involved. Some members of the committee wanted the Giannini Foundation¹ to supervise the operation of the law; some wanted the State Department of Agriculture to administer the law; and some wanted to set up a commission, the members to be appointed by the Governor, to handle this work. Finally the draft was completed, approved and then sent to an industry legislative committee to carry it through the Legislature.

The bill, as sent to the committee, covered both producer and distributor provisions. The producer price was based upon a formula with some relation to both production costs and to manufacturing milk prices. The Director of Agriculture was to be responsi-

¹ Giannini Foundation of Agricultural Economics, University of California, Berkeley.

ble for the administration and enforcement of the law. As will be noted later, when the bill was presented to the Legislature in 1935, only the producer portions were included in the Young Bill. In it producer prices were to be worked out in relation to manufacturing milk prices, rather than according to a formula based upon costs of production.

Stabilization Boards Established

Meanwhile, the other major areas of the State had been undertaking similar stabilization efforts. After reasonable stability had been reached in the Los Angeles area, other areas of the State undertook similar procedures with the arbitration provisions of the Agricultural Code. Stabilization boards were established for the San Francisco, Oakland, Stockton and Santa Clara marketing areas. Later on, following adoption of the federal license in Los Angeles, similar licenses were established for several of these areas. These were all terminated when the provisions of the Young Act became operative.

Licenses Terminated

In May 1934 the U.S. Department of Agriculture terminated Los Angeles License Number 33 and similar licenses in other California markets. Its stated reason at that time was that the Agricultural Adjustment Act could be used only to provide relief to milk producers, not to distributors. Distributors must seek relief under the National Recovery Administration (N.R.A.). With the aid of producer associations in the Los Angeles market and other markets of the State, federal producer programs were developed and put into effect in August 1934. These remained in effect until the producer programs under the California State law became effective in the fall of 1935. These federal programs were not enforced, as a result of the federal court ruling, but they provided some stability and their prices were generally complied with.

Chapter 3

THE YOUNG ACT

As indicated previously, the combined producer-distributor bill was turned over to an industry legislative committee composed of producers. Charles Humphrey, President of Consolidated Milk Producers of San Francisco, was chairman of the committee. With the help of the State Legislative Counsel and others, the committee prepared the bill in final form for presentation to the Legislature. Senator Sanborn Young of Los Gatos agreed to handle the bill in the Senate. He was joined by several other senators. Assemblyman James E. Thorpe, Chairman of the Assembly Livestock and Dairies Committee, handled the bill in the Assembly. He was assisted by Assemblyman John Phillips of Riverside County. The bill met with little opposition in either house, and it was passed as an emergency measure and signed by Governor Frank Merriam, to become effective on June 1, 1935.



Senator Sanborn Young, author of California's first milk producer price law.

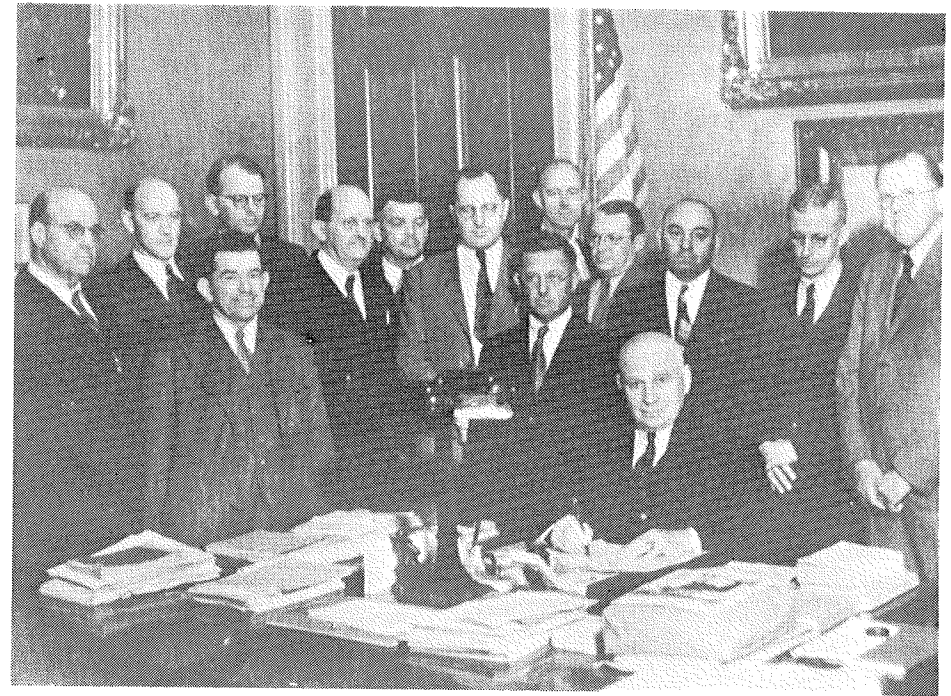
Factors in Setting Prices

As passed, the bill was limited to producer price provisions only, in keeping with national legislation to assist producers. Also it was believed there would be less opposition in the Legislature if distributor controls were left out. The bill, as made effective, was designed primarily to authorize a neutral party, the Director of Agriculture, to establish minimum prices for fluid milk and cream which distributors must pay to producers. It was believed that this would eliminate one of the major causes of milk wars, that is, the continual bickering between fluid milk producers and their distributors over the prices to be paid to producers.

The minimum prices, to be formulated by the local Control Boards and approved and issued by the Director, were to be based upon the prices being paid for milk for manufacturing purposes (constituting at that time over 65 per cent of total milk production) and upon the additional costs of producing and marketing fluid milk as compared to

manufacturing milk. The Act also specified that consideration must be given to maintaining an adequate supply of pure, wholesome milk. Prices were to be set by marketing areas to be established by the Director so as to reflect local differences in prices paid for manufacturing milk, and especially differences in local production costs for fluid milk. It was believed that, based upon these standards, fluid milk prices would always be kept in line with manufacturing milk prices, allowing only for local variations in additional fluid milk production costs.

In the bill, as passed, local producer control boards were to be established, to be responsible for watching producer cost changes and for recommending price changes to the Director. Producers had wanted their local control boards to be given power to set their own producer prices without approval of the Director, but this was rejected when the industry's legislative committee was



Historic event in stabilizing California's milk industry, June 1, 1935. Governor Frank Merriam signs the Young (Producer) Act. Front row, left to right: Zeke Smith, Fred Wood (legislative counsel) and Governor Merriam. Back row: Charles Humphrey (President, Consolidated Milk Producers, 1934 to 1937), H. (Skip) Claudius, Joseph Paulucci (legislative counsel), Senator Bradford S. Crittenden, John Watson, Von Ellsworth, Ralph Taylor, Jay Kugler, Assemblyman James E. Thorpe, Assemblyman John Phillips and Senator Sanborn Young, author of the bill.

advised that such a provision would be an unconstitutional delegation of legislative power. So the final bill authorized the local boards to formulate and recommend prices and price changes for approval by the Director.

An assessment of 2 mills per pound of milk fat was authorized to pay the costs of administering the program. The fee was to be collected by the Director from distributors.

As enacted, the bill did not emphasize the need for the Department to develop total production costs—only the additional costs of producing and marketing fluid milk over manufacturing milk. Prices of manufacturing milk being paid by various marketing areas were the major component of fluid milk prices. These prices were obtained by reports from manufacturing milk processing plants located in the source areas.

The bill became effective in June 1935 and the Division of Markets¹ was made responsi-

ble for administration of the Act. Fortunately the Division, having given civil service examinations in August 1935 for the class of Fluid Milk Marketing Assistant, had three qualified persons available for employment in October 1935. Two persons were employed on November 1, 1935 and the third a bit later. Because of legal actions and threats of legal actions on constitutional grounds, there was reluctance among fiscal heads in the Department and other State agencies to authorize an adequate staff in the Bureau. It was argued that the Act might be declared unconstitutional and the Department would be left with unneeded employees. Later, as legal decisions favored the Act, this reluctance subsided.

¹By reason of the great increase in work load in later years, a new bureau was created to handle these laws, called the Bureau of Milk Control and later called the Bureau of Milk Stabilization, its present title.

Major Changes

After the provisions of the Act became operative in the several areas of the State, weaknesses developed. Some of these called for only minor changes in the laws, but some required major amendments. These major amendments are listed below.

Amendment Number 1. Soon after the law became operative in the spring and summer of 1936, producers began to complain that some distributors were not paying Class 1 prices for all milk used for Class 1 purposes and, further, that some distributors were showing favoritism to some producers in Class 1 allocations. Quite likely there was some basis for these criticisms, but also the spring increase in total fluid milk production was a contributing factor. The complaints persisted and resulted in the preparation of amendments to the Act in the 1937 Legislature. These amendments provided for written contracts between each producer and his distributor, and authorized the Director to

audit each distributor's books periodically to assure that each producer was paid in full according to the terms of his contract. Since each contract must specify the quantity or percentage of deliveries to be paid for at Class 1 prices, producers believed that such amendments would correct this weakness. These amendments had the full support of producers, farm organizations and the Legislature. Distributors did not generally oppose the legislation and the amendments were passed and became effective in September 1937.

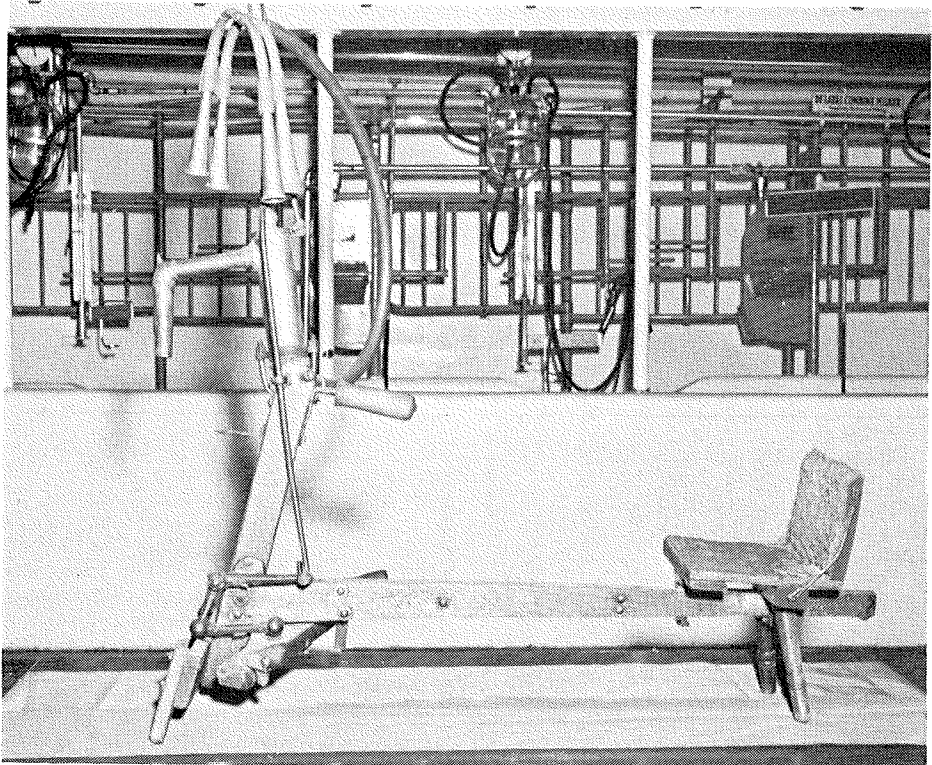
Amendment Number 2. As indicated earlier, local control boards were made responsible for developing and recommending local producer price changes. Some producer board members felt that the Director should accept their recommendations without question. For legal reasons the Director could not do this. This led to a certain amount of friction between some local board and the De-

partment. Some boards did a thorough job of studying economic conditions and recommending price changes. Other boards made price recommendations without adequate supporting facts. The Attorney General's office and private legal counsel contended that the law was still vulnerable to legal attack on the ground that local control boards were being given too much authority in determining producer prices. Also some courts indicated this in "dicta," but did not declare the Act unconstitutional. In the end, for these legal reasons and because local boards were not staffed to do the necessary basic economic and statistical work preliminary to making price recommendations, the Act was amended in the 1937 Legislature to place these activities with the Director and to limit the role of producer boards to that of making general recommendations to the Director.

Amendment Number 3. In the early 1950's serious disagreements developed between producer associations and the Bureau of Milk Control (now the Bureau of Milk Stabilization) over minimum producer prices. Producers contended that prices were too low to permit profitable operations. The Bureau contended that the prices it was setting more than covered the sum total of the prices of manufacturing milk and the added costs of producing and marketing fluid milk. There was an adequate supply of fluid milk, but there was not a large surplus. The controversy continued for several years with severe heat and charges tossed back and forth. Finally it was realized that the difficulty lay in the basic standard—in the price of manufacturing milk. Prices of manufacturing milk, now under support programs by federal legislation, were shown by Department cost



First Los Angeles Milk Producer Control Board holds conference in July 1940. This board was appointed by the California Director of Agriculture to help in the administration of the milk marketing plan for Los Angeles County. Members are (left to right) Louis Struckman, Nels Lautrup, Thomas K. Martin, William L. Houghton, Ernest L. Vehlow, Clarence L. Smith, George te Velde and F. A. Lucas.



Increased efficiency means lower costs. To improve the efficiency back at the turn of the century, Perry Phillips of Hanford (Kings County) developed the milking machine in the foreground. In contrast the modern, automatic milking machine in the background is used by most dairy farmers today. In California there is now a total of 3,385 milking pipeline installations in which milk is piped directly from the cow to some 4,441 farm tanks.

surveys to be more than 90 cents per hundredweight below costs of producing such manufacturing milk in California producing areas. Manufacturing milk producers were having a very difficult time surviving and, in fact, the total number of manufacturing producers had dwindled from around 16,000 to less than 6,000.

Thus it became clear that the prices paid for manufacturing milk were no longer a sound basis for establishing producer prices for fluid milk. Discussions with producer leaders brought out the view that the basic relationship between manufacturing and fluid milk should be maintained, but the Director should be authorized to adjust producer prices for fluid milk by taking into consideration the difference between the price of manufacturing milk and the cost of producing manufacturing milk. An amendment to the Act was prepared for the 1955 Legislature and it was passed and became effective in September 1955.

The amendment, when put into effect, authorized some producer price increases and stopped the basic disagreements. There were

some, however, who believed that the amendments made the basic standards somewhat less sound, economically, and they expressed the view that fluid milk surpluses would increase to the point of necessitating a return to the old standard. Experience has shown that surpluses did increase subsequently, but proponents contend that other factors, especially some distributors' needs for milk for manufacturing purposes, have been more potent in contributing to increased production beyond needs for fluid milk purposes.

In any event the amended standard necessitated more comprehensive cost surveys, both for manufacturing milk and for fluid milk. It is believed that these related costs, together with manufacturing milk prices and the supply requirement of the law, provide a theoretically sound and practical longtime guide to the Director in carrying out the basic purposes of the Act regarding producer prices for fluid milk. Beyond this, the responsibility for applying these standards and for establishing proper producer prices thereunder is administrative.

Chapter 4

THE DESMOND ACT

Despite progress in applying the Young Act to production areas throughout the State and in eliminating milk wars between producers and distributors, the competitive situation among distributors in most major markets of the State continued to remain chaotic. Although distributors in areas under control were required to pay uniform prices to producers, thus removing one basic cause of distributor price cutting, nevertheless price cutting, secret rebates and many other forms of questionable competitive practices continued unabated. Since distributors could no longer legally pass these losses in income back to their producers because of the Young Act, they were forced to charge these losses to their own business operations. Some weaker distributors went into bankruptcy and their producers sustained substantial

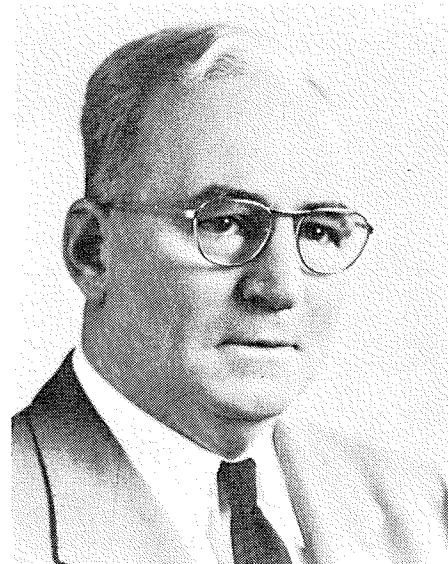
losses. Many were apprehensive and even the larger, stronger concerns expressed the view that, unless wholesale and retail prices improved, they could no longer continue to pay the producer prices set by the Department under the Young Act. The license and bonding provisions of the Act covered only a small part of producer losses and so producers no longer felt secure in their returns.

Distributors Ask for State Help

Since there was no legal, voluntary means whereby distributors could develop reasonably stable wholesale and retail prices, they again undertook efforts to develop a State law which would authorize the Director of Agriculture to establish minimum wholesale and minimum retail prices for fluid milk. Senator Earl Desmond of Sacramento, who

was then legal counsel for several Northern California milk distributor associations, agreed to handle the bill. The basic drafting work was completed in late 1936 and early 1937.

The most difficult task was to develop the legislative (economic-legal) standards to guide the Director in establishing minimum prices. It was realized that, unless economically and legally sound standards were developed, the Act would not accomplish desired results, nor would it survive expected constitutional challenges. Senator Desmond requested economists in the Division of Markets and the University of California to develop these standards. This was done jointly by these agencies and the standards were included in the final text. It is interesting to note that these standards have survived many court tests, have provided the theoretical and practical basis for price determination, and



Senator Earl Desmond, author of California's first milk distributor price law.

have been altered but little over the more than 25 years of operation of the Act.

Desmond Act Passed

The Desmond Bill was received sympathetically by both houses of the Legislature, but there was strong opposition by some chain store groups and by some producer cooperatives who were engaged in processing and distribution. The chain store groups argued

that their methods were more efficient than the traditional wholesale distributor to store methods and that they could therefore sell more cheaply. They wanted to be exempt from the law. Cooperative distributors claimed that they were merely marketing the products of their members and that the usual business relationships should not apply to them. For legal and constitutional, as well as practical competitive reasons, the Legislature saw fit to disregard the contentions of both groups. The bill was passed by substantial margins in both houses and it became law in September 1937.

Setting Prices

The basic purpose of the Act was to stop price cutting and secret rebates among distributors and retail stores. This was to be accomplished by authorizing the Director to establish minimum wholesale and retail prices for fluid milk and cream by marketing areas throughout the State. These prices were to include all wholesale sales to stores and restaurants, retail store prices and home delivery prices. Secret rebates and price cutting at all levels were prohibited and all violations were subject to penalties.

The basic standard or guide to the Director was that the minimum prices and margins established by the Director were to be adequate, but not more than adequate, to maintain in business in each market sufficient distributors of each type to provide adequate service to consumers. This standard necessitated detailed costing surveys in each market as a preliminary to minimum price establishment.

In addition to authorizing the Director to establish minimum wholesale and retail prices, the Act required the Director to appoint a local distributor control board in each market. It also required the membership of the board to include a consumer representative. It was the duty of each board to watch distributor operations under the program and to recommend changes in prices and margins when needed. Later on the requirement for a consumer representative on each board was eliminated by the Legislature, because it became difficult to find persons who were truly representative of consumer interests and also interested in the administration and enforcement of the law.

The Desmond Act stopped distributor milk wars almost immediately and brought reasonable stability in distribution markets. Some milk distributor supporters of the Act

contended that minimum prices set by the Director should take into account all expenses incurred by distributors. However, the wording of the Act stated "necessary expenses incurred." So the Director eliminated unnecessary expenses. Over the years the application of this standard to distributor operations has discouraged unnecessary expenses and has compelled high cost, relatively inefficient distributors to bring their costs into line with

the maximum costs allowed by the Director as a basis of determining minimum prices. As the Desmond Act became generally operative throughout the State, some distributors began using price discounts on dairy products such as ice cream, butter and cottage cheese as a means of circumventing the Desmond Act. This practice led to the enactment later of an unfair practice act for dairy products.

Chapter 5

ANALYSIS OF PRODUCER PRICE LAW (THE YOUNG ACT)

This chapter deals with the formulation of administrative procedures under the producer law.

The preamble to the milk law affirms that the welfare of the dairy industry directly affects the public interest and the health and welfare of the people of the State. It declares that unfair, unjust, destructive and demoralizing trade practices have been carried on in the production, marketing, sale, processing and distribution of milk; that these practices constitute a constant menace to the health and welfare of the inhabitants of the State; and that it is the policy of this State to promote, foster and encourage the intelligent production and orderly marketing of commodities necessary to its citizens, including milk. There is little doubt that the principal proponents of the law were the group directly affected by its operation and administration, namely, the dairy industry.

Objectives of Milk Stabilization Laws

The primary objectives of the milk stabilization laws, as they are written, may be summarized as follows:

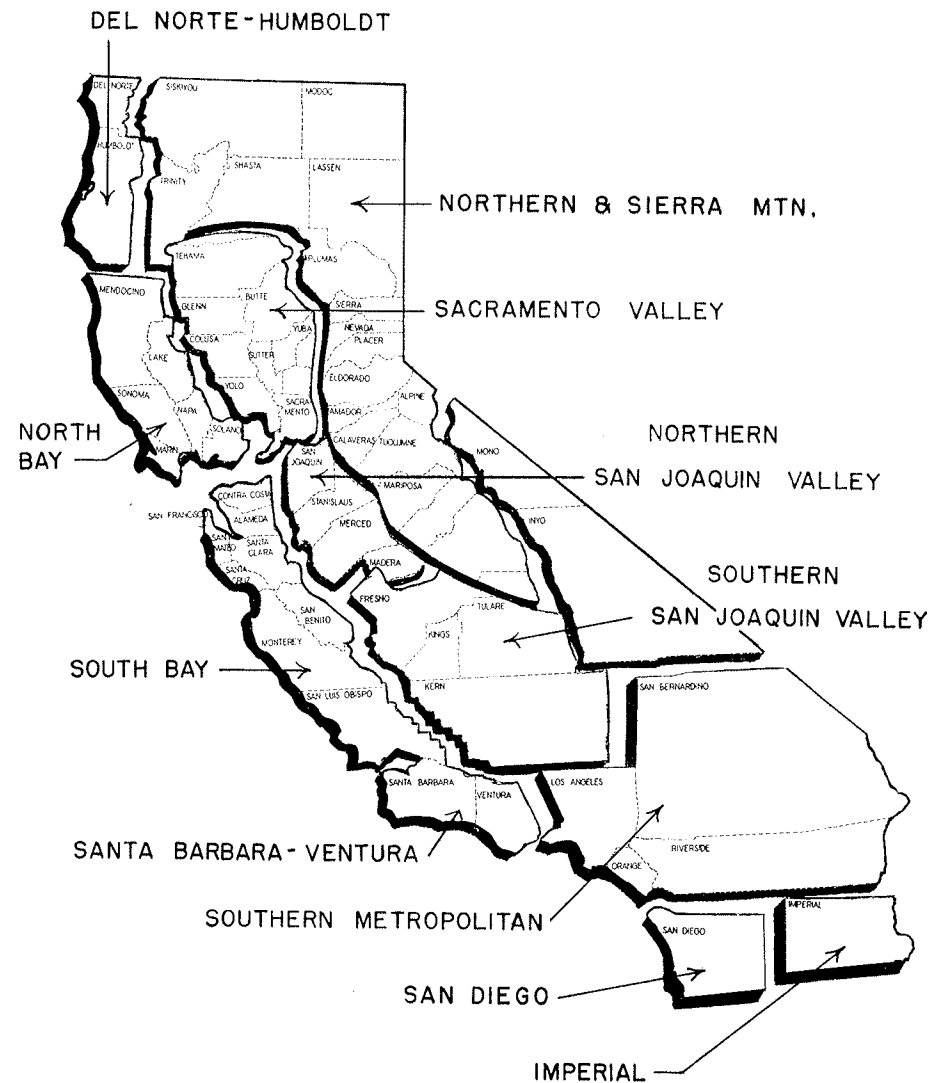
1. To maintain an adequate and continuous supply of pure and wholesome fluid milk to consumers at fair and reasonable prices.
2. To eliminate speculation, waste, and unfair and destructive trade practices.
3. To promote, foster and encourage intelligent production and orderly marketing, and to maintain a reasonable amount of stability and prosperity in the milk industry.

The law outlines certain procedures which must be followed to make it effective. The first of these relates to the formation of marketing areas wherein definite steps and eligibility requirements are outlined under which the Director of Agriculture may proceed. The Director is required to designate marketing areas which he deems necessary or advisable to accomplish the purposes of the Milk Marketing Act. An area is established when conditions within the area affecting production, distribution and sale of fluid milk and fluid cream are determined to be reasonably uniform.

Procedure to Formulate Stabilization and Marketing Plan

After a marketing area has been established, producers may petition the Director to formulate a stabilization and marketing plan for such an area. The petition must represent not less than 65 percent of the total number of producers whose major interest in the fluid milk business is in the production of fluid milk for the marketing area, and who produce not less than 65 percent of the total volume of fluid milk produced for such a marketing area. In lieu of such a petition the Director must conduct a public hearing in such an area and determine whether or not producers representing 65 percent by number of producers and 65 percent by volume of production favor formulating a stabilization and marketing plan.

MILK PRODUCTION AREAS USED IN STANDARD COST PRODUCTION METHOD



If the Director finds that a stabilization and marketing plan is necessary to accomplish the purposes as previously outlined, he must formulate such a plan and then issue a notice of public hearing upon the plan formulated to all producers and distributors on record in the Department. Following such a hearing

the Director must make the necessary finding and prescribe minimum prices to be paid by distributors for fluid milk and cream in accordance with the provisions of Chapter 17 of Division 6 of the Agricultural Code of California.

Price Standards

The basic purpose of such stabilization and marketing plans is the establishment of minimum prices which distributors must pay to producers for market milk purchased. The Legislature has established certain standards which must be considered in determining such prices. These may be summarized as follows:

1. Such minimum prices to producers shall be in a reasonable and sound economic relationship with the price of manufacturing grade milk. They shall take into consideration the reasonableness and economic soundness of manufacturing milk prices in relation to the cost of producing and marketing manufacturing grade milk, and the additional cost of producing and marketing fluid milk.

2. Such minimum prices shall take into consideration the current and prospective supply and demand for fluid milk.

3. Such prices will insure consumers an adequate and continuous supply of pure and wholesome milk at fair and reasonable prices.

The interpretation and application of these standards by the administering agency are perhaps equally as important as the standards themselves. The standard relating to costs of production and manufacturing milk prices was no doubt established because the production of market grade milk and the production of manufacturing grade milk are probably more closely related than any other two farm enterprises. In addition, manufacturing grade milk dairies are the greatest single potential source of additional market milk production.

Collection of Data

In considering the reasonable and sound economic relationships between the prices of market and manufacturing grades of milk, the difference in the production costs must be ascertained, since the costs of production are important factors in determining sound levels of pricing. Changes in feed costs and farm wage rates are the most important variable costs of milk production, since these two items alone account for approximately 75 percent of the total costs on California dairy farms. To obtain representative information on such costs, surveys of producers' costs are made by a State Bureau of Milk Stabilization staff of trained milk production cost analysts who gather data directly from a representative number of dairy farms. These

data are summarized for individual areas of the State in order that important changes in dairy operation costs can be noted and given proper consideration.

Before the administrative body can make a reliable determination of milk supplies or market needs, accurate statistical information must be available. With the establishment of stabilization and marketing plans, the Director of Agriculture was given authority to require producers and distributors to furnish certain information with regard to their production, sales and usage of milk and dairy products.

The reports submitted to the Director have resulted in a vast amount of detailed and highly accurate statistical information on milk production, sales and utilization in California. Independent research agencies have indicated that no other state has more up-to-date and accurate data. Furthermore, information of this type is not available for fluid milk in areas which have no form of government price regulation.

The availability of information as described provides a reliable means of determining the balance between the supply of milk marketed and the market demand. Current availability of these data is of utmost importance, since the standards prescribed by the Legislature necessarily gave this considerable emphasis in determining minimum price levels.

In addition to establishing levels of minimum prices, the Director of Agriculture is required to include in each plan provisions for prohibiting producers, distributors and retail stores from engaging in certain unfair practices.

Conduct of Public Hearings

After marketing areas have been established, and stabilization and marketing plans have been formulated and adopted for the area, it is necessary for the Director of Agriculture to review such plans continuously and to amend them when necessary. The plans may be amended only after a proper notice of hearing, fixing a time and place for the public hearing, has been issued to all industry persons affected. Notices of hearings are also distributed to newspapers and radio and television stations and are mailed to anyone asking to be placed on the mailing list. These hearings generally include producers and distributors of milk who may be affected by such plans.

At the hearing the Department of Agriculture submits pertinent documents and economic data prepared by authorized representatives. Industry witnesses are given an opportunity to submit data and testimony stating their program, which may be in support of or in opposition to any Department proposal or in support of a proposal of their own choosing. All witnesses appearing before the hearing are sworn and a complete transcript of the proceedings is made. Written briefs following the hearing are generally accepted within a limited time and all exhibits and transcripts are then presented to the Director of Agriculture for his consideration.

Written findings are required to be made within 45 days after the hearing, stating the decision. These findings may amend the plan or may result in no change being made. Such findings are developed after a review by authorized Department personnel of the economic data, other evidence and testimony

received at the hearing. A determination is made as to whether the prescribed standards have been met or whether some provisions of the plan should be changed to comply properly with such economic standards. The substance of these standards is referred to in greater detail in subsequent paragraphs.

Following a finding by the Director that some amendment to a stabilization and marketing plan is necessary, he must issue an order to that effect and mail to all persons on the mailing list a copy of the amended plan, specifying the changes and the effective date thereof.

Fluid Milk Classifications Defined

Fluid milk may be classified for purposes of pricing as provided for in the Agricultural Code. The three classifications may be defined briefly as follows:

Class 1 comprises fluid milk and any dairy product which by law must be made from market milk.



Interest is high as the Bureau of Milk Stabilization holds a consolidated producer price hearing in Artesia (Los Angeles County) in December 1964. Clair Wright, manager of Central Milk Sales Agency, is testifying. The hearing covered the Southern Metropolitan, San Diego, Ventura-Santa Barbara, and Imperial Marketing Areas. (Photo courtesy of *The Dairyman*)

Class 2 comprises all fluid milk, fluid skim milk or fluid cream used in the manufacture of a dairy product not included in Class 1 or Class 3.

Class 3 comprises fluid milk, fluid skim milk or fluid cream used in the manufacture of butter, powder or hard cheese.

Included in such provisions is a requirement that distributors and producers enter into a written contract for the purchase of milk by distributors if purchases exceed 200 gallons per month. These contracts must also state the minimum amount of fluid milk to be purchased for a given period, the amount to be paid for as Class 1, the prices to be paid, the date and method of payment, and the charges for transportation (if hauled by the distributor).

The Director is granted rather wide discretionary authority in administering the law. Through the years the law has been in operation such authority has been carried out by provisions specifying certain charges which may be assessed against producers by distributors for certain marketing functions actually performed. These may be charges for transporting, assembly, refrigeration or for certain processing functions. Likewise distributors are required to pay for certain services performed by producers, such as the separation or standardizing of milk.

A procedure for accounting to each producer for milk purchases is also a part of each plan. Details as to pooling provisions and usage accounting are specified. This permits the Department to make detailed audits of the distributors' records to determine if proper payment has been made for each purchase of fluid milk from every individual dairyman.

Enforcement

To permit proper enforcement, the Director of Agriculture has the authority to investigate any transactions between producers, distributors, cooperative associations, retail stores and consumers or between any combination of the above groups. He also has access to all records relating to such transactions for inspection or reproduction.

The Director may bring legal action against violators of the Act or of the stabilization and marketing plans under the provisions of the Act. Violators are subject to having their right to act as a fluid milk distributor revoked and are subject to civil and criminal penalties. Civil penalties consist of a liability of \$500 for each violation.

The Director of Agriculture is authorized to enter into agreements or otherwise arrange with authorities of other states or federal agencies concerning plans relating to the stabilization and distribution of fluid milk and fluid cream within California, or as between California and other states. The Director may exercise his general powers to accomplish and enforce such plans.

Advisory Boards

Advisory boards for individual marketing areas, or for a group of marketing areas, may be appointed by the Director of Agriculture to assist and advise him in matters pertaining to the stabilization and marketing plans. Such boards are required to be appointed when a majority of the producers, individually or through any nonprofit agricultural cooperative marketing association, request their establishment.

A stabilization and marketing plan may be terminated by the Director, after notice and public hearing, in the event he finds that the plan is no longer necessary or applicable for a particular market.

Chapter 6

CALIFORNIA MILK STABILIZATION ANALYSIS OF RESALE PRICE LAWS (THE DESMOND ACT)

This chapter deals with the formulation of price regulations and administrative procedures pertaining to the marketing of milk and dairy products at the wholesale and retail levels.

Under the Milk Stabilization Law (Division 6, Chapter 17, Agricultural Code of California), it is mandatory that the Director establish minimum wholesale and minimum retail prices for fluid milk and fluid low fat milk in the various milk marketing areas within the State. As mentioned in Chapter 5, the marketing areas are established on the basis of similarity in production costs. Resale marketing zones are formed within the boundaries of the established producer marketing areas. There may be several resale zones within a marketing area if significant differences in costs and types of distribution exist.

Public Hearing

Once a marketing area is established, as described in Chapter 5, the Director must make surveys and studies of marketing conditions within the area and he is then obligated to call a public hearing. At this hearing the Department submits testimony and evidence of the various economic conditions ascertained by the Director to be pertinent to the marketing of fluid milk and receives industry testimony and evidence. All witnesses appearing in the public hearing are required to give testimony under oath. A complete transcript of the proceedings is made. Briefs following the hearing are also allowed. The public hearing procedure is a part of the total investigative procedure which enables the Director to collect the data necessary in establishing and amending resale price orders.

Findings

The Director may make his findings upon each of the important economic issues raised in the testimony presented at the public hearing, or he may make findings from information available to him from other

sources. The Director characteristically follows testimony and evidence presented at the public hearings in establishing minimum resale prices, but he is not limited in scope to this evidence alone.

Findings must be made by the Director within 45 days after the close of the hearing. This finding must be in writing, and it must substantiate the minimum prices deemed proper for the marketing area. The findings are developed, after review by personnel of the Bureau of Milk Stabilization, on economic data, testimony and credible evidence before the Director.

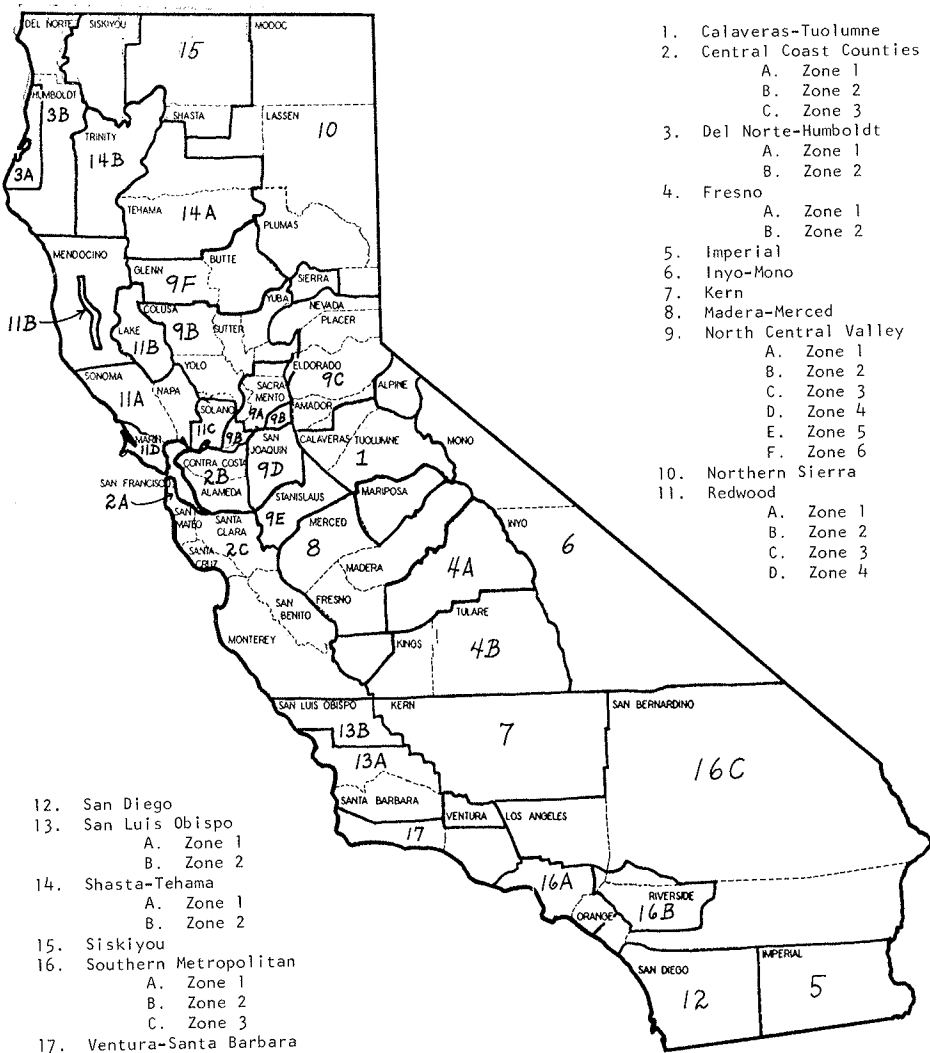
Issuance of Order

Following the findings of the Director, a resale order containing the minimum wholesale and minimum retail prices for the area is issued. Copies of the new resale order are mailed to all parties who are affected by the resale prices, and to those persons who have specifically requested copies of all resale orders. In addition to this mailing, full disclosure of all findings is made by news release to the various news media.

After a resale order has been established within a marketing area, economic conditions and cost factors are under constant review by the Department. When significant changes in these factors occur, a public hearing is called by the Director, either upon his own motion or upon receipt of a proper written petition from the industry. The hearing procedure, in establishing an amended order, is the same as the one establishing an original order.

Though the minimum pricing of fluid milk and fluid low fat milk is mandatory in all marketing areas, the pricing of skim milk and cream is permissive. Minimum prices for these items are established through the public hearing processes mentioned, and minimum price schedules are issued in the same manner as for fluid milk or fluid low fat milk. The criteria for the establishment of mini-

MILK MARKETING AREAS AND RESALE PRICE ZONES



1. Calaveras-Tuolumne
2. Central Coast Counties
 - A. Zone 1
 - B. Zone 2
 - C. Zone 3
3. Del Norte-Humboldt
 - A. Zone 1
 - B. Zone 2
4. Fresno
 - A. Zone 1
 - B. Zone 2
5. Imperial
6. Inyo-Mono
7. Kern
8. Madera-Merced
9. North Central Valley
 - A. Zone 1
 - B. Zone 2
 - C. Zone 3
 - D. Zone 4
 - E. Zone 5
 - F. Zone 6
10. Northern Sierra
11. Redwood
 - A. Zone 1
 - B. Zone 2
 - C. Zone 3
 - D. Zone 4

12. San Diego
13. San Luis Obispo
 - A. Zone 1
 - B. Zone 2
14. Shasta-Tehama
 - A. Zone 1
 - B. Zone 2
15. Siskiyou
16. Southern Metropolitan
 - A. Zone 1
 - B. Zone 2
 - C. Zone 3
17. Ventura-Santa Barbara

Price Factors

When, in the judgment of the Director, the cost standard in establishing prices would not satisfy the purposes of the Act, a secondary standard of stability may be invoked. If a cost basis would cause instability within the market, the secondary standard allows the Director to establish minimum prices above or below cost. If the secondary standard of stability is used, the Director must

minimum prices for cream or skim milk are basically the same as for whole milk. As part of the Director's investigative procedure and prior to establishing minimum prices, extensive cost audits are made to establish the reasonably necessary unit costs for the distribution of fluid milk or cream in each marketing area. These costs are the primary basis upon which minimum prices are established.



Crowded milk price hearing is held in Los Angeles in July 1948. Testifying before the microphone is Dr. David A. Clarke, Jr., of the Giannini Foundation of Agricultural Economics, University of California.

Kinds of Wholesale Prices

Minimum prices are established within each marketing area for two recognized wholesale methods and four retail methods of distribution. The first wholesale method is for sales of packaged milk ready for consumer sale by one distributor to another distributor. The second wholesale method is for sales by a wholesale distributor to retail outlets such as retail stores, schools, hospitals, restaurants, etc.



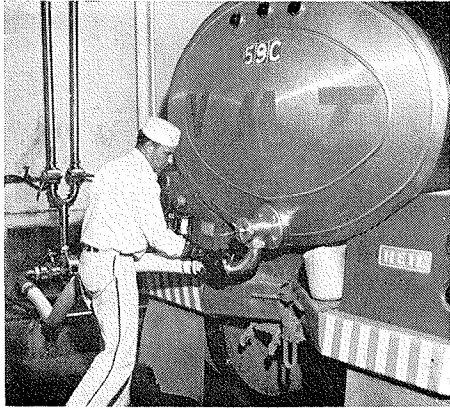
The interior of a milk processing plant. Detail studies are made by the Bureau of Milk Stabilization of the costs of processing and distributing milk.

Kinds of Retail Prices

The four retail methods of distribution recognized are sales at a producer's ranch (cash and carry), sales at a processor's plant (dock sales), sales at a retail store, and sales to home delivery customers. These retail methods have been recognized either by their traditional position within the market or by court decree.

make special findings to explain his deviation from costs. In addition to the cost factors used by the Director in establishing minimum prices, it is obligatory for him to make studies of the following factors within a marketing area: available plant capacity, demand for fluid milk and fluid dairy products, population trends and growth patterns, and economic conditions.

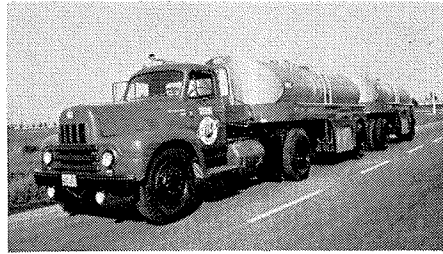
The purpose of establishing minimum wholesale and minimum retail prices is to insure stability within the market, and to assure that the consumer has an adequate supply of fresh and wholesome milk at a fair and reasonable price. This goal is achieved by the establishment of reasonable minimum



Receiving bulk milk. Market milk in California is transported from farm tanks to processing plants in stainless steel tankers.

prices, and by the elimination of unfair trade practices, unfair competition, conditions of monopoly or combinations in restraint of trade within the market.

The competitive pressures between the individual companies and among the various methods of distribution are of such magnitude that the Director has been granted rather wide discretionary authority to achieve enforcement of minimum prices and minimum price regulations. He has the authority to investigate transactions between distributors and retail stores, and between retailers



Line Tanker. Barreling over California's high-speed highways, trucks of this type transport several thousand gallons of milk each from our central valleys to metropolitan areas in a matter of a few hours.

and consumers. He also has access to all records of all sales transactions. A distributor found violating the Act or orders issued under the provisions of the Act is subject to penalties. He may have his right to do business as a fluid milk distributor revoked and may be subjected to civil and criminal penalties prescribed in the law.

Although wide authority is given to the Director in establishing minimum prices and promulgating provisions governing these transactions, and also in enforcing resale orders, all actions of the Director in this realm are subject to court appeal. Court decisions are invaluable to the Director to assist him in the interpretation of the legislative intent of the law.

Need for Additional Legislation

As indicated previously, after the Desmond Act became effective in 1937, distributor milk wars ceased in California. However, intense competition among all types of distributors continued. Although the population of the State continued to grow rapidly, distributors also expanded their facilities even more rapidly and most distributors made great efforts to expand volume.

With the advent of the war years, bringing increasingly greater demands for fluid milk and all other dairy products, problems of enforcing minimum prices were diminished because of the "seller's market" conditions then prevailing.

However, with the cessation of hostilities in 1945, followed by the lessening government demands for milk and dairy products, competition increased among milk and dairy products distributors for the regular civilian trade. Because producers generally were reluctant to cut down production, raw product supplies were plentiful.

In addition to the intense competition among fluid milk distributors, a legal problem in the application of the Desmond Act provisions of the Milk Stabilization Law complicated the matter still more. Certain distributors of dairy products only were not, at that time, subject to the law. This gave them a business advantage over fluid milk distributors who had to obey the law.

As an example, an ice cream distributor could (with impunity) (a) furnish refrigeration facilities to a wholesale customer—with or without compensation, (b) extend credit for merchandise sold, or (c) loan money to customers. This situation was also true of the distributor who dealt only in cottage cheese or buttermilk or any product other than fluid milk. These were the "unregulated" or unlicensed distributors of dairy products. A licensed distributor operating under the provisions of the Milk Stabilization Law could do none of these things legally if he sold fluid milk, ice cream and other dairy products to the same customer.

Chapter 7

DAIRY PRODUCTS UNFAIR PRACTICES ACT

Many distributors who were licensed under the Milk Stabilization Law were also manufacturers and distributors of both fluid milk and ice cream as well as other dairy products. Many other licensed distributors dealt only in fluid milk. If the licensed distributor who dealt in all dairy products met the competition of the unlicensed distributors, the licensed distributor who dealt in fluid milk only was placed in an untenable position.

It was obvious that with all these competing factors operating, a real threat to the Milk Stabilization Law existed and that, unless all dairy product distributors were placed under equal regulations, the basic purpose of the Milk Stabilization Law would be subverted. Thus it became more and more difficult to enforce minimum wholesale and retail prices set under the Desmond Act.

The purpose, then, of the Dairy Products Unfair Practices Act was to strengthen and equalize application of the Milk Stabilization Law.

The "Ice Cream Law," as it was then called, was introduced on January 23, 1947 by Senator George J. Hatfield. It was passed by the Legislature and subsequently signed by Governor Earl Warren on June 20, 1947 and became law in September of the same year. The law applied to distributors of dairy products, whether such distributors dealt in fluid milk, ice cream or any other dairy product. Certain dairy products, such as butter, were excluded, but since then some of these products have been added.

Provisions of the Act

The Dairy Products Unfair Practices Act sets forth, in general terms, areas of business practices and methods of doing business which are declared to be unfair and unlawful. The parties covered by the Act are manufacturers, distributors, producers, wholesale customers, retail stores and consumers involved in the sale or purchase of market milk or dairy products. Collusion among any of these parties mentioned, or joint participation among them to commit any of the prohibited practices in the doing of things or the giving

of things or services in obtaining business, makes all participants subject to the penalties specified in the law.

Under the Act, distributors may extend credit, sell any equipment, rent certain refrigeration equipment and furnish advertising material. They may not sell below cost; give secret rebates in the form of money, free products or services; make money loans; falsely advertise milk or dairy products; nor discriminate in price or service among customers who purchase like quantities under like terms and conditions.

Distributors must make a public filing of the prices at which they are selling all their dairy products, excepting hard cheeses, butter and frozen dairy products. The Act specifies the dairy products for which prices must be filed.

Retail stores may not sell dairy products below cost. They, as well as distributors, may not sell any type of product below cost if the sale is made in connection with the sale of a dairy product. They may not participate in any of the unfair practices enumerated in the Act.

The Act authorizes the Director to adopt and promulgate rules and regulations for its administration and enforcement. Such regulations, when properly adopted, become part of the California Administrative Code. They have the full force and effect of law.

The rules and regulations do not make new law, but rather expand and make explicit that which is presently in the law. For example: (a) 60 days credit is the credit limitation; (b) rental rates are set for specific pieces of equipment; and (c) "generally accepted cost accounting procedures" are prescribed.

All of the prohibitions are tempered with a provision which allows all persons concerned to compete lawfully by permitting them to meet a lawful competitive price or a lawful competitive condition.

All distributors are required to keep records of receipts and sales; records of the quantities of dairy products manufactured, wasted or lost and handling expenses; records of refrigeration facilities rented and of

other equipment sold on contract; and other records as required by the Director.

The Director or his authorized agents may investigate any and all transactions relating to dairy products. Upon receipt of any verified complaint, the Director must conduct an investigation. He may inspect and copy any books, papers, records or documents and he may subpoena witnesses and conduct hearings in furtherance of any investigation.

Administration of the Act is financed by a fee levied on manufacturers of ice cream mix and ice milk mix. As of July 1, 1965, the fee was 2 mills per pound of milk fat used in such manufacture. The fee may be set at a lesser figure if the Director determines that administrative costs can be defrayed with a lesser fee.

Anyone found violating the Act is subject to penalties, both criminal and civil. Any violation is a misdemeanor and is punishable by a fine ranging from \$50 to \$500, or by a maximum six months jail sentence, or by both fine and imprisonment.

Civil penalties consist of liabilities ranging from \$50 to \$500 for each violation. All penalties, civil as well as criminal, must be based on the nature of the violation and the seriousness of its effect on the purposes of the Act.

The Dairy Products Unfair Practices Act is complementary and supplemental to the California Milk Stabilization Law. In case of conflict, when both laws apply to the same person and subject matter, the Milk Stabilization Law prevails.

The General Unfair Practices Act of the State of California does not apply to any person subject to the provisions of the Dairy Products Unfair Practices Act.

Administration and enforcement of the Dairy Products Unfair Practices Act are performed by the Bureau of Milk Stabilization.

Generally, when a violation is substantiated by Bureau personnel, a recommendation for appropriate action is made by the regional office concerned to the Bureau headquarters. The Office of the Attorney General handles legal procedures necessary for court actions.

Chapter 8

THE DAIRY COUNCIL OF CALIFORNIA (DAIRY PRODUCTS PROMOTION ACT)

As competition for the consumer market increased, it became evident to both producers and distributors that there was need to increase the per capita consumption of milk and dairy products. Such a program was considered to be necessary since sales campaigns by individual distributors only tended to transfer consumer purchases from one distributor to another without increasing total sales. As the need of increased per capita consumption came into clearer focus, some major obstacles were recognized. The first was that in the 1930's the greater proportion of newcomers to the State came from areas where fresh milk and dairy products were not common daily foods. These people, and especially their children, needed education about the importance of milk and dairy products in their health and diet.

Then came the heavy soft drink advertising programs. Many teenagers stopped drinking milk or reduced their consumption of milk, partly because they thought it would prevent an overweight condition and partly as a teenage conformance response.

The California Dairy Council had been established and incorporated in 1917 and had been promoting the use of milk and dairy products. It remained in operation until 1945 when the industry concluded that a voluntary program required too much time of the Council's personnel to collect its funds. Members of the industry concluded that a mandatory program would serve them better. A bill, called the Dairy Products Promotion Act, was drawn to develop a fund of money to conduct a more extensive educational and promotional program to show the importance of milk and dairy products in the diet. This bill was passed and became effective in September 1945.

Later on, after passage of the Act, a further serious threat to the consumption of milk and dairy products broke out. Certain college researchers had released reports claiming that milk and dairy products were prime offenders in the development of high cholesterol levels and thereby contributed to heart

and circulatory difficulties. Many doctors at once began advising their patients, afflicted with these difficulties as well as for overweight, to "cut out all milk and dairy products." This situation contributed to further amendment of the law to increase assessments and to expand the educational and promotional program substantially.

Mandatory Financial Support

The general provisions of the law creating the Dairy Council of California (then known as the California Dairy Industry Advisory Board) were designed to create an agency which would have mandatory financial support by all of California's dairy industry, i.e., producers, producer-handlers and handlers of milk. The legislative design outlined in the law provides specifically that programs of education, advertising and research shall be conducted for the purpose of increasing the consumption of milk and dairy products.

At the request of California's dairy industry to the 1945 session of the California Legislature, the California Dairy Industry Advisory Board law was first enacted for a period of four years. In 1949 it was re-enacted for eight years, and in 1957 for another eight years. In 1961, before the expiration of the eight-year period, the Legislature made the law permanent.

The original law required that 65 percent of the handlers and producers voting approve its application before it became effective. The law provided for an assessment of five mills per pound of milk fat to be paid by producers and handlers on all milk produced and handled in California during the months of May and October of each year. The 1963 session of the Legislature authorized a referendum to determine whether an assessment, not to exceed three mills per pound of milk fat (paid by both producers and distributors on Class 1 sales only), should be made effective for the 10-month period other than the months of May and October. In the referendum the producers and distributors approved a three mill assessment.

This new assessment increased the Council's annual funds from slightly over \$500,000 to about \$1,500,000.

Dairy Council Board

The Dairy Council is administered by a board comprised of 25 members. Included are 11 producers, 11 handlers and 3 producer-handlers. The board is appointed by the California Director of Agriculture who makes annual appointments of approximately one-third of the membership from nominations received from each component of the industry.

The following are major duties of the board as authorized by the Director:

(a) to employ personnel and advertising experts, and to recommend advertising and research contracts;

(b) to gather, publicize and disseminate accurate and scientific information about dairy products and their relation to the public

health, economy, diet and proper nutrition of children and adults;

(c) to study ways used to produce, process, manufacture, market and distribute dairy products to help assure compliance with sanitary and other regulations imposed by various governmental bodies;

(d) to gather and disseminate information regarding:

- factors and conditions peculiar to the dairy industry which tend to cause unbalanced production;

- the price of milk and other dairy products in relation to the cost of other items of food in a balanced diet;

- factors which tend to stabilize the industry and foster more efficient cooperation among producers, persons engaged in handling, processing and marketing dairy products and the consuming public.

Upon the recommendation of the Dairy Council, the Director determines fees to be



California children such as these two girls benefit when their schools take part in the National School Lunch and Special Milk Programs. The Dairy Council of California works closely with the State's school food service personnel to increase participation in the programs, thus assuring more youngsters of a nutritionally balanced noonday meal.



The only opportunity for many youngsters to see a live cow and calf is offered by the Dairy Council of California's mobile dairy unit. The lecturer who accompanies the animals to school demonstrates the milking and butter making processes, and answers questions about dairy foods and the dairy industry.

paid on sales of Class 1 milk and determines the effective period of the fees. The ceiling on fees is three mills per pound of milk fat. The fees, paid by producers and handlers, are effective during a 10-month period (excluding the months of May and October).

Periodically the board is required to transmit to the Director statements of its planned activities during specified periods. These activities are based on an investigation of the industry's needs. The board's statements are required to outline the estimated costs of administering the program, estimate the probable production of milk fat, and describe the programs of research, education, publicity and advertising planned. If the activities recommended by the board are authorized by law, the Director must approve them or, if he disapproves them, he must notify the

board in writing of his reasons for disapproval.

The Fiscal Office of the California Department of Agriculture handles the Council's funds and assists in preparing its annual budget. The Bureau of Milk Stabilization audits the records of the handlers and producer-handlers of the State to determine if the required fees have been paid. When necessary, the Bureau directs the collection of delinquent assessments. The Council's records are open at all times to inspection and audit by the Department. All Dairy Council expenditures must be audited at least every two years by the Department of Finance. A copy of the audit must be furnished to the Governor, the California Director of Agriculture and the State Controller.

Chapter 9

STATISTICS OF THE CALIFORNIA DAIRY INDUSTRY *

Number of Cows Milked

An average of about 790,000 milk cows were milked in California during 1964. For purposes of comparison, this was 221,000 or 39 percent more cows than were recorded for 1924, 40 years previous. It was, however, 60,000 or 7 percent less than the peak number of cows reached in 1957.

Quantity Produced

The total quantity of milk produced in California during 1964 amounted to about 8½ billion pounds. This was more than two and one-half times greater than the comparable figure for 1924. It was 11 percent greater than the output of 1957 when the maximum number of cows milked was recorded.

Production Per Cow

When related to the average number of cows milked, the large gains in total milk production resulted from increased production per cow. In 1964, for instance, dairy cows in California produced an average of 10,810 pounds of milk per cow. This was 2,930 pounds or 37 percent above the corresponding figure for the entire United States. It was also 4,940 pounds or 84 percent greater than the average production of milk per cow in California in 1924.

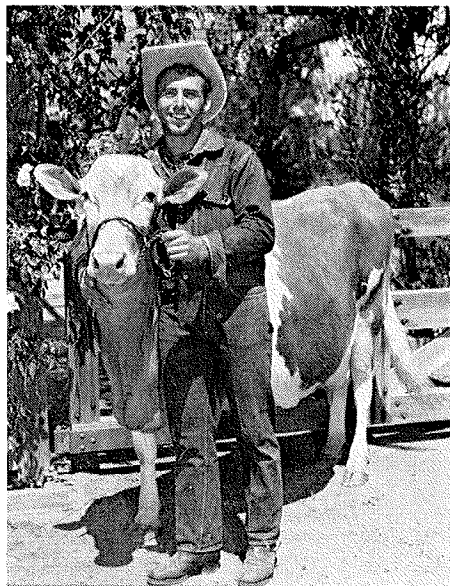
Use of Milk

Approximately 98 percent of the milk produced in California in 1964 was commercial and was received at plants for use in processed fluid milk or manufactured dairy products. The remaining two percent was produced for home use on farms. Of the commercial production 88 percent was classified as market milk or milk available for use in fluid products. Twelve percent was classified as manufacturing milk or milk available only for use in manufactured dairy products. In 1950, 66 percent of the milk produced commercially in California was classified as market milk and 34 percent was classified as manufacturing milk.

* Compiled by the Bureau of Agricultural Statistics, California Department of Agriculture.

Production by Areas

In 1964 about 42 percent of the total commercial production of milk in California was produced in the San Joaquin Valley. Southern California accounted for 36 percent; the Central Coast, 13 percent; the Sacramento Valley, 6 percent; and the remainder of the State, 3 percent. Of the commercial production which was classified as market milk, 41 percent was produced in Southern California. The San Joaquin Valley accounted for 39 percent; the Central Coast, 14 percent; the Sacramento Valley, 4 percent; and the rest of the State, 2 percent. Of the commercial production which was classified as manufacturing milk, 63 percent was produced in the San Joaquin Valley. The Sacramento Valley accounted for 18 percent; the North Coast, 10 percent; and the remainder of the State, 9 percent.



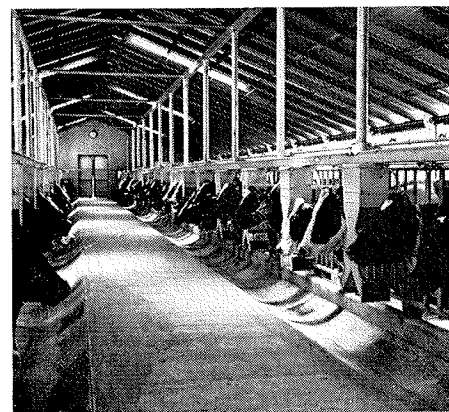
Farmer and his friend. California has 3,283 market milk dairy farms. The trend in the State is toward larger and fewer dairy farms.

Trends

Since 1950 the commercial production of all milk in California has increased about 48 percent. Market milk production rose 99 percent while manufacturing milk declined 49 percent. In the San Joaquin Valley total production rose 57 percent, market-milk production rose 187 percent and manufacturing milk production declined 51 percent. In Southern California total production rose 72 percent, market milk production rose 73 percent and manufacturing milk production, which is of minor importance in that area, declined 80 percent. In the Central Coast area total production rose 21 percent, market milk production rose 44 percent and manufacturing milk production declined 65 percent. In the Sacramento Valley total production rose 13 percent, market milk production rose 92 percent and manufacturing milk production declined 32 percent. In the rest of the State total production declined 11 percent, market milk production rose 95 percent and manufacturing milk production declined 46 percent.

Decline in Milk Fat Content

Records indicate that, during the last 15 years at least, the average milk fat content of milk produced in California has been declining. In 1950 the average milk fat test of all milk produced commercially in the State was 3.91 percent. In 1964 the figure was 3.64 percent. For milk classified as market milk, the average milk fat test dropped from 3.85 percent in 1950 to 3.62 percent in 1964. For milk



"Milk factory." The total quantity of milk produced in California during 1965 amounted to about 8½ billion pounds.

classified as manufacturing milk, the average milk fat test dropped from 4.01 percent in 1950 to 3.78 percent in 1964.

Geographical Variation

The average milk fat content of milk produced in California has also varied geographically. In 1964 all milk produced in the North Coast area contained an average of 4.20 percent milk fat. For the Central Coast the figure was 3.81 percent; for the Sacramento Valley, 3.77 percent; for the San Joaquin Valley, 3.60 percent; and for Southern California, 3.54 percent.

Within the market milk classification the percentages varied as follows: North Coast, 4.26; Central Coast, 3.80; Sacramento Valley, 3.74; San Joaquin Valley, 3.60; and Southern California, 3.54.

Within the manufacturing milk classification the percentages were North Coast, 4.71; Central Coast, 3.89; Sacramento Valley, 3.82; San Joaquin Valley, 3.62; and Southern California, 3.59.

Changes in Milk Utilization

Approximately 64 percent of all milk produced commercially in California during 1964 was used in Class 1 fluid market milk products. The remaining 36 percent was available for use in manufactured dairy products. In 1950 milk used in Class 1 fluid market milk products accounted for 55 percent of the total production with 45 percent available for manufacture.

Class 1 fluid market milk products, which are required to be derived from milk classified as market milk, accounted for 72 percent of the usage of the milk so classified in 1964 and for 84 percent of the usage of the milk so classified in 1950.

In 1964, 68 percent of all milk available for manufacture in this State was market milk in excess of fluid-product needs. The remaining 32 percent was milk classified as manufacturing milk and available solely for that purpose. In 1950, 23 percent of the milk available for manufacture was market milk in excess of fluid requirements and 77 percent was manufacturing milk.

Between 1950 and 1964 the commercial production of all milk in California rose 48 percent. That portion which was used in Class 1 fluid market milk products rose 70 percent while that which was available for manufacturing rose 21 percent. Milk classified as market milk which was in excess of that required for Class 1 fluid market milk

products, and thereby available for use in manufactured dairy products, rose 257 percent.

Breakdown of 1964 Sales

Sales of all Class 1 fluid market milk products in California in 1964 amounted to 617,733,000 gallons. Approximately 90 percent of this volume represented fluid milk (whole milk, low fat milk and the whole-milk equivalent of concentrated fluid milk). Of the remaining volume of milk sold, fluid skim milk accounted for about five and one-half percent; flavored milk drink, two percent; half and half, two percent; and fluid cream, the remaining one-half percent.

Sales of concentrated fluid milk were equivalent to about one-half of one percent of the sales of all fluid milk.

Low fat milk accounted for over three and one-half percent of the sales of fluid milk.

Of all the sales of fluid cream, about 61 percent represented sales of sour fluid cream.

1950 Sales

As a matter of comparison, in 1950 sales of all Class 1 fluid market milk products in California amounted to 363,397,000 gallons. About 91 percent of this volume represented fluid milk. Sales of fluid skim milk accounted for 2.1 percent of the volume; flavored milk drink, 1.7 percent; half and half, 4.2 percent; and fluid cream, 1.0 percent. Of the sales of fluid cream, only 13 percent represented sour fluid cream. Neither low fat milk nor concentrated fluid milk was recorded as sales in California at that time.

During 1964 about 55 percent of the fluid milk sold in California was classified as "wholesale" sales. This included sales to stores, restaurants, schools, hospitals and the like. Retail home-delivered sales accounted for about 21 percent. Cash-and-carry sales at drive-in type dairies (whether or not the production of milk at such locations was also involved) accounted for about eight percent. Another nine percent represented sales to peddlers or subdistributors for resale to the trade on wholesale, retail or combination routes. The remaining seven percent represented sales to agencies of the Federal Government, particularly military installations.

Products Manufactured in California

Dairy products manufactured in California include those which are produced primarily in response to the consumption requirements of the population of the State. Other prod-

ucts are manufactured as the result of many competitive factors. The supply of milk available for manufacture, the fluctuations in that supply (day-to-day and season-to-season), the availability of processing facilities within a readily accessible distance of that supply, and the comparative recovery values for milk used in various products at various times are just a few of the factors which determine what dairy products are manufactured in this State and in what quantities. Buttermilk, cottage cheese and frozen dairy products are examples of products which are manufactured primarily to meet the needs of the people of California. Butter, cheese other than cottage cheese and evaporated milk are examples of products which fall in another category.

Buttermilk

The manufacture of buttermilk in California in 1964 amounted to about 15 million gallons. The peak output of between 16 and 17 million gallons was recorded in 1957. Data covering a 38 year period show a definite upward trend from the less than 4 million gallons produced in 1927 to the peak production reached in 1957. Since 1957 the quantity manufactured has gradually declined.

Cottage Cheese

The manufacture of cottage cheese in California in 1964 included about 118 million pounds of creamed product and 16 million pounds of partially creamed, or low-fat product, for a grand total of 134 million pounds to be consumed in the State. In 1945 (the first year for which data are available) the output, which was entirely creamed, approximated 55 million pounds. Much of the curd for cottage cheese is made in areas of large milk supply, such as the San Joaquin Valley. The curd is shipped from plants in those areas to plants in centers of dense population, such as Los Angeles and the San Francisco Bay Area, for creaming and packaging.

Frozen Dairy Products

Over 108 million gallons of frozen dairy products were manufactured in California during 1964. This included about 64 million gallons of ice cream, 24 million gallons of ice milk, 5 million gallons of sherbet, 6 million gallons of imitation ice cream and 9 million gallons of imitation ice milk.

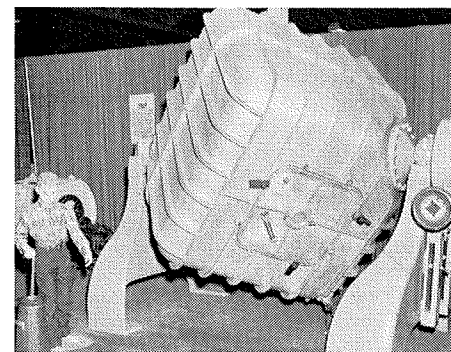
Records of ice cream manufacture in California extend back to 1920 when approximately 6 million gallons were made.

Ice milk production was first reported in 1923, but it was not until 1932 that the million-gallon level was reached. The first 10-million-gallon output came in 1949 and the first 20-million gallon mark was reached in 1956.

Records of sherbet manufacture extend back to 1933 when 647,000 gallons were made. The production of both imitation ice cream and imitation ice milk, products in which vegetable fat has replaced milk fat, has been reported in California since 1953 and 1954 respectively.

Butter

Approximately 34 million pounds of butter were manufactured in California during 1964. The largest output on record, since data first became available for 1920, was the 79-million pound figure for 1924. The smallest production was 16 million pounds in 1945. Estimates have been made that the manufacture of butter in California accounts for less than 20 percent of the butter consumed in the State. Butter imported from Minnesota, Wisconsin, Iowa, Utah and other states make up the difference.



First metal butter churn in the world. Built of cast aluminum in 1933 in the Los Angeles plant of Challenge Cream and Butter Association by Clyde Mitchell and E. L. Wetmore, this churn was finally retired in 1963 after having churned 34 million pounds of butter. The manikin at the left shows how hand-churned butter was made years ago.

To a considerable extent, the manufacture of butter in California is related to fluctuations in milk supplies within the State. It has little, if any, relation to consumption requirements. A significant proportion of butter manufactured in California is made in the North Coast area where large supplies of milk are far from markets. With large seasonal

variations in milk production, the opportunities to use the milk in alternative products are limited. In recent years in Southern California supplies of market milk exceeding fluid requirements resulted in increased butter manufacture in that area. Limited facilities for manufacturing many other dairy products contribute to diverting surplus milk supplies to making butter.

A third basis for manufacturing butter in California lies in the availability of a widely scattered supply of farm-separated manufacturing cream, in small amounts, from areas where it is generally produced as a side line to some other source of income. The total volume of this manufacturing cream has been declining, but in recent years surplus market cream has been partially offsetting this downward trend.

Cheese

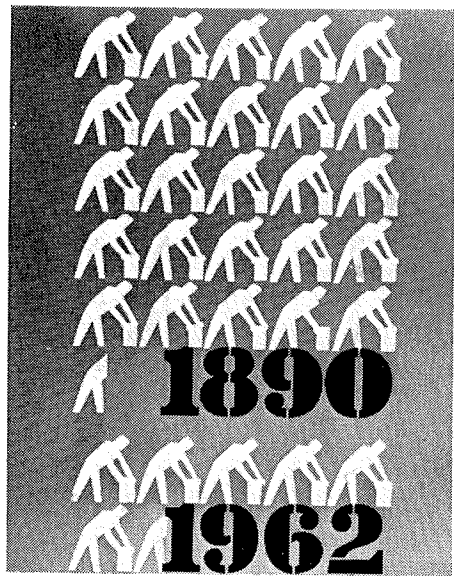
The manufacture of cheese, other than cottage cheese, in California during 1964 amounted to less than 20 million pounds. This production probably accounted for not more than 15 percent of the so-called hard-cheese consumption in the State. Over 13 million pounds were manufactured in California in 1920. The output exceeded 17 million pounds as far back as 1938.

Many of the factors accounting for the manufacture of butter in California apply as well to the manufacture of cheese, other than cottage cheese. Total consumption requirements in the State have little bearing on changes in production. Isolated areas, with limited alternatives for milk usage, accounted for some of the output. The production of certain business firms or families of reputable, high-quality specialty items also contributes to the volume of cheese produced in the State.

Evaporated Milk

Evaporated milk manufactured in California during 1964 exceeded 182 million pounds. The output in 1932 (the first year for which data are available) amounted to about 204 million pounds. The largest annual production on record was 325.6 million pounds reported for 1945.

Condensaries, which manufacture evaporated milk and other condensed milk products, require a large volume of milk on a year-round basis from dependable sources. They do not fit into situations where milk production fluctuates widely, where readily accessible supplies of milk are limited, or



Dried Milk Products

Much of the powdered skim manufacture in California is allied with the manufacture of butter in what is commonly referred to as a "butter-powder operation." The fat portion of the milk received at a plant is used for butter and the skim portion is dried. In recent years, because much of the milk used in manufacturing butter and powder in the State is surplus market milk, the powder is often made in plants located in major milk-producing areas having drying facilities. The butter is made from cream in the metropolitan areas.

Other dried milk products manufactured in California include dried whole milk, dried whey and dried buttermilk. Their manufacture in the State is of secondary importance and, for the most part, is allied with the manufacture of powdered skim in plants equipped with the necessary drying facilities.

With products produced in California for consumption within the State and without any significant imports from or exports to other areas, it is possible to estimate the per capita consumption of such products in California. Dairy products which meet these conditions include all Class 1 fluid market milk products, all frozen dairy products, cottage cheese and buttermilk. Population data which may be used in converting total product figures to a per capita basis are available from the California Department of Finance.

Fluid Milk Trends

Between 1950 and 1964 the population of California rose from 10,643,000 to 18,234,000 or about 71 percent. Sales of all Class 1 fluid market milk products in the State rose 70 percent. Consumption per capita, as measured by total sales divided by estimated population, declined from 136.6 quarts to 135.5 quarts. Actually, the figure first rose from 136.6 quarts in 1950 to 149.3 quarts in 1957 and then declined to 134.2 quarts in 1962. Since 1962, it has risen to 135.5 quarts.

Estimated consumption of fluid milk in California rose from 124.3 quarts per capita in 1950 to 135.0 quarts in 1956 and then declined to 119.7 quarts in 1962. In 1964 it amounted to 121.5 quarts.

Fluid skim milk rose from 2.8 quarts per capita in 1950 to 8.2 quarts in 1961 and then declined to 7.5 quarts in 1964.

Flavored milk drink has shown no definite trend, but has fluctuated between 2.0 and 2.5 quarts per capita during the 15-year period of 1950-1964.

Half and half declined from 5.7 quarts in 1950 to 3.0 quarts in 1964.

Estimated consumption of all fluid cream declined from 1.41 quarts per capita in 1950 to 0.98 quarts in 1964. The sour cream portion rose from 0.19 quarts to 0.60 quarts, but other cream fell from 1.22 quarts to 0.38 quarts.

Frozen Dairy Product Trends

Estimated consumption of all frozen dairy products in California between 1950 and 1964 has varied from 20.0 quarts to 23.8 quarts per capita. The range for ice cream has been 13.4 and 15.6 quarts. Ice milk rose from 4.2 quarts to 6.1 quarts and then declined to 5.3 quarts. Sherbet has ranged from 1.0 to 1.3 quarts. Imitation ice cream came on the market in 1953 and reached a peak of 1.6 quarts per

capita in 1962. Imitation ice milk was first reported in 1954 and its estimated consumption rose to 1.9 quarts per capita in 1964.

Cottage Cheese Trends

During the period 1950-1964, the estimated consumption of cottage cheese in California rose from 7.3 pounds per capita in 1950 to 8.3 pounds in 1957 and then fell back to 7.3 pounds in 1964. From 1950 through 1953 all of the product was classified as "creamed." In 1954 a partially creamed or low-fat product came on the market. In 1964 it accounted for 0.9 pounds per capita as compared with 6.4 pounds of the creamed cottage cheese.

Buttermilk consumption in California declined from an estimated 5.2 quarts per capita in 1950 to 3.3 quarts in 1964.

Chapter 10

LEGAL AND CONSTITUTIONAL PROBLEMS

Constitutional Problems

The two basic milk stabilization laws, the "Young Act" (governing producer pricing plans) enacted in 1935 and the "Desmond Act" (governing resale pricing) enacted in 1937, were in effect only a short time before they were attacked in the courts on constitutional grounds.

All attacks on the constitutionality of the laws, with the exception of one involving a relatively minor issue, have failed.

Certain producers, distributors and consumers joined in one of the early actions to have the Act declared in violation of the Constitutions of the United States and the State of California (*Jersey Maid vs. Brock* [1939] 13 C 2d 620). In this action an injunction was granted by the trial court enjoining the Director of Agriculture from enforcing the law against the plaintiffs.

The case involved the stabilization and marketing of fluid milk, and minimum wholesale and retail prices established for the Los Angeles Marketing Area. The constitutional issues raised and rejected by the

State Supreme Court were (1) improper exercise of the police power of the State in violation of the due process clause of the United States Constitution; (2) unconstitutionality of the Act because all persons engaged in the milk business are not subject to it, i.e., manufacturing milk was not covered; (3) undue delegation of power to the Director of Agriculture, including inadequate legislative standards; (4) unconstitutionality because it was not uniform in its operation with respect to producers who have a voice in determining whether the Act should become operative in an area.

The one section of the Act declared unconstitutional in this case, and upheld by the Supreme Court, was a provision which purported to authorize the Director to fix the amount of damage for the failure of a distributor to pay a producer for the purchase of fluid milk. This ruling did not render invalid any of the remaining portion of the Act.

A constitutional attack on another point arose in a habeas corpus proceeding in re

Milk is a bargain. In 1890 the average factory worker had to labor over 25 minutes to earn the price of a quart of milk. Thanks largely to the efficiency of our modern milk industry, his grandson (at the same job in 1962) had only to work 6½ minutes to buy a quart of milk. Today the work equivalent is even less.

where fluid milk requirements play a dominant role in determining what is available to them. In California most condensaries have been, and all are now, located in the Central Valley where the conditions of milk production most nearly comply with those just mentioned. As the volume of strictly manufacturing milk in the State has declined, and milk available for manufacture has become primarily surplus market milk, the number of condensaries and the total volume of milk received at condensaries have also declined.

Nonfat, Dry Milk Solids

During 1964 the manufacture of nonfat, dry milk solids or powdered skim in California amounted to approximately 73 million pounds. All but 665,000 pounds of this product was manufactured for human consumption. A small quantity, representing less than one percent of the total, was produced for animal feed. In 1935, the first year for which data are available, the production for human consumption was about 31 million pounds and the output for animal feed was about 12 million pounds.

Willing (1939) 12 C 2d 591. In this case a distributor had been convicted of purchasing milk from a producer without obtaining the required license and furnishing a bond. The contention was that this was unconstitutional class legislation, since the license and bond requirement did not apply to retail stores and did not apply to persons who purchased manufacturing milk from producers. The courts ruled there was an adequate basis for the classification, and the constitutionality of these provisions was affirmed.

A second broad attack on the constitutionality of the Act followed soon after *Jersey Maid vs. Brock*. This was another action by certain producers, distributors and consumers (*Ray vs. Parker* [1940] 15 C 2d 275).

The court stated that nothing in this case changed conclusions reached in the *Jersey Maid* case.

Claims that the Act was discriminatory and lacking in uniformity were again raised, but on different provisions than in the aforementioned cases. Provisions providing for penalties for violation of unfair practices in a marketing area, with no penalty applicable outside of such area, together with provisions for penalty fees being used in a fund which supported plans in other areas, were cited as discriminatory and lacking in uniformity. Another contention on lack of uniformity concerned the provision for classification of milk for price purposes according to usage made of the milk. These contentions were rejected by the State Supreme Court.

It was contended in the Supreme Court that there was an improper delegation of legislative functions with regard to the designation of marketing areas and the formulation of stabilization and marketing plans. They also urged that the power of the Director to classify milk and fix prices was an improper delegation of legislative power. The Supreme Court ruled on this appeal on the basis of the *Jersey Maid* ruling.

This case (*Ray vs. Parker*) broadened the attack on the judicial power of the Director concerning the subject of assessing penalties as covered in the *Jersey Maid* case. The trial court ruled that authority to deny or revoke a license was an improper delegation of judicial power. The Supreme Court reversed this finding.

Attacks on hearings and other procedures, alleging arbitrary and capricious action, were not upheld.

Legality of Administrative Actions and Decisions

In general, stabilization and marketing plans and minimum wholesale and resale price orders, and administrative actions in connection therewith, have been upheld by the courts. However, in 1943 the courts ruled against the Director in one important administrative decision, *Challenge Cream and Butter Association vs. Parker* (1943) 23 C 2d 137. With the advent of the paper milk container, the initial cost of distributing milk in these containers was higher than for glass bottles. The Director issued minimum wholesale and retail price orders with different prices for milk sold in fiber and glass containers of the same unit size. The court ruled that the Director did not have this authority and that a price differential for the same quantity, quality and type of delivery was in violation of the aims of a uniform minimum price.

The following are a number of important cases wherein the courts validated administrative acts or interpretations of the Director:

1. The pooling of the payment for Class 1 usage among producers shipping to two different plants owned by the same distributor was deemed inappropriate by the Director. This contention was upheld by the courts (*Marin Dairymen's Milk Co. vs. Brock*) [1950] 100 CA 2d 686). However, more recently this procedure has been made permissible by amendments to the Act.

2. The court supported the Director in prohibiting a milk distributor from assessing a transportation charge for fluid milk beyond the cost of delivery from the producer's ranch to the plant where the milk was processed (*Knudsen Creamery vs. Brock* [1951] 37 C 2d 485). The court ruled that the Director's action "wholly harmonizes with the Act in fixing the terminal point of the producer's responsibility for conveyance of the milk to the place of delivery for the distributor, for the latter's ultimate disposition to any marketing area of his own choice."

3. The establishment by the Director of a subdistributor price, on the basis of the cost of milk delivered at the sales platform in fiber containers (as contrasted with the platform cost of milk in glass containers), was upheld (*Sentell vs. Jacobsen* [1958] 163 CA 2d 748).

4. The court affirmed the Director's authority to establish a differential price for milk sold to consumers at a milk processing plant and for milk sold at a retail store (*Misasi vs. Jacobsen* [1961] 55 C 2d 303).

Military Milk Sales

Administration of the Milk Stabilization Law has been plagued for many years with problems surrounding the sale of milk to agencies of the Federal Government. In 1943 it was ruled by the United States Supreme Court that the State was precluded from the enforcement of minimum wholesale prices for the sale of milk consummated within a federal enclave, where the land was purchased by the United States with the consent of the State (*Pacific Coast Dairy vs. Department of Agriculture*, 318 U.S. 285).

This case involved the sale of milk at Moffet Field. The matter of exclusive jurisdiction was conceded in the case and was not a subject of litigation. During the period 1956 through 1960, with supplies of market milk rapidly increasing above the requirement for Class 1 use, competition to obtain the military milk business drove bid prices to levels which returned to producers substantially less than the minimum producer prices established by the State. The matter of exclusive jurisdiction of the federal agencies at several military installations was reviewed by legal counsel and a determination was made that exclusive jurisdiction had not been obtained by the Federal Government over most of the federal enclaves in the State. Accordingly, the Department served notice of intention to enforce minimum wholesale prices at these military installations. This notice was followed by legal action to enforce wholesale prices for such sales.

In turn the Federal Government filed an action and obtained a District Court injunction against the Director from enforcing wholesale milk prices at Travis Air Force Base, Castle Air Force Base, and the Oakland Army Terminal. The court ruled against the State on the grounds that the United States had obtained exclusive jurisdiction and that state regulations conflict with federal procurement law and policy. The case was taken to the United States Supreme Court (*Paul vs. United States* [1963] 371 U.S. 245).

The court ruled, with respect to milk purchased from appropriated funds, that the state law was in conflict with the Federal Procurement Act. This includes the bulk of military purchases. However, with regard to

purchases for military clubs and post exchanges which are not made from appropriated funds, the court vacated the Federal District Court judgment and remanded the case to the District Court to determine whether, at the respective times when the various tracts of land in question were acquired by the Federal Government, the basic Milk Stabilization Law was in effect. The court ruling states that "since a state may not legislate with respect to a federal enclave unless it reserved the right to do so when it gave its consent to the purchase by the United States, only state law existing at the time of the acquisition remains enforceable, not subsequent laws."

Since this decision in 1963 neither the State nor the Federal Government has initiated proceedings to litigate the matter of jurisdiction at the numerous military enclaves in the State. This would involve only purchases from nonappropriated funds and would entail a tremendous volume of litigation.

A closely related issue is the enforcement of the minimum producer price for milk sold by distributors to federal agencies. Efforts to enforce the minimum producer prices paid by producer cooperatives to their members for the sale of military milk have not been successful. A cooperative (which operates as a distributor in the processing and the sale of milk) may make bids to federal agencies at prices which do not leave a sufficient amount of money after allowance for bare processing and delivery costs to return the Class 1 price to their producer members. Certain other distributors competing with the cooperatives have also bid low and have not returned the full Class 1 price to producers.

Legal action was instituted by the Director to determine whether a cooperative association may sell milk to federal agencies at a price which is not sufficient to cover both the Class 1 raw product cost and bare processing and delivery costs. This action was dismissed because of a subsequent federal court decision in a later action. This decision developed from an action designed to remedy the situation by regulation. This regulation, issued by the Director, prohibited the sale of milk and dairy products below cost to federal agencies. An action was brought against a producer cooperative association for violating this regulation when making a military bid below cost. An injunction was granted by a State court against the distributor selling to the military activity below cost. The U.S. Government filed an action in the Federal

District Court in San Francisco and obtained a preliminary injunction prohibiting the Director from enforcing the regulation in sales of milk to federal agencies.

This decision does not preclude the enforcement of the minimum producer price by the State as long as the State does not

interfere with prices bid by distributors for the federal milk business. At present the State has not found the means of enforcing the minimum prices which cooperative milk marketing associations return to their producer members for milk sold to federal agencies.

Chapter 11

ADMINISTRATIVE POLICIES AND PROBLEMS

Policies

Administrative procedures and policies constitute the structure which bridges the gap between legislative purposes and provisions and the functioning of a program. The more complex the program, the greater is the need for administrative implementation. Being extremely complex, the milk marketing program has generated a substantial body of procedures and policies.

Some of the most important of these procedures and policies deal with the way farmers are paid. The law divides the use of market milk into three classifications: *Class 1* represents the highest value usage and includes fresh milk and cream sales; *Class 3* is the lowest value usage and includes butter, powder and hard cheese; *Class 2* is the "catch-all" category and includes buttermilk, cottage cheese, ice cream and all other dairy products not classified as *Class 1* or *3*.

The law directs the Director of Agriculture to establish the minimum *Class 1*, *2*, and *3* prices for market milk, following certain standards and public hearing procedure. Further, the law requires that dairy farmers be paid the established minimum prices based upon the use made of their milk.

Administrative Policies

The law, however, does not explain how the Director is to be able to determine what use is made of a particular producer's milk when it enters a complex processing plant. In this set of circumstances administrative policies have been designed to make the legislative intent effective.

The first of these policies states that all milk from dairy farmers entering a processing plant loses its identity and is commingled, and that the use made of the milk is a proportion of the use of the entire plant, except for milk that is kept physically segregated.

The second determination developed administratively is that it can be assumed that over-contract milk finds its way into the lowest value usage.

Another policy involves plant loss. Receipts and usage at a plant must balance in order to account properly for all milk received. Loss of product incurred in processing is assumed to be proportional to the volume of the several products processed and the dairy farmer is to be paid accordingly.

A whole body of procedures and policies concerning the way dairy farmers must be paid has been developed and it is listed in a manual of producer payment procedures.

For the purpose of establishing minimum wholesale and minimum retail prices, a similar set of circumstances surrounds the statutory requirement of determining the reasonably necessary expenses of processing and distributing milk. These procedures and policies are contained in a manual of auditing and cost procedures.

Applying the unfair practices provisions of the law to particular sets of circumstances requires interpretation of the meaning of the provisions of the law. This has resulted in promulgating a series of rules and regulations which are filed in the California Administrative Code.

An example of these regulations is the one which prohibits the extension of credit to wholesale customers for a period longer than 60 days. Extending money loans to wholesale customers constitutes a prohibited practice; the extension of credit does not. However, it becomes necessary to determine at what point the excessive extension of credit becomes a loan and is prohibited.

Many legal questions emerge in the course of administering the milk marketing program. The more important of these are submitted to the State Attorney General for formal opinion. Opinions given become policy. A file of these opinions by the Attorney General is maintained by the Director.

An example of these opinions is one dealing with trading stamps. The opinion held that giving trading stamps on milk which is subject to established minimum prices is illegal, but that giving trading stamps on other dairy products is not prohibited, provided that the value of the trading stamp does not reduce the sale price below cost.

Problems

The milk marketing program, which embraces extensive regulation of the dairy industry and affects prices and profits, is confronted with many problems. One of the greatest problems concerns the seeking of special advantage by some members of the industry. Most segments of the industry support the program and seek its continuance. However, this fact does not prevent certain individuals or segments from seeking a favorable position at the expense of competitors or other segments.

Somehow the Director of Agriculture must put together a total program that recognizes the needs of each segment, does not bestow special advantage upon one or another group, does not prevent progress or innovations, and contributes to the welfare of the public at large. This is no easy task.

Current problems include the following:

1. The wide difference in blend prices received by dairy farmers.

2. The present excess in supply.

3. The pressure of the excess supply seeking a *Class 1* market.

4. The time and difficulties involved in changing producer, wholesale and retail prices.

5. The pressure to obtain market milk for *Class 2* and *3* usages to fill the need created by a diminishing supply of manufacturing milk.

6. The rising cost of producing milk in Southern California, as compared with the remainder of the State.

7. The depressed producer prices resulting from Federal Government milk procurement practices.

8. Retail price differentials between milk depot and retail store, milk depot and home delivery, and retail store and home delivery.

9. Integration of processing plants and producers.

10. Integration of processing plants and wholesale customers.

11. Preferred usage allocated to distributor's own herd.

12. Struggle between cooperative associations of producers and conventional distributors for equality in competition.

13. Appropriate amount of grocer's gross margin on milk.

14. Bidding procedures to public institutions.

15. Effect of wholesale quantity discounts on competitive situation of small buyers versus large buyers.

16. Competitive situation of small distributors versus large distributors.

The dairy industry is a dynamic industry subject to intense competition and is affected by a great public interest. Problems continue to develop. Some have been solved; some are being solved. Others remain to be solved. The community as a whole has a right to protect its food supply through democratic processes. Thus effort must be continued both by administrative action and through amendment of the law, to resolve these problems, even more promptly than in past years.

Chapter 12

APPRAISAL OF MILK STABILIZATION LAWS

It is possible that there will be some individuals who will feel that those persons who have been most closely identified with the technical development and administration of California milk stabilization laws may not be in the best position to appraise fairly the accomplishments and the weaknesses of the laws. This may be a valid assumption. On the other hand, certainly these administrators are familiar with the laws and their strengths and weaknesses, and they should know what changes are needed to improve the administration and enforcement of the laws.

Appraisal of Producer (Young) Act

The following are considered to be accomplishments of the Producer Act:

1. It has stopped milk wars between producers and distributors, and has provided reasonable price stability, and thus has saved producers the costs and losses involved in such wars. This has served the public interest.

2. It has provided reasonably efficient producers with an adequate price return over the years, provided that such producers have had, by contract, an adequate Class 1 usage. (There was a period from 1950 to 1955 when, because of a defect in the basic pricing standard in the law, the prices set may not have been fully adequate.)

3. It has provided consumers with an adequate supply of pure and wholesome fluid milk and cream.

4. It has encouraged greater efficiency in production (a) by rewarding efficient producers and (b) by providing more stable conditions which in turn have encouraged producers to develop more efficient operations.

The following points are listed as weaknesses of the Producer Act:

1. The assurance of a definite price has probably encouraged some established producers to expand and some new producers to enter the field of production without a reasonably adequate Class 1 guarantee, thus tending to build up surpluses. This situation

has been aggravated by some processing distributors who wanted additional milk for their manufacturing operations and who encouraged some of their producers to increase their production beyond any reasonably immediate need for such production for fluid milk purposes.

2. Considering the State as a whole, the Act has not assured all established producers an adequate Class 1 usage. Producers in some areas of the State have enjoyed much higher Class 1 usage than others. A more equitable apportionment among all producers of Class 1 usage is urgently needed.

3. The present procedures of changing producer prices are too slow and costly.

Appraisal of Distributor (Desmond) Act

The following are considered as accomplishments of this Act:

1. The Act has stopped price wars among all types of distributors, thus avoiding the costs and losses incurred by such wars.

2. It has provided reasonably efficient distributors with an adequate return over the years. It has not covered all costs of all distributors, but it was not intended to do so.

3. It has made it possible for many smaller distributors to stay in business instead of being forced out by the price cutting and other competitive tactics of larger or financially stronger competitors.

4. It has generally stopped, or curtailed substantially, many kinds of unfair trade practices.

5. It has provided milk consumers of the State with a high quality package of milk at generally lower prices, considering the costs of production and distribution in California.

The following are considered to be weaknesses or shortcomings of the Act:

1. It has not stopped some firms and their employees from attempting destructive competitive practices. Some of these practices have violated the law; some, not specifically prohibited by the law, violated the spirit and purposes of the law.

2. The Act may have slowed down temporarily the institution of some desirable

changes in distribution methods, pending authorization through legislative amendment. However, delays required to obtain legislative authorization have provided greater opportunity for consideration and discussion of such changes and often have avoided the chaotic competitive conditions which generally accompany unilateral institution of radically new methods or policies. Furthermore, the deliberations which occur prior to the enactment of amendments generally provide a sounder basis for the adoption of new ideas.

3. The Act does not yet provide assurance that savings resulting from volume discounts are fully reflected to consumers. This is partly true of wholesale discounts to stores. Such savings are not fully passed on to patrons of large volume stores, not only because of restrictions in the Act, but also because of the objections of wholesale distributors and small store operators. They object to milk being sold to and from stores with large volume sales at prices lower than the price of milk sold to and from stores with smaller volume sales.

4. The Act does not yet provide a basis for a thoroughly sound price relationship between home delivery sales and the various types of store sales. The present differential is maintained at a somewhat arbitrary level to avoid an almost complete elimination of the home delivery services because of excessive delivery costs per unit. Generally, the fluid milk industry, producers and distributors believe that more milk can be sold daily through continuation of both store and home delivery systems than by eliminating home delivery. There are strong reasons for maintaining home delivery, but in many cases, if prices were based solely on unit costs, prices to home delivery customers would have to be raised substantially. No doubt this would further curtail sales and require still higher prices and so on until the service would have to terminate. Some new and more economical methods of home delivery need to be developed in order to assure its position in the market.

The Dairy Products Promotion Act

The following are considered to be accomplishments of this Act:

1. Students and teachers in schools throughout the State have been provided much needed factual information about the nutritive and health-giving properties of milk and dairy products. This information has had a positive and discernible effect upon under-

standing the nutritional use of milk and dairy products among these students and teachers, and has affected favorably their use of these products.

2. Through research projects financed by funds collected under the Act and carried on by University of California scientists, much valuable information has been developed concerning the need for the use of milk and dairy products. This information has been made available to the dairy industry and the general public, and has had a significant effect upon the public use of these products.

3. Since development of the expanded program, the educational and promotional activities have helped to maintain the consumption of milk and dairy products in California. The decline in the per capita consumption of milk precipitated by the premature announcement of the findings of research projects of limited scope (attributing direct causative relationships between the use of milk and dairy products and heart and circulatory difficulties and also with problems of overweight) has been countered to some extent. The problem is by no means resolved, but much of the misinformation has been corrected by the program in collaboration with other state and national dairy promotion agencies.

The following are considered to be shortcomings of this Act:

1. It has not yet been able to persuade many physicians to discontinue the practice of prescribing diets which completely eliminate milk and dairy products for patients who are overweight or have heart or circulatory problems. Such advice is often standard practice with some physicians. It has had a serious effect upon the consumption of milk and dairy products, not only by their patients, but also by friends and associates of their patients.

2. The program has not yet been able to offset adequately the advertising appeals of soft drink manufacturers. Teenage girls, especially, are following the current fad of using soft drinks more often than milk, because they "don't want to get fat." This indicates a problem for the school programs as well as the need to counter the advice of some physicians.

The Dairy Products Unfair Practices Act

The following are considered to be the accomplishments of this Act:

1. The Act has restored competitive equality between distributors who are directly subject to the provisions of the Desmond Act

and those who are not. This has been accomplished by prohibiting the cutting of prices of dairy products and other unfair practices among all distributors, whether or not they handle fluid milk.

2. The Act has provided a general code of fair practice in California's dairy industry and has helped to maintain stable conditions in a highly competitive industry. This has aided the administration and enforcement of the Desmond Act, and has helped to maintain greater stability in competition.

The following are considered to be shortcomings of this Act:

1. Certain provisions of the Act, especially those prohibiting sales below cost, are difficult to enforce, partly because of the time and expense involved in obtaining cost information from violators and partly because of the attitude of courts concerning the application of such prohibitions. It is believed that the problem would be minimized by amending this law to provide a "prima facie" test of "less than cost," and by clearer explanation in court of the nature of "less than cost" provisions as distinguished from the State Fair Trade Laws.

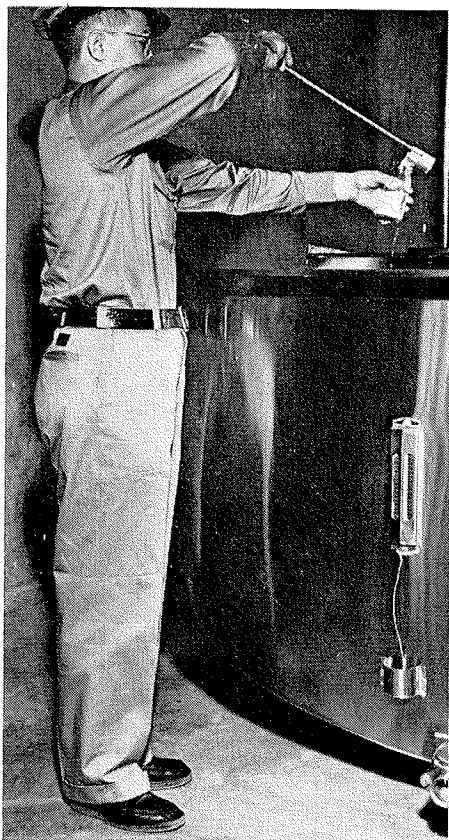
Economic Soundness of California Milk Stabilization Legislation

As a whole, the California laws provide a comprehensive program to regulate and stabilize the fluid milk industry in the State. The standards of the Producer Act require that prices to be paid by distributors to producers shall be in proper relationship with the prices and costs of producing manufacturing milk, plus the added costs of producing and marketing fluid milk as incurred by reasonably efficient producers. The Director must also be sure that prices are high enough, but not higher than necessary, to provide an adequate supply of milk at all times. The economic concept of setting prices at the level to provide the needed supply at the lowest costs of efficient producers in California is certainly sound, unless the fluid milk supply of California can be produced more cheaply outside the State at a lower cost.

For years the opportunity has existed for milk produced outside the State to be marketed in California, but—except for a few small border areas—very little out-of-state milk is sold in California. This means that bordering states have not been able to regularly produce fluid milk of equal quality at lower costs. This is partly because the California producer law has helped to facilitate

high production per cow and high production efficiency in general, all of which has been passed on to consumers in California in the form of lower milk prices. The work of the California Agricultural Extension Service has also aided greatly in developing high production efficiency in California dairy farms.

The same principles have applied to the economics of the distribution phases. The standards of the Desmond Act authorize the Director to establish distributor and store margins at levels only sufficient to enable reasonably efficient distributors and stores to cover their costs and obtain a reasonable margin of profit. The costs of inefficient operators are not fully covered by the prices authorized by the law. It is conceded that application of the law has not always been perfect, partly because of practical pricing problems. Nevertheless the constant pressure



Consumer guardian. Constant watch is kept on sanitation and quality.

of the standards of the law to furnish milk to consumers at the lowest possible price, consistent with maintaining sufficient producers and distributors, has certainly worked towards lower prices for California milk consumers. This is borne out by price comparisons with other cities and sections of the United States.

Justification of the Need for Regulation of the Milk Industry of California

Quite frequently people have posed the question of why the fluid milk industry of California should be singled out for price-fixing legislation. Some people are opposed to any such legislation. Some want to know why the milk industry alone should be so regulated. In answer to these questions it must be pointed out that, not only in California but throughout the United States, the milk industry historically was not able to stabilize itself until both federal and state milk stabilization laws were passed.

Current federal milk programs establishing prices to producers affect a high percentage of all fluid milk produced in the United States. Also some 23 states have milk laws. Some cover both producer and resale prices; and some cover only producer prices. Thus there is both state and national recognition of the inherent inability of the fluid milk industry to regulate itself without disastrous milk wars and serious effects upon the milk supply to consumers.

In California the milk wars of the early thirties showed tendencies and practices perhaps even worse than in most other markets of the country. These tendencies remain. It is firmly believed that if the producer and distributor laws were repealed in California, almost immediately the industry would be plunged into conditions of price cutting, unfair practices, milk wars between producers and distributors, milk wars among distributors, heavy financial losses to milk producers and distributors, and bankruptcies of both producers and distributors. Then, finally, after great loss to both producers and distributors, some sort of stability would be developed. Remaining distributors—the larger and wealthier concerns—would then try to maintain prices at levels which would help to recoup some of their losses. This situation would probably result in higher prices to consumers than they now pay under the Milk Stabilization Law.

Changes Suggested to Improve the Milk Laws

1. The Producer Act

(a) The producer law needs amendment to provide a more equitable apportionment of Class 1 usage among producers in the several areas of the State. For several years the required contracts between producers and distributors have been used by some distributors to insure themselves of an adequate supply of milk for manufacturing purposes as well as for fluid milk purposes. In many instances such contracts have taken advantage of the dual situation where the distributor wanted the milk for manufacturing purposes and the producer wanted to expand. However, many of such contracts failed to recognize that prices paid to producers for fluid milk for manufacturing purposes generally do not cover the costs of producing such milk. Nor were the Class 1 guarantees of such contracts sufficient to provide an adequate total income to many such producers. In other words, these producers have accepted contracts which were unsound. In an effort to increase their income these producers have frequently demanded unsupported, higher Class 1 prices and have condemned the Producer Act when the increased producer prices were not granted by the Department. However, it must also be recognized that the geography of milk production has been changing. That is, more of the supply is being produced in the Central Valley and less in the metropolitan, higher cost areas.

(b) As explained previously, the Producer Act needs to be amended so as to enable the Director to change producer prices more easily and quickly. The present law requires extensive fact finding, public hearings and uniform changes. Despite the grouping of areas, the time consumed is so long that frequently much harm is done to producer incomes. The authors believe that a more automatic formula could be authorized, based upon changes in economic conditions affecting production.

2. The Distributor Law (Desmond Act)

If a more rapid plan or procedure for producer price changes is developed, the Distributor Act will need to be amended likewise, so as to enable wholesale and retail price changes to reflect producer price changes.

3. The Dairy Products Unfair Practices Act

As indicated previously, this Act needs to be amended to provide a more prima facie test for sales of dairy products at less than cost. The present requirement, which requires conducting a cost survey of a suspected violator under generally hostile conditions, is too cumbersome and time-consuming.

4. General Legislation and Authorizations

(a) There is need for federal legislation to remove conflicts of congressional policy arising from application of federal milk procurement laws and regulations governing the purchase of milk for the armed services and other federal agencies. At this time federal agencies refuse to respect state milk pricing laws. This results in unregulated low bids by distributors, with the losses passed back to fluid milk producers. The federal purchasing agencies meanwhile respect the

prices set by federal milk regulatory agencies. The loss to California producers is estimated at about \$7 million annually.

(b) There is urgent need for a comprehensive program to develop greater understanding by the public of the purposes and provisions of California milk laws. Some of the material reaching the public has been inaccurate and confusing. Many people, including some milk producers and distributors, have either forgotten or were not here when the chaotic conditions which brought about enactment of these laws existed. It is believed that, unless there is general understanding of the basic purposes and provisions of these laws, there cannot be a fair appraisal of their worth. To this end there is need for more comprehensive and balanced information to be provided to the public, the Legislature, and State Government officials. This presentation is dedicated to this purpose.

Appendix A

BIOGRAPHIES OF AUTHORS

Robert A. Abbott

Mr. Abbott is presently working as a milk economist with the Bureau of Milk Stabilization, California Department of Agriculture. He was graduated from the University of California at Davis with a Bachelor of Science degree in 1948. He earned his Master of Science degree from Oregon State College. He has had experience as a specialist in agricultural economics with the Agricultural Extension Service staffs of the University of Hawaii and the University of California.

James P. Duffy

Mr. Duffy is a native of England. He has lived in Los Angeles for 48 of his 58 years.

He joined the California Department of Agriculture in September 1940 after extensive experience in the milk industry as an accountant and sales executive.

At the time Mr. Duffy joined the Department, the State milk law was administered by the Bureau of Market Enforcement.

He advanced through the ranks from investigator to senior investigator, district supervisor, area supervisor and to his present position of regional administrator, which position he has held since April 1, 1962.

William J. Hunt, Jr.

Mr. Hunt, Chief of the Division of Dairy Industry, has been associated with the California dairy industry since 1935. He was graduated from the University of California at Davis in 1934 and was employed by a major milk distributing company until he joined the California Department of Agriculture in 1937 as a fluid milk investigator. In 1941 he was promoted to District Supervisor and in 1952 he was appointed Assistant Chief of the Bureau of Milk Stabilization. He continued in this capacity until 1958 when he resigned to become Executive Manager of the General Dairy Industry Committee of Southern California, a trade association of milk and dairy products distributors located in Los Angeles. In May 1960 he returned to Sacramento as Executive Manager of the California Milk Producers' Federation, a federation of statewide fluid milk producer associations. He returned to the California Department of Agriculture in November 1961 to accept an appointment to the newly created position of Chief, Division of Dairy Industry.

William J. Kuhrt

Mr. Kuhrt was raised on a dairy and fruit farm near Forestville, Chautauqua County, New York. He studied law and agriculture at Cornell University and received a Bachelor of Science degree in agriculture in 1922. In 1926 he received a Master of Arts degree in marketing and economics from the University of Minnesota. He served as a lieutenant, field artillery, in World War I.

Mr. Kuhrt was an agricultural economist in the Division of Cooperative Marketing, U.S. Department of Agriculture, from 1923 to 1930. From 1930 to 1932 he served as general manager of a Farm Board Grain Terminal Agency.

He began service in the Bureau of Markets, California Department of Agriculture, in April 1932. He carried on a survey of costs of milk production and distribution in the San Francisco milk market and then was sent to Los Angeles in July 1932. There he helped to formulate a stabilization program and became Chairman of the Los Angeles Milk Industry Boards, both State and federal. He served in this capacity from July 1932 through March 1934. In 1934 he was appointed as secretary of the Statewide Committee of Milk Producers and Distributors, and helped to draft a State milk law.

In 1935 Mr. Kuhrt was appointed as a marketing assistant in the California Department of Agriculture at Sacramento. He helped to draft the Desmond Act in 1937 and he was also principal author of the California Marketing Act in 1937.

In 1939 he became Associate Chief of the Bureau of Markets. In 1941 he was appointed Chief of the Bureau of Markets and served in this position to 1955. In 1955 he became Chief of the Division of Marketing with supervision over eight bureaus of the Department concerned with the administration and enforcement of all marketing regulatory and service work in the Department.

In 1959 Mr. Kuhrt was appointed Assistant Director of the Department and in 1961 he was made Chief Deputy Director of the Department. He served in this capacity until December 1963 when he retired.

In 1963 he was awarded a Superior Service Citation by the U.S. Secretary of Agriculture.

Louis C. Schafer

Mr. Schafer was born on October 20, 1915 in San Antonio, Texas. He spent his early childhood in Memphis, Tennessee, and in 1924 he moved to Los Angeles, California. He was graduated from Van Nuys High School in the summer of 1932.

He attended the University of California at Los Angeles and was graduated in 1947 with a Bachelor of Arts degree in political science. He received his Master of Arts degree in political science in 1954 from the University of Southern California.

Mr. Schafer was associated with Borden's Dairy Delivery Company in Los Angeles from 1935 to 1939. From 1942 to 1947 he worked for Challenge Cream and Butter Association in Los Angeles. From 1948 to 1952 Mr. Schafer was an investigator for the Bureau of Milk Control (now the Bureau of Milk Stabilization) in the California Department of Agriculture. He then progressed in the Bureau as follows: senior fluid milk investigator, 1953 to 1954; district supervisor, 1955; milk economist, 1956-1957; assistant chief of the Bureau of Milk Stabilization, 1958 to 1960; and chief of the Bureau, 1961 to the present.

Howard J. Stover

Dr. Stover has been with the California Department of Agriculture since 1949. Prior to 1956 he served in the Bureau of Milk Control (now the Bureau of Milk Stabilization) as both statistician and economist. In recent years he has specialized in dairy statistics.

His training includes teaching and research at Cornell University (where he received B.S. and

Ph.D. degrees), Texas A&M, and the University of California. From 1936 to 1942 Dr. Stover was statistician for the Farm Foundation, a privately endowed research organization in Chicago, Illinois. After the war he served with the Commodity Service Department of the California Farm Bureau Federation.

Leroy Walker

Mr. Walker grew up on a diversified farm in northeastern Nebraska. He was graduated from the University of Nebraska, College of Agriculture, majoring in agricultural economics and agronomy.

He worked for the Ford Motor Company for one year prior to a four-year tour of duty as a pilot in the U.S. Army Air Force during World War II.

Following one year of additional study and graduate work, Mr. Walker went to work as an investigator for the Bureau of Milk Control (now the Bureau of Milk Stabilization), California Department of Agriculture, in March 1947. One year later he began working in the statistical section of the Bureau as a marketing analyst. He continued in this capacity until 1957 when he became a milk economist, working primarily on the producer pricing phases of the program.

Donald A. Weinland

Mr. Weinland has been in public service for over 24 years. He began his California state civil service in 1948 as a marketing economist in the Bureau of Marketing, California Department of Agriculture. In 1952 he was promoted to the position of Chief of the Bureau of Milk Stabilization, in which he served for eight years. In 1961 he became Assistant to the Director of Agriculture and was in charge of the Department's legislative program. In addition to these duties he was appointed Exe-

cutive Secretary of the State Board of Agriculture in 1962.

Prior to his state career, Mr. Weinland had seven years' experience in marketing program work with the U.S. Department of Agriculture in Washington, D.C. In 1948 he became associated with the California State Legislature as an agricultural economist and financial technician with the Legislative Budget Committee in connection with a study of California milk control laws.

He was graduated from the University of California in Berkeley with a Bachelor of Science degree in agricultural economics and he received his Master of Science degree in agriculture from Cornell University in 1939. After receiving his LL.B. degree from Georgetown University, Washington, D.C., in 1947, he was admitted to the California bar in 1948 of which he is currently an active member.

Mr. Weinland's agricultural background dates back to 1937 at which time he was associated with Agricultural Trade Relations, Inc., in San Francisco and Stockton.

Wilson B. Woodburn

Mr. Woodburn, Manager of the Dairy Council of California, was in the grocery business prior to entering state service with the Bureau of Market Enforcement, California Department of Agriculture, in 1931.

He later became Chief of the Bureau of Milk Control (now the Bureau of Milk Stabilization) which establishes producer and resale prices for fluid milk.

In 1951 Mr. Woodburn became Manager of the Dairy Industry Advisory Board (now the Dairy Council of California), an organization representing all segments of the California dairy industry in the fields of public relations, education and institutional advertising.

Appendix B

SELECTED DEFINITIONS

Bulk Grade A Producer—A producer of Grade A milk and whose bulk fluid milk or cream is received or handled by a distributor or nonprofit association of producers.

Certified Milk—Market milk which conforms to the rules, regulations, methods and standards for the production and distribution of certified milk adopted by the American Association of Medical Milk Commissioners. It must bear the certification of a milk commission appointed by a county medical association, organized under and approved by the medical society of the State of California.

Distress Surplus Milk—Generally refers to market milk produced in excess of the current requirements of processors for fluid milk or manufactured dairy products.

Distributor—In general, any person who purchases from or handles for producers fluid milk or fluid cream for processing, manufacture or sale including brokers or agents.

Fluid Cream—That portion of milk rich in milk fat and any combination of cream and milk which contains more than 11.6 percent milk fat and conforms to the health and sanitary regulations of the place where such cream is consumed.

Fluid Low Fat Milk—A market milk product containing from 1.9 percent to 2.1 percent milk fat and not less than 10 percent of milk solids-not-fat.

Fluid Milk—Means any and all whole or concentrated milk that is produced in conformity with applicable health regulations for market milk of the place where such milk is consumed.

Fluid Skim—A market milk product resulting from the complete or partial removal of milk fat from milk. It contains not more than 25/100 of 1 percent milk fat and not less than 8.5 percent of milk solids-not-fat.

Grade A Milk—Market milk produced on dairy farms that conforms with all the requirements of sanitation prescribed by local and state authorities.

Guaranteed Milk—Milk which must meet conditions regulating production similar to those required by certified milk except that the local board of health, rather than a medical milk commission, has the supervision.

Handler—Same as distributor.

Manufacturing Grade Milk—Milk sold only for manufacturing purposes and to be converted into some other product such as butter, cheese and evaporated milk. Manufacturing grade milk may not be sold for human consumption in a fluid state in California.

Market Milk—Milk sold for human consumption in a fluid state. At the time of delivery to the consumer, it must not contain less than 3.5 percent of milk fat nor less than 8.5 percent milk solids-not-fat. If pasteurized, it must not contain more than 15,000 bacteria per milliliter.

Milk Depot—A fluid milk processing plant where milk is sold to consumers.

Milk Fat, Pound of—A pound of the small globules of fat contained in milk.

Producer—Any person who produces fluid milk from five or more cows or goats in conformity with the applicable health regulations of the place in which it is sold and whose bulk fluid milk or cream is received or handled by any distributor or any nonprofit association of producers.

Producer-Distributor—Means any person who is both a producer and a distributor of fluid milk or fluid cream.

Producer-Handler—Same as a producer-distributor.

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