

NDPO Board Members

Mike Eby

Chairman of the Board
Pennsylvania
(717) 799-0057
Mikee@ndpo.us

Paul Rozwadowski

Vice Chairman
Wisconsin
(715) 644-5079
Paulr@ndpo.us

Gary Genske

Treasurer
California/New Mexico
(949) 650-9580
Garyg@ndpo.us

Deborah Mills

Secretary
Minnesota
(651) 764-0006
deborahm@ndpo.us

Pete DeHaan

Oregon
(503) 437-6628
Peted@ndpo.us

Bob Krucker

Idaho
(208) 280-1830
Bobk@ndpo.us

John J. King

Pennsylvania
(717) 284-5756

Greg Millick

Georgia
(315) 525-4127
Gregorym@ndpo.us

Dan Meier

New York
(518) 353-1474
Danm@ndpo.us

Rob Baum

Vermont
(802) 249-4332
robb@ndpo.us

Joe Arens

Michigan
(517) 927-7398
jarens@ndpo.us

John Larsen

Minnesota
(507) 273-1451
johnl@ndpo.us

Tom Wing

Michigan
(269) 660-0498
tomw@ndpo.us



"We Dairy Farmers pledge to thoroughly and immediately review and study each of the issues that impact the price of milk paid to producers in order to determine and facilitate needed changes that may be required to reach our stated purpose of producer profitability, for now and in the future."

NATIONAL DAIRY PRODUCERS ORGANIZATION, INC.



Producer's Voice

Third Quarter 2020

www.NationalDairyProducersOrganization.com



JOIN THE DISCUSSION! TUESDAY 8 PM EAST – 5 PM WEST
Live Calls: (712)775-7035 Recorded Calls: (712) 775-7039 PIN: 330090#

SHAWNEE DAIRY LLC vs. DFA #1

For 10 years, NDPO has been encouraging farmers to seek improved producer pay pricing through better milk marketing management through our co-operatives. This effort, on my part, has led to my filing a court action to compel my co-op to deliver information I feel is necessary for me to understand how my co-op operates. Below is my first letter to the DFA Board since this "records" trial began. More will be written as new facts are revealed.

September 4, 2020

Dear DFA Board Member,

I am a dairy owner in New Mexico, milking 2,000 cows. Like all of you, I am also a longstanding member since 1991 of Dairy Farmers of America, Inc., (DFA). I personally share your interests in a strong milk market to ensure sustainable pricing for the milk we produce.

In March 2019, I wrote to advise you that I was sending DFA a request for information related to executive compensation and its milk transactions with affiliates. We filed a court petition to compel DFA's delivery of this information. In April 2020, the Court denied DFA's motion to dismiss the petition. And last week, the Court held the first day of the trial on our petition. I testified for more than 8 hours.

At the trial, DFA attorneys suggested that I was attacking DFA's Board of Directors. This is false. DFA's Board is made up of dairymen like myself, including some of my clients. As a DFA member, like you, I want basic information to make clear: (a) all compensation DFA officers take home, directly or indirectly from affiliates; and (b) the terms upon which DFA sells our milk to its downstream affiliates. When DFA sends me this requested information, I will be allowed to share the information to any interested DFA member.

As I noted in my March letter, the sole legitimate purpose of a dairy co-op is to secure the highest price for member milk. For years now, I believe DFA has ignored this purpose, our area being the lowest producer pay price in the country, instead, pledging our milk and using our credit (milk checks) to acquire affiliates to generate sales and downstream profits that, while immaterial to us, justify lavish commercial space and lofty salaries for DFA executives.

I continue to hope that each of you, as members of DFA's Board, will seek to serve only the interest of your fellow member producers with sustainable milk prices. If you help me investigate and eliminate conflicting business goals from DFA, you will help stabilize our dairy businesses and earn the enduring gratitude of your fellow dairymen. I look forward to productive discussions with each of you.

Gary Genske, Presiding Member, Shawnee Dairy, LLC

Hold YOUR co-op management accountable to dairy farmer co-op members and dairy farmer sustainability, by:

1. Accept no milk and sell no milk, unless the price paid or received is greater than the member dairy farmer's average cost to make the milk.
2. Implement a pro-rata across-the-board reduction in the acceptance of milk for processing until the milk supply is balanced with profitable market demand, which provides a price greater than the member dairy farmer's average cost to make the milk.
3. Do not own, operate or be involved with any processing facility, make any dairy product or chase any dairy market that will not pay a price greater than the member dairy farmer's average cost to make the milk.
4. Use the National Dairy Producer's Organizations (www.nationaldairyproducersorganization.com) 100 percent USA milk (www.100percentusa.org) trademark on all co-op made products to promote U.S.- made dairy farmer milk to better compete with imports.

LIKE US ON FACEBOOK! "NATIONAL DAIRY PRODUCERS ORGANIZATION" TO FOLLOW
IMMEDIATE PRESS RELEASES.

OFFICE 949-375-4450 • FAX 949-650-4490

Please get your vendors involved with our cause by asking for their support –their internet contributions can be made via NDPO homepage/major credit cards.

NATIONAL DAIRY PRODUCERS ORGANIZATION, INC.



Third Quarter 2020

3187 RED HILL AVE. #110. COSTA MESA, CA 92626

OFFICE: 92626 949-375-4450 • FAX 949-650-4490

PETITION FOR REFERENDUM ON THE BEEF PROMOTION AND RESEARCH ORDER

This petition is submitted to the Secretary of Agriculture for the purpose of calling a referendum and an up or down vote on the termination of the Beef Promotion and Research Order (7 U.S. Code §2901-2911 and 7 U.S. Code §7401.) This petition specifically refers to the Beef Promotion and Research Act of 1985. Title XVI, Subtitle A of the Food Security Act of 1985.

The Beef Promotion and Research Act of 1985 states in Section 7(b) that "...the Secretary may conduct a referendum on the request of a representative group comprising 10 per centum or more of the number of cattle producers to determine whether cattle producers favor the termination or suspension of the order" (7 U.S.C. 2906(b)). This petition requests the termination of the order. The number of U.S. cattle producers will be determined according to the Guidelines to Petition the Secretary of Agriculture For a Referendum on the Beef Promotion and Research Order (June 2020), which states AMS will use the most recent census data. The most recent USDA census data (2017) reports 882,692 cattle producers, so a minimum of 88,269 eligible signatures are required to meet the 10% threshold.

This petition calling for a vote on the program shall be signed **ONLY** by cattle producers as defined by the eligibility criteria in the same Guidelines (see eligibility criteria below), and any signatory must supply **ALL** required information.

Eligibility Criteria

- Any cattle producer regardless of age who has owned, sold or purchased cattle from July 2, 2020 – July 1, 2021 is eligible to sign the petition.
- Any person younger than 18 years of age must have a parent or guardian co-sign the petition.
- A person who signs the petition on behalf of a corporation or other entity must be authorized to do so. No proxy signature is permitted.
- Any individual member of group, who is an eligible person separate from the group, may request a referendum separately.
-

Petition Information Required by USDA

- Full name of person or entity represented
- Signature and printed name (signature of parent or guardian of any person signing under the age of 18)
- Complete mailing address
- Daytime Telephone Number (home, business or cell)
- Email address (if available)
- Date petition was signed

Before signing this petition VERIFY THAT YOU MEET ALL ELIGIBILITY CRITERIA. The USDA will pool a statistical sample, and if selected you must be able to provide documentation that you owned, sold, or purchased cattle between July 2, 2020 & July 1, 2021.

CALLING FOR SUCH A REFERENDUM THE FOLLOWING CATTLE PRODUCERS SET OUR HAND TO THIS PETITION AS FOLLOWS:

Full Name (or Entity)	Complete Mailing Address	City	State	Zip Code
Day Time Phone Number	E-Mail (If Available)	Date	Signature	

Send Signed Petition(s) to: We Need a Beef Checkoff Vote | P.O. Box 8682 | Pratt, Kansas 67124

Petition available online: www.weneedabeefcheckoffvote.com



BREAKING: Department of Justice Files Amicus Brief in Dairy Farmers of America Lawsuit

On July 27th, 2020, the United States Department of Justice (DOJ) filed an amicus brief in a lawsuit against Dairy Farmers of America, the United States' largest dairy cooperative. The lawsuit, filed in Vermont U.S. District Court, alleges that DFA and other cooperatives agreed not to compete for each other's farmer-members, conspired to share payment information in order to discourage competition and depress prices, and maintained those low prices market-wide by entering into supply agreements with Dean Foods and other dairy processors.

In its Statement of Interest for the brief, the DOJ makes three main arguments:

1. **The allegations against DFA in the case are not shielded by the Capper-Volstead Act from antitrust laws.** In other words, DFA cannot hide behind its technical status as a cooperative. If there is evidence that DFA conspired with nonexempt parties, (non-cooperatives) to act "anti-competitively *against other farmers*," then "claims at issue in this case fall outside the heartland of Capper Volstead protection." The DOJ states, "To the extent . . . that DFA, even when acting as a milk marketing cooperative, made agreements with non-cooperatives that would violate section 1 of the Sherman Act," that "DFA had monopsony power and used it," and that "it would be inconsistent with the (Capper-Volstead) Act to allow a monopsony to use (Capper-Volstead) as a shield."
2. **The Capper-Volstead Act does not insulate exclusionary acts from the antitrust laws prohibiting monopsonization.** Basically, this section argues that the definition of "predatory practices" should be applied broadly as violations of section 2 of the Sherman Act, and are "therefore outside the protection of the Capper Volstead Act."
3. **The Defendants (DFA) bear the burden of proof that they are protected by the Capper-Volstead Act.** Since it is DFA's claim that they are protected as a cooperative by Capper-Volstead, they must show proof of such claims. This argument is extremely significant, because it shifts the burden of proof away from the farmers. OCM has long argued that requiring farmers to show proof of harm is an unreasonable burden, and this argument from DOJ follows a similar line of reasoning.

The Statement of Interest provided by DOJ is perhaps one of the most relevant interpretations of the Capper-Volstead Act's intent and purpose that OCM has seen. The DOJ arguments clearly demonstrate that farmer and producer protection was one of the main reasons for passage of the Clayton and Sherman Acts.

Restoring the intent of the Clayton Act and implementing producer protection standards in antitrust enforcement were the exact arguments OCM made in our comments to the DOJ and the Federal Trade Commission on their proposed guidelines for vertical mergers in February. OCM's argument in favor of shifting the burden of proof of competitive harm away from producers was a central point in our comments to the USDA's proposed rules on the Packers and Stockyards Act in March.

The DOJ doesn't cite OCM in its Statement of Interest, and we do not presume to take credit for influencing those arguments, but we are pleased to see a government agency with antitrust enforcement authority taking a stand for the rights of farmers and ranchers. The Sherman and Clayton Acts have been on the books for over a hundred years, and the DFA suit is an important opportunity for them to be interpreted correctly, as they were intended: to curb corporate abuses and end anti-competitive behaviors, even if they are committed by cooperatives such as DFA.

DFA released a statement on the DOJ brief, and DFA's attorneys filed a response to it, in which they argued that DFA never claimed to have immunity under Capper-Volstead.

More Background on the Case:

In 2016, DFA paid \$50 million to dairy farmers to settle a class-action lawsuit that alleged DFA and its marketing arm, Dairy Marketing Services LLC, had conspired to monopsonize the fluid milk market in the Northeast. A significant outcome of that settlement was that a group of 116 farmers in the Northeast opted out of that settlement and worked together to bring a separate lawsuit against DFA.

In September of 2019, U.S. District Judge Christina Reiss issued a 58-page ruling that allowed the case to move forward. The judge ruled that the farmers had provided "admissible evidence from which a rational jury could conclude that DFA management favored growth of its commercial operations and empire building over the interests of its farmer-members."

If the jury sides with farmers, according to Leah Douglas of FERN News, "there could be wide-ranging implications for the dairy sector and other agricultural cooperatives. Currently, agricultural cooperatives enjoy an exemption from some antitrust scrutiny under the Capper-Volstead Act, a law dating back to when cooperatives were meant to shore up farmers in the market against pressure from powerful middlemen. The farmers in this case would have DFA's behavior ruled beyond the scope of the antitrust immunity granted by Capper-Volstead. They would also have DFA's supply agreements terminated."

Reprinted with OCM permission/July 28, 2020

Please Support This Cause:

NATIONAL DAIRY PRODUCERS ORGANIZATION, INC.



c/o Gary Genske, Treasurer
3187 Red Hill Ave. #110, Costa Mesa, CA 92626
Phone: 949-650-9580, Fax: 949-650-4490

Membership/Assessment Application for The National Dairy Producers Organization, Inc.

Name	Patron/Producer Number			
Address	City	State	Zip	If organic, check here
Phone	Email Address		# of Cows	
Processor Name/Dairy Plant/Marketer Name		Phone		
Address	City	State	Zip	

Under National Dairy Producers Organization, Inc. bylaws, your contribution is considered your membership dues. The dues cannot be raised without your consent. This agreement gives the National Dairy Producers Organization, Inc. permission to use your money to accomplish the specific work of the organization, under direction of the board of directors on behalf of its members so as to help all dairy producers achieve and maintain a sustainable price for all milk regardless of its use, or the city, state or region of the country in which milk is produced. **Please initial one of the following, sign, then mail or fax to our address above.**

- 1) _____ I hereby authorize \$.01 (one cent) per hundredweight (CWT) plus \$20 per month assessments to be withheld from my monthly milk settlement payment and remitted to the National Dairy Producers Organization, Inc. at the above address, or
- 2) _____ I am a former dairy farmer and want to be a member of the National Dairy Producers Organization, Inc. and hereby pledge payment of \$80 for the annual membership dues to be remitted to the above address.
- 3) _____ We are a vendor to the dairy industry and wish to become an associate member and pledge payment of \$250 for annual membership dues to be remitted to the above address.

As of this date, this assessment request shall become effective and shall supersede prior National Dairy Producer Organization, Inc. assessments, if any.

Sign: _____ Effective Date: _____
The National Dairy Producers Organization, Inc. is a 501(C)(5), a not for profit organization.



National Dairy Producers Organization
C/O Gary Genske
3187 Red Hill Ave, STE 110
Costa Mesa, CA 92626