

MARCH 18, 1975

MEMBERS PRESENT: Chairman Hickey
Vice Chairman Price
Mr. Jeffrey
Mr. Coulter
Mr. Getto
Mr. Howard

MEMBERS ABSENT: Dr. Robinson

GUESTS: Senator Young
Clarence J. Cassady, Dairy Commission
Ray L. Jarman, Meadow Gold Dairies
Louis Bergevin, Nevada Cattlemen's Association
John O. Olsen, Associated Nevada Dairymen, Inc.
John Battles
C. P. Brechler, Clark County
Chuck White, Nevada Farm Bureau
Barry Brooks, Model Dairy

A quorum being present, Chairman Hickey called the meeting to order for the purpose of hearing SJR 9, 10 and 11. SJR 9 memorializes Congress to authorize establishment of preserves for free-roaming horses and burros and to permit the purchase of public lands and grazing privileges to assist in the establishment of such preserves.

SJR 10, memorializes Congress to enact legislation making certain revisions in law concerning protection, management and control of wild horses and burros and appropriating funds to the Forest Service of the Department of Agriculture to conduct research on wild horse ecology and management in cooperation with the University of Nevada.

SJR 11, memorializes Congress to increase appropriations for programs relating to public lands in Nevada under control of" Bureau of Land Management of United States Department of Interior.

Senator Young, the prime sponsor of all three of these SJRs was the first speaker. He began with SJR 9 and stated that it was directed toward the problem we have with mustangs in this state. He stated that they estimate that there are over 20,000 free roaming horses and burros in the state and they are increasing at about 20% a year. These mustangs range over 25 million acres and are creating a serious problem. They are in conflict with both the stockmen, farmer and wildlife in the area. It is therefore desirable to establish a preserve, in order to eliminate the conflict that exists now and will continue to exist between the various groups. Senator Young stated that there was a precedence set for establishing this as there already exists preserve in the southern part of the State for Bighorn Sheep and in the northeastern part of the

State a preserve for Antelope. He stated that the American public had indicated their desire to preserve these animals and thus the preserve should be accessible. Mr. Young stated that he was confident that until this is done there will be continual warfare between the stockman and those that support the preservation of the mustang. These animals congregate in large groups and range further than other animals and a large number can do extensive damage which take years to repair. Senator Young cited several areas of the State where there large herds some 600-700 each and others as large as 1200.

It is therefore desirable to set up a preserve to congregate the animals and harvest the excess horses.

Mr. Getto asked the Senator how the Supreme Court ruling would effect this. Senator Young stated that they really weren't sure. He cited the two mustang laws in existence, one which prohibits the herding or capturing of mustangs by use of airplanes or helicopters and the Free Roaming Horse and Wild Burro Act. These are under the BLM for management purposes. There is a suit in New Mexico where a panel of three judges have declared the 1971 act to be invalid, because no damage has been shown nor has it been proven that they are migratory. This would leave the controls to the states.

SJR 10, memorializes Congress to enact legislation making certain revisions in law concerning protection, management, and control of wild horses and burros and appropriating funds to the Forest Service of the Department of Agriculture to conduct research on wild horse ecology and management in cooperation with the University of Nevada.

Senator Young stated that this was directed toward another aspect of this law. It would allow BLM and Forest Service to use aircraft and motor vehicles to round up and herd mustangs. At the present they can capture and give away but they cannot transfer title. This bill would allow them to transfer title and also would require claim of ownership. At the present time many people claim mustangs but when it comes time for tax assessment they do not claim them. They do not brand so they do not face county taxes or grazing fees. This bill would also appropriate funds to the Forest Service for the purpose of running a comprehensive research program. This research program would work out of the University of Nevada.

SJR 11, memorializes Congress to increase appropriations for programs relating to public lands in Nevada under control of Bureau of Land Management of United State Department of Interior.

This bill, according to Senator Young, is directed toward a broader aspect of management of land under the Bureau of Land Management. He gave a brief background of the Bureau of Land Management and stated that it had begun as a politically dominated organization, with no real mission except to look after this land. Over the last 15 years it has developed into a very professional organization. Prior to 1934 Taylor Grazing Act everything was open range. The range deteriorated rapidly as a result of overgrazing. Great damage was also done to the streams and rivers. This act was passed in an attempt to supervise grazing.

In Nevada our ranges use to provide 4,000,000 AUM (animal unit months) and it is now down to 2,000,000 AUM.. Senator Young spoke of a study which was conducted which claimed that the BLM was not doing their job.

Senator Young stated that 16% of the range is in good condition but that about 85% is badly deteriorated condition. About 10,000,000 acres could be rehabilitated and 1,000,000 has been.

BLM stated that if sufficient funds were appropriated in 15-20 years they could increase the AUM by 1/3. He also stated that 8 mill miles of streams have been badly damaged by erosion. 68% of the state is under the BLM but yet very little of the state has ever been surveyed. Feel that if we are going to develop the state should at least know where the township lines are.

Senator Young gave the example of the BLM charging \$6-7 billion for offshore leasing and shale leasing etc. and yet only about 5% comes back to BLM for administrative and improvement purposes of their land.

This is a plea to Congress which appropriates the money to spend more money to increase the benefits of the land.

Mr. Bergevin, Nevada Cattlemen's Association, stated they agree in substance to what Senator Young said that there is a problem. Mr. Bergevin stated that the BLM is cutting grazing rights of cattlemen to keep up with these horses. Yet these animals are starving and degenerate and something has to be done to harvest them. He also stated that he agrees that more money has to be put into the land. He stated that he did disagree with the Senator in that the cost of upgrading the land has been borne by the grazer. The upgrading has been done by the permittee with his efforts and much manpower. He also stated that much of this deterioration of the range has been done by natural causes and not be overgrazing. He felt that they really look into this improvement that is done by private money and not federal money.

Chuck White, Nevada Farm Bureau, stated that he too took exception to several things stated by Senator Young. Mr. White cited a study that was made that took 6 1/2 years and 7 1/2 million dollars. He stated that he felt that if more management was put into the hands of the private individual, would have an improvement of up to 75%. He stated that he would like to see more management potential put into the hands of the individual users.

Dave Buroughs, representing the Sierra Club, presented a statement to the committee a copy of which is herewith attached and made a part of this record. (Exhibit I)

Mr. Buroughs stated that he did not have a prepared statement on SJR 11 but did recognize that the BLM is important as a land management agency. He cited the budgeting situation where the BLM has land in the ratio of 5-1 to Forest Service but yet the budgeting is 1-5 for the Forest Service. BLM can not do their job as they do not have enough money to do so.

Mr. Howard stated that they state that they would like the wild horses accessible to public view yet how many people have every seen a wild horse. 1-10,000 see a wild horse. The reserve for wild burros has been set up right in the middle of a antelope reserve. Mr. Buroughs stated that he felt that the public did not understand what they were doing when the Wild Horse and Burro act was passed.

Mr. Getto asked if they had done any research on the amount of damage the horses can do to streams and rivers. These horses are on the range 12 months a year whereas the cattle is on a much shorter time. The owners of these cattle are doing the work as the BLM is not controlling. Mr. Buroughs stated that the Sierra Club was not a truly prohorse group. They do realize that these horses and burros have to be managed.

Mr. Getto asked Mr. Buroughs what a true mustang was. Mr. Buroughs stated that he was not an expert in that field and had very little experience in this, but did know that the range was in bad shape.

Mr. Getto asked if they would advocate the cutting down of the herd. Mr. Buroughs stated they would.

As there was no further testimony on this Mr. Hickey asked for the committee's recommendations.

Mr. Jeffrey moved the committee "do pass" SJR 9, and Mr. Price seconded. The vote was unanimous with Dr. Robinson being absent.

SJR 10. Mr. Jeffrey moved "do pass" and Mr. Price seconded the motion. The vote was unanimous with Dr. Robinson being absent.

SJR 11, Mr. Jeffrey moved "do pass" and Mr. Coulter seconded the motion. The vote was unanimous with Dr. Robinson being absent.

AB 29, abolishes the Nevada State Dairy Commission, was then brought up for discussion. The amendments that Mr. Price and Mr. Cassady drew up were then presented to the Committee for their consideration. They would basically eliminate the price controls on distributor and retailer and maintain them on the producer.

Mr. Jeffrey stated that from the testimony received he felt that the distributor might be put in a bad position if the price was eliminated because of the school and hospitals. He further stated that it had been testified that the local independent distributor would probably be put out of business especially in the southern markets where the large distributors has plants in California. The local dealer has to supply markets, hospitals, schools and the "mom and pop" type of store.

Mr. Hickey informed the committee that the distributors had been invited to attend and testify but none have appeared before the Committee.

Mr. Cassady stated that there were 2 distributors present at this time.

Ray Jarman, Meadowgold Dairy, stated that they had to serve the total market and could not possibly compete with the major chains that serve a "captive audience". Consequently by not having this "captive audience" as a protection, it is more costly for them to distribute. They average stop is \$5 and up. It is more expensive when not delivering volume.

Mr. Price asked Mr. Jarman where their market area was. Mr. Jarman stated that they served Carson City, Reno, Hawthorne, Yerington and the Lake Tahoe area. The more miles they travel the more expensive it is.

Mr. Price then asked Mr. Jarman about the school business. Mr. Jarman stated that it was divided between the three distributors in the area.

Mr. Price went on to state that there had been a great deal of criticism on the form of computing raises. The committee had very little input from the distributors. The present method leaves very little incentive for economizing. Would they object to changing the method to return on investment.

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Mr. Jarman stated that he was never sure what was a fair return on investment. Even with the cost & 10% method set by the state it is possible to end up losing money.

Mr. Hickey asked if Meadowgold was a member of a large corporation to which Mr. Jarman stated that it was a member of Beatrice Foods. Mr. Hickey asked what they felt was a fair return. Mr. Jarman stated that each operation within the large corporation was independent and did not depend on the operation, at all.

Mr. Jeffrey stated that he felt the committee was getting a little hung up on the word investment.

Mr. Hickey asked if the distributors price was eliminated how much effect would this have. Mr. Jarman stated that it would disturb them greatly because they don't have the captive audience.

Mr. Jarman went on to state that they have had several labor increases that have not been recognized and when they did get a 7% of increased costs this was completely absorbed by the increase in the cost of containers.

Mr. Price asked if something could be done to allow the schools to use powdered milk would this help. Mr. Jarman stated that the school business was a benefit but that this was subsidized with federal funds and there was nothing that could be done on the local level. He also stated that if you did this it would take away some of the class 1 usage of the producer.

Barry Brooks, Model Dairies, stated that they delivered locally to Winnemucca, Fallon, Lake Tahoe, Gardnerville, Carson City and Reno. They distribute to homes, restaurants, hospitals stores etc.

He stated that as far as they were concerned to discontinue the wholesale price would benefit no one. Even with a built in profit some years you have a profit and some you don't. "Last year was terrible".

He further stated that you need the minimum price so that the large areas of the state do not become a dumping ground for large corporations.

Mr. Price asked how this would be and Mr. Brooks stated that the large captive plants would bring milk into the state because the locals would not be able to supply. Mr. Price asked if this would happen even with the fair trade act. Mr. Brooks stated that is hard to determine what is below cost.

Mr. Price stated that the Las Vegas area had discontinued home delivery and did Mr. Brooks feel that this would happen

in the northern part of the State. Mr. Brooks stated that they have already gone to contracting this out to strictly home peddler-distributors. They had to get out of this because of the cost of labor.

Mr. Price stated that he felt that if this legislature does not come up with something so that Nevada can come in line with the surrounding states that two years from now there will be such great pressure from the consumer to completely do away with any type of price setting in this industry.

Mr. Brooks stated that he felt it was unfair that everybody compared Nevada with California. "This is like comparing oranges with apples," he stated. We should be compared with some state like Idaho.

Mr. Hickey stated that he agreed with Mr. Price and felt that the Las Vegas area was comparable to many of the California areas.

Mr. Getto stated that there was some justification for being a little higher than the surrounding areas, to which Mr. Brooks stated that Nevada has always been about 1-1 1/2¢ higher than the Sacramento area which happened to be the lowest in the country. Nevada is higher on almost anything than California, labor costs are higher, transportation is a big cost in distributions, all this makes our milk prices higher.

Mr. Cassidy, Administrator for the Dairy Commission, stated that he wished that this point could be made to the consumer. He also stated that it was very difficult to enforce fair trade practices.

He further stated that our local plants can not compete with captive plants and do away this control would be forcing our milk off the shelves. This would have an adverse effect on our producers as they would have no place to sell their milk

He stated that something must be done and perhaps the commission would be able to come up with an acceptable method of computing. 50% of the stops in Nevada are under \$40.

Mr. Jeffrey stated that he would be in favor of taking minimum price off the retailer as he has been the one that has not cooperated with the Commission.

The committee then went through the proposed amendments and discussed each one. (Exhibit II is a copy of these amendments).

In Section 1, subsection 2 the committee agreed to strike out only the retailer from minimum pricing.

In Section 2 it was decided that there should be an 8 member commission as outlined in Alternative Section 2 of the amendments. Mr. Getto asked for the justification for a retailer on the commission. Mr. Hickey stated that the retailer does have many problems and should have some input into the Commission.

Mr. Jeffrey stated that he would like to see that the large corporation would not be allowed to have a member, that this would have to be restricted to the little retailer. Mr. Cassidy stated that the majority of the commission members representing the retail store have been the small retailer although there have been a few large retail stores represented.

Mr. Price stated that section 4 merely tightened up the language whereby having the automatic removal if the governor so wishes.

Section 5, Mr. Cassidy stated, strengthened the language so that they could better determine where milk was actually coming from.

Section 8 was language to tighten up the bill. Mr. Cassidy stated that although they are not going to have minimum price for retailer they still have to be able to see the retailer's books to make sure that they are not selling below costs.

Section 10 deals with public hearing and is completely new language. Mr. Jeffrey stated that he would like to see something in this section that provides that the commission members must be given this information before the hearing.

Mr. Cassidy stated that they are automatically notified of this by the office. Mr. Jeffrey stated that he would still like to see this in the bill. The committee agreed that some language should be included to provide that commission members receive all this information at least 15 days before the hearing.

Mr. Cassidy stated that he was presenting other suggestions that might help the commission perform its functions. He stated that he had researched the regulations from other states and this is what he had arrived at. (Exhibit III).

Section A would set a price filing time limit. At the present time they can raise their prices on by products and change their prices at the same time. This section would put a 7 day period before they become effective.

Section B, would put into effective emergency pricing. This would allow the Commission to freeze prices for up to six months. They could put this into effect in certain areas without effecting other areas of the state.

Mr. Cassady stated that this would be very helpful if they felt that somebody was selling below cost. "Safeway could go wild in Fallon and but everybody else at a great disadvantage." Safeway does spread its cost over the entire area and thus the transportation costs are not included only on those that have the transportation costs.

Section c. Mr. Cassady stated that if they felt somebody was selling below cost this would put the burden of proof on them and not on the Commission to prove. This would give them help with the retail pricing.

Mr. Getto asked if it was the desire of the committee to leave the appointing the public members to the Governor rather than spell out from what sector of the public they must come.

Mr. Jeffrey stated that from testimony it was determined that spelling out was not all that good in that if there was someone from the financial institutions this person could have a conflict of interest in that they do have large loans out to the industry. It was the general feeling that this should all be left to the governor's discretion.

Mr. Jeffrey went on to say that he felt the committee should look into the coop in southern Nevada and that there should be something in the bill requiring that the Nevada blend price be paid. Mr. Hickey stated that there was not much that could be done with this. According to the U.S. Attorney's office it was impossible to supercede the federal law.

Mr. Cassady stated that these members had signed an contract which was very legal. Mr. Hickey added that this type of contract would have to be taken care of by the federal courts and the state had nothing to do with this.

Mr. Price moved that the committee adopt these amendments and forward them to the bill drafter so that they could be put into the correct form and language. Mr. Howard seconded the motion. The vote was unanimous with Mr. Getto not voting.

Mr. Howard then moved that the committee "do pass" AB 29 as amended. Mr. Price seconded the motion. The vote was unanimous with Mr. Getto not voting stating it was a conflict of interest.

Mr. Jeffrey then moved that committee introduce a bill that would remove the Administrator of the Dairy Commission from the classified service and place him in the unclassified service to be appointed by the Governor and serve at the pleasure of the Governor. Mr. Howard seconded the motion. The vote was unanimous with Mr. Getto again not voting citing conflict of interest.

As there was no further business to discuss, Mr. Hickey adjourned the meeting.

Respectfully submitted,

Sandra Gagnier,
Assembly Attache

ASSEMBLY

AGENDA FOR COMMITTEE ON AGRICULTURE
 TUESDAY,
 Date March 18, 1975 Time 8:00 a.m. Room 240

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Bills or Resolutions to be considered	Subject	Counsel requested*
SJR 9	Memorializes Congress to authorize establishment of preserves for free-roaming horses and burros and to permit the purchase of public lands and grazing privileges to assist in the establishment in such preserves.	
SJR 10	Memorializes Congress to enact legislation making certain revisions in law concerning protection, management, and control of wild horses and burros and appropriating funds to the Forest Service of Department of Agriculture to conduct research on wild horses ecology and management with the University of Nevada	
SJR 11	Memorializes Congress to increase appropriations for programs relating to public lands in Nevada under control of Bureau of Land Management of the U.S. Department of Agriculture	

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SIERRA CLUB

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Toiyabe Chapter - Nevada and Eastern California

March 17, 1975

SJR 9: Memorializes Congress to authorize establishment of preserves for free-roaming horses and burros.

The Toiyabe Chapter gives a qualified endorsement of SJR 9 to reserve some lands for wild and free-roaming horses and burros.

The Chapter recognizes that SJR 9 was developed to give a state posture on a federal law which vitally affects Nevada. Since SJR 9 was introduced, this federal law has been declared unconstitutional and is now tied up in the courts. The state position is important for more appropriate state and local action years ago might have prevented federal action. Whether the federal law exists or not, the State should develop some position. The Chapter commends Senators Lamb and Young for providing this opportunity for Nevada citizens.

The federal law is testimony to national interest in protecting horses and burros. The law declared the right of horses and burros to exist on public lands, their right to humane treatment, and their right to grazing allotments. A state law should do no less.

A large section of the American public is interested in assuring the right to exist for feral horses on public lands. Even many of those critical of the present law enjoy seeing some free-roaming horses. So the right of existence is not so much a question as numbers, distribution, and management.

However, the federal law has one major shortcoming. Despite overwhelmingly public support ~~for the Act~~, no new funds were provided to implement the Act. Horse and burro numbers cannot be reduced unless research shows that they are adversely affecting range and wildlife. This means that the burden of proof lies on range and wildlife to damage. Far more funds are needed than are presently being used to develop the information and pay for the reduction of animals. Present funds are being diverted from other programs, which are already meagerly supported. Range management, under BLM, for instance, has had little increase in funding over the past few years to reflect the recognized need for more intensive management of range lands for all users. Yet much of their present funding is being used solely for the horse and burro Act.

If horses and burros were confined to certain preserves, sufficient funding might be found to do the research and provide range protection. Controversy could be reduced.

On the other hand, the Chapter would be reluctant to support any reserve that had not been analyzed for wildlife and natural area values. Endangered species and critical habitat for other

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species should be considered. Water sources should be protected. The maximum numbers of horses and burros should be agreed upon before the reserve is established.

While we appreciate the fact that some ranchers have been hardhit by this Act, the numbers of horses and burros and their impact is relatively small when compared to lands overgrazed by domestic livestock, displacement of range by energy development, such as strip-mining, transportation and communication corridors, off-road vehicle use, and other pressures being exerted on the public lands.

In light of the present uncertainty of the federal Act, our only amendment to this Joint Resolution might be, that the state and counties be included, so that the federal government not bear the entire onus of the ~~public~~ reserves, but the counties and State demonstrate their acceptance of responsibility *willingness to share in the development of such preserves*.



SIERRA CLUB

Toiyabe Chapter - Nevada and Eastern California

March 17, 1975

SJR 10: Revisions of the Wild and Free-roaming Horse and Burro Act and support of research.

The Toiyabe Chapter of the Sierra Club enthusiastically endorses the second portion of this Joint Resolution urging more research on horses and burros, and proposing that the University of Nevada be involved. Unfortunately what little efforts federal agencies have made to develop information on horses and burros has been suspect by all. With Nevada having the largest number of free-roaming horses, the need for information is urgent.

As for the ~~XXXXXX~~ first section of the Act both national ~~XXXXXX~~ Sierra Club and the Chapter are in the process of developing information and can make no statement at this time.

Exhibit II

STATE OF NEVADA
DAIRY COMMISSIONNew Material Underlined
Deleted Material in Brackets

Section 1. NRS 584.410 is hereby amended to read as follows:

1. To provide funds for administration and enforcement of NRS 584.325 to 584.690, inclusive, by assessments to be paid by producers of fluid milk or fluid cream or both, and from licenses issued to distributors in the manner prescribed herein.

2. To authorize and enable the commission to prescribe marketing areas and to fix prices at which fluid milk or fluid cream, or both, may be sold by producers ^{and} distributors (and ^{retailers}), which areas and prices are necessary due to varying factors of costs of production, health regulations, transportation and other factors in the marketing areas of this state; but the price of fluid milk or fluid cream within any marketing area shall be uniform for all purchasers of fluid milk or fluid cream of similar grade or quality under like terms and conditions.

3. To authorize and enable the commission to formulate stabilization and marketing plans subject to the limitations herein prescribed with respect to the contents of such stabilization and marketing plans and declare such plans in effect for any marketing area.

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4. To enable the dairy industry with the aid of the state to correct existing evils, develop and maintain satisfactory marketing conditions and bring about a reasonable amount of stability and prosperity in the production and marketing of fluid milk and fluid cream.

~~Section 2. NRS 584.420 is hereby amended to read as follows:~~

~~1. There is hereby created the state dairy commission of the State of Nevada in which shall be vested the administration of the provisions of NRS 584.325 to 584.690, inclusive.~~

~~2. The commission shall consist of (nine) six members appointed by the governor. The members shall select a chairman from among their number.~~

Alternative Section 2. NRS 584.420 is hereby amended to read as follows:

Exhibit II

1. There is hereby created the state dairy commission of the State of Nevada in which shall be vested the administration of the provisions of NRS 584.325 to 584.690, inclusive.

2. The commission shall consist of (nine) eight members appointed by the governor. The members shall select a chairman from among their number.

~~Section 3. NRS 584.430 is hereby amended to read as follows:~~

~~(Two) three members of the commission shall be producers(, one member shall be a distributor, and one member shall be a producer-distributor, two members shall be operators of retail stores) and three members shall be persons representing the (consuming) public at large who have no connection with producers, distributors, producer-distributors, or the retail stores.~~

~~Alternative Section 3 amends NRS 584.430 to read as follows:~~

~~Two members of the commission shall be producers, one member shall be a distributor (, and) or (one member shall be) a producer-distributor, (two) one member(s) shall be an operator(s) of a retail store(s) and (three) four members shall be persons representing the (consuming) public at large who have no connection with producers, distributors, producer-distributors, or the retail stores.~~

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Section 4. NRS 584.435 is hereby amended to read as follows:

(Continued absence) Absence from two consecutive meetings of the commission (may) shall constitute good and sufficient cause for removal of a member by the governor.

Section 5. NRS 584.650 is hereby amended to read as follows:

Every distributor who purchases fluid milk or fluid cream from a producer and every producer cooperative organization who handles producer milk for its members or other producers, shall make and keep for 1 year a correct record showing in detail the following with reference to the handling sale or storage of such fluid milk or fluid cream for each individual producer:

1. The name and address of the producer.
2. The date the fluid milk or fluid cream was received.
3. The amount of fluid milk or fluid cream received.
4. The official butterfat test of the fluid milk or

fluid cream if purchased on a butterfat basis.

5. The usage of the fluid milk or fluid cream.
6. Evidence of payment for the fluid milk or fluid cream purchased or handled.

Section 6. NRS 584.655 is hereby amended to read as follows:

In addition to the compilation pertaining to fluid milk and fluid cream from the reports required by NRS 584.325 to 584.690, inclusive, the commission shall collect, assemble, compile, and distribute statistical data relative of fluid milk, fluid cream, other milk and milk products, and such other information as may relate to the dairy industry and the provisions of NRS 584.325 to 584.690, inclusive. For purposes of this section the commission may require such information as it shall deem necessary from distributors, producers, cooperative associations of producers, retailers, and others who are engaged in the production, sale, distribution, handling or transportation of fluid milk, fluid cream or other dairy products.

Section 7. NRS 584.568 is hereby amended to read as follows:

1. Each stabilization and marketing plan shall contain provisions fixing the price at which fluid milk and fluid cream may be sold by producers ^{or distributors} ~~or distributors~~ (and (retailers)) and regulating all discounts allowed by producers ^{or} ~~or~~ distributors (and (retailers)).

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2. In determining the minimum prices to be paid by distributors to producers the commission shall consider, but not be limited to, the following factors:

- (a) Cost of production.
- (b) Reasonable return upon capital investment.
- (c) Producer transportation costs.
- (d) Cost of compliance with health regulations.
- (e) Current and prospective supplies of fluid milk and fluid cream in relation to current and prospective demands for such fluid milk and fluid cream.

3. In determining the minimum prices to be paid by retailers to wholesalers (and by consumers to retailers) the commission shall consider, but not be limited to, the following factors:

- (a) The quantities of fluid milk or fluid cream, or both,

Exhibit II

distributed in the marketing area covered by the stabilization and marketing plan.

(b) The quantities of fluid milk or fluid cream, or both, normally required by consumers in such marketing area.

(c) The cost of fluid milk or fluid cream, or both, to distributors (and retail stores) which in all cases shall be, respectively, the prices paid by distributors to producers and the minimum wholesale prices, as established pursuant to NRS 584.325 to 584.690, inclusive.

(d) The reasonable cost of handling fluid milk or fluid cream, or both, incurred by distributors (and retail stores) respectively, including all costs of hauling, processing, selling and delivering by the several methods used in such marketing area in accomplishing such hauling, processing, selling and delivering, as such costs are determined by impartial audits of the books and records, or surveys, or both, of all or such portion of the distributors (and retail stores) respectively, of each type or class in such marketing area as are reasonably determined by the commission to be sufficiently representative to indicate the costs of all distributors (and retail stores, respectively) in such marketing.

Section 8. NRS 584.583 is hereby amended to read as follows:

584.583 Sales of fluid milk, fluid cream, butter, fresh

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dairy byproducts below cost by distributors, retailers.

1. No distributor or retailer may sell fluid milk, fluid cream, or fresh dairy byproducts below cost. "Fresh dairy byproducts" includes but is not limited to the following items: buttermilk, skim milk, chocolate drink, ice cream, ice milk mix, sherbet, sour cream, sour cream dressing and cottage cheese; and does not necessarily define the class of fluid milk or fluid cream which is used to make such products.

2. In determining cost in the case of a (manufacturing) distributor (,) who processes or manufactures fluid milk, fluid cream, butter or fresh dairy byproducts, the following factors shall be included, but cost shall not necessarily be limited to such factors:

(a) Cost of raw products based on actual cost or on current and prospective supplies of fluid milk and fluid cream in relation to current and prospective demands for such fluid milk and fluid cream.

(b) Cost of production.

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- (c) Reasonable return upon capital investment.
- (d) Producer transportation costs.
- (e) Cost of compliance with health regulations.
- (f) Overhead cost of handling based on a percentage of overall plant and sales operating cost.

3. In determining cost in the case of a peddler-distributor or retailer, the following factors shall be included, but cost shall not necessarily be limited to such factors:

- (a) Purchase price of product.
- (b) Overhead cost of handling.
- (c) Reasonable return upon capital investment.

4. Each (manufacturing) distributor who processes or manufactures fluid milk, fluid cream, butter or fresh dairy byproducts shall file with the commission a statement of costs, listing separately the items set forth in subsection 2 of this section and any other applicable cost factors. Such statements shall be kept current by supplement under regulations promulgated by the commission. All such statements shall be kept confidential by the commission except when used in judicial proceedings or administrative proceedings under NRS 584.325 to 584.690, inclusive.

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5. Each (manufacturing) distributor who processes or manufactures fluid milk, fluid cream, butter or fresh dairy byproducts and each peddler distributor shall file with the commission a list of wholesale, retail and distributor or dock prices. No such distributor shall sell at prices other than those contained in such list, except in the case of bids to departments or agencies of federal, state and local governments; but in no case shall the distributor sell below cost as provided in this section.

6. Notwithstanding other provisions of this act (The) the commission or any agent of the commission may examine, at any reasonable time and place, the books and records of any (manufacturing) distributor, or (peddler-distributor) retailer relating to cost and prices.

Section 9. Request for Public Hearing

1. Any petition requesting a hearing for the purpose of amending a stabilization and marketing plan shall be filed in ten copies and include the following:

(a) The name and address of every person joining in the petition. If the petitioner is a cooperative association of producers, a partnership or corporation the names of the duly authorized representative(s) thereof shall be listed.

(b) A concise statement of the specific relief requested.

(c) A specific statement of the reasons why such relief is needed.

(d) A statement of the substantiating evidence.

2. The petition shall be signed by the petitioners and an affidavit shall accompany each such petition setting forth that the facts set forth therein are true and correct to the best of their knowledge, information, and belief.

3. There shall be attached as an exhibit to the original copy only of such petition filed substantiating evidence in support of such petition. Additional information shall be supplied the commission upon request.

4. Any person may, before the hearing, examine a copy of said petition and accompanying statements (but not the exhibits attached thereto) and file an answer, protest or any other statement concerning same, and may appear at the hearing to give evidence in support of or in protest of said petition.

5. Additional copies of such petition must be available for distribution at the scheduled hearing.

6. ~~15 day notice~~

6. 15-day notice with all supplied information must be given each Commission member.

Exhibit III

The following items were taken from codes of other states and are submitted for information purpose:

Section A Price filing time limit.

(Amends NRS 584.583)

Prices which are filed pursuant to subsection 5 of this section shall not become effective until the seventh day after filing. However, any other distributor may meet such price so filed if such distributor files with the commission a schedule of prices which do not exceed the prices so met by him as outlined in NRS 584.584.

Section B Emergency Pricing.

1. If after public hearing, the Commission finds that conditions in the market with regard to wholesale or retail milk prices are such as to cause, or threaten to cause, irreparable damage to the fluid milk industry or to cause or threaten to cause the creation of monopoly in the fluid milk industry, the commission shall establish the price or prices below which fluid milk shall not be sold by distributors and retailers, and shall regulate any discounts allowed by distributors and retailers. Any price established pursuant to this section shall not be effective for a period in excess of six months.

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2. The minimum prices so established shall be at a level which the commission in its opinion, determines will maintain fair price competition and promote orderly marketing conditions.

Section C Prima facia evidence

At any hearing or trial on a complaint under this section, evidence of sale of fluid milk, fluid cream, butter or fresh dairy byproducts by a distributor or retailer below cost shall constitute prima facia evidence of the violation or violations alleged and the burden of rebutting the prima facia case thus made, by showing that the same was justified in that it was not, in fact, made below cost or that it was not for the purpose of injuring, harassing or destroying competition, or that it was not used as a loss leader or to induce the public to patronize his store, shall be upon the person charged with a violation of this section.

